

Model Stipulation and Order

Superior Court of New Jersey  
Law Division, Civil Part

\_\_\_\_\_ County  
Docket Number: L- \_\_\_\_\_

\_\_\_\_\_  
Plaintiff(s),

v.

\_\_\_\_\_  
Defendant(s).

**Electronic Discovery  
Stipulation and Order**

**1. Purpose**

This Order (the “eDiscovery Order”) will govern discovery of Electronically Stored Information (“ESI”) and any electronically stored or maintained information in this case as a supplement to the Rules of Court, the Complex Business Litigation Program’s Guidelines, and any other applicable Orders and Rules.

**2. Cooperation**

The Parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the discovery and production of ESI and any electronically stored or maintained documents.

**3. Liaison**

The Parties have designated liaisons who are and will be knowledgeable about and responsible for discussing their respective ESI and/or electronic documents (“eDiscovery Liaison”). Each eDiscovery 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 and/or electronic documents in this matter. The Parties will rely on the eDiscovery Liaison, as needed, to confer about ESI and/or electronic documents and to help resolve disputes without court intervention. The following individuals are the designated as the eDiscovery Liaison for this litigation:

Plaintiff(s) [with contact information]:

Defendant(s) [with contact information]:

**4. Preservation**

By signing this eDiscovery Order, the Parties certify that they have taken reasonable steps to preserve all ESI and electronically stored documents. Additionally, the Parties have discussed their preservation obligations and needs as litigation progresses and agree that preservation of potentially relevant ESI and electronically stored documents will be reasonable and proportionate. To reduce the costs and burdens of preservation, and to ensure proper ESI and/or electronically stored information is preserved, the Parties agree that:

- a) They have exchanged a list of custodians, the types of ESI and/or electronically stored information they believe should be preserved, or general job titles or descriptions of custodians, for whom they believe ESI and/or electronically stored information should be preserved, e.g., “HR head,” “scientist,” “marketing manager,” etc...;
- b) In addition to the previously preserved ESI and/or electronically stored information, the Parties agree that any ESI created or received between (date) and (date) will be preserved for the custodians and/or for those individuals who meet the general job titles or descriptions of custodians provided by the opposing party;

- c) They have agreed/will agree on the number of custodians per party for whom ESI and/or electronically stored information will be preserved;
- d) Data sources that are not reasonably accessible because of undue burden or cost and ESI from these sources will be preserved but not searched, reviewed, or produced: [e.g., backup media of [named] system, systems no longer in use that cannot be accessed];
- e) Among the sources of data the Parties agree are not reasonably accessible, the Parties agree not to preserve the following: [e.g., backup media created before (date), digital voicemail, instant messaging, automatically saved versions of documents];
- f) Any data sources, ESI and/or electronically stored information that has or potentially could have been destroyed is listed below and has been divulged to the opposing party;

Plaintiff(s) Preservation Issues (if any):

Defendant(s) Preservation Issues (if any):

- g) In addition to the agreements above, the Parties agree data from these sources (a) could contain relevant information but (b) under the proportionality factors, should not be preserved: (enter text)

## 5. Custodians

The Parties agree that in providing R. 4:103-1 Initial Disclosures, or earlier if appropriate, they have met and conferred about methods to search ESI in order to identify data sources that are likely to contain relevant documents. The Parties have agreed to (number) custodians and/or data sources each for the purposes of this litigation. Those custodians and/or data sources are listed below. The Parties shall add or remove custodians as reasonably necessary.

Plaintiff(s) Custodians and/or Data Sources:

Defendant(s) Custodians and/or Data Sources:

## 6. Search Terms

The Parties have agreed upon the following search terms:

Plaintiff(s) Search Terms:

Defendant(s) Search Terms:

In the event that any of the search terms return (number) documents or more, the Parties agree that the search term is per se overly broad and will work to create a more tailored search term.

## 7. Production

The Parties agree to run the appropriate de-duplication program prior to any production to reduce the number of duplicate documents. The Parties further agree to the Production Format set forth in Exhibit "A", which is attached hereto and incorporated as part of the eDiscovery Order, for all ESI and/or electronically stored information exchanged in this litigation.

The Parties agree to electronically Bates label documents as follows:

Plaintiff(s) Bates Designation:

Defendant(s) Bates Designation:

**8. Phasing (Rolling) Production**

When a party propounds discovery requests pursuant to proposed R. 4:104-5, the Parties agree to phase the production of ESI (*i.e.* produce the documents on a rolling basis), and the initial production will be from the above-agreed upon custodians and data sources.

Following the initial production, the Parties will continue to prioritize the order of subsequent productions.

**9. Documents Protected From Discovery**

Although New Jersey has not adopted a rule of evidence similar to Federal Rule of Evidence 502 (Attorney-Client Privilege and Work Product; Limitations on Waiver), the Parties understand and stipulate that disclosure of Privileged Discovery Materials pursuant to this Stipulation and Order as well as any Clawback or other Order will not prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client, work product or other applicable privilege or immunity, under New Jersey law.

For example, the mere production 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.

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

**10. Modification**

This Stipulated Order may be modified by a Stipulated Order of the Parties or by the Court for good cause shown.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Counsel for Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Counsel for Defendant

**IT IS SO ORDERED** that the foregoing Agreement is approved.

Dated: \_\_\_\_\_

\_\_\_\_\_  
J.S.C.