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15 [ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE]

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18

19 CITY OF LOS ANGELES, a municipal)
corporation,)
20)
Plaintiff,)
21)
v.)
22)
JPMORGAN CHASE & CO.;)
23 JPMORGAN CHASE BANK, N.A.; and)
CHASE MANHATTAN BANK USA,)
24 N.A.,)
25 Defendants.)
26)

No. 2:14-CV-04168-ODW (RZx)
DISCOVERY MATTER

**[PROPOSED] ORDER ON
STIPULATION REGARDING
ESI DISCOVERY PROTOCOL**

1 The following terms of the Stipulation Regarding ESI Discovery Protocol
2 submitted by Plaintiff City of Los Angeles and Defendants JPMorgan Chase & Co.,
3 JPMorgan Chase Bank, N.A., and Chase Manhattan Bank USA, N.A., meet with the
4 approval of the court.

5 **IT IS HEREBY ORDERED THAT:**

6 This Order Regarding ESI Discovery Protocol shall govern the parties'
7 document productions in the above-captioned case. To the extent any party identifies
8 issues that it contends make compliance with any of the provisions of this Order
9 impossible or overly burdensome, the parties shall meet and confer regarding an
10 appropriate and reasonable alternative.

11
12 **I. DEFINITIONS**

13 **A. “Electronically stored information” or “ESI,”** as used herein, means
14 and refers to computer generated information or data of any kind.

15 **B. “Native data format”** means the file in its original creating application,
16 *i.e.*, including the format(s) in which the producing party has maintained ESI in the
17 ordinary course of business.

18 **C. “Metadata”** means and refers to information or data about data, and
19 includes without limitation (i) information embedded in or associated with a native file
20 that is not ordinarily viewable or printable from the application that generated, edited,
21 or modified such native file which describes the characteristics, origins, and/or usage
22 of the electronic file and/or (ii) information generated automatically by the operation
23 of a computer or other information technology system when a native file is created,
24 modified, transmitted, deleted or otherwise manipulated by a user of such system.

25 **D. “Static Image”** means or refers to a representation of ESI produced by
26 converting a native file into a standard image format capable of being viewed and
27 printed on standard computer systems.

1 **E. “Documents”** includes writings, drawings, graphs, charts, photographs,
2 sound recordings, images, and other data, data records or data compilations — stored
3 in any medium from which information can be obtained.

4 **F. “Media”** means an object or device, real or virtualized, including but not
5 limited to a disc, tape, computer or other device, on which data is or was stored.

6 **II. FORMAT OF PRODUCTION**

7 **A. TIFF Image Files.** The Parties agree that all ESI will be produced as
8 single-page, black-and-white Group IV TIFF image files of at least 300 dpi resolution,
9 except as provided in section II.H. Each image file shall be of the form: <Bates
10 num>.tif where <Bates num> is the BATES number of the page. Original document
11 orientation as displayed in the native file should be maintained in the TIFF image
12 (e.g., portrait to portrait and landscape to landscape).

13 **B. Text Files.** Accompanying these TIFF files shall be a multipage text
14 (.TXT) file containing searchable text from the native file for nonredacted documents
15 and OCR text for documents that have been redacted. Each filename shall be of the
16 form: <Bates num>.txt where <Bates num> is the BATES number of the first page of
17 the document. Text shall be encoded in UTF-8. Load files of the static images should
18 be created and produced together with their associated static images to facilitate the
19 use of the produced images by a document management or litigation support database
20 system (e.g., Opticon OPT or iPRO LFP image load files). The parties shall meet and
21 confer to the extent reasonably necessary to facilitate the import and use of the
22 produced materials with commercially available document management or litigation
23 support software.

24 **C. Production of Structured Data.** To the extent a response to discovery
25 requires production of discoverable electronic information contained in a database, in
26 lieu of producing the database, the parties shall meet and confer to, with an
27 understanding of which fields are relevant, agree upon a set of queries to be made for
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1 discoverable information and generate a report in a reasonably usable and exportable
2 electronic file (e.g., Excel or CSV format) for review by the requesting party or
3 counsel. Upon review of the report(s), the requesting party may make reasonable
4 requests for additional information to explain the database schema, codes,
5 abbreviations, and different report formats or to request specific data from identified
6 fields.

7 **D. Production of Physical Documents.** Documents or records that either
8 were originally generated as ESI but now only exist in physical hard-copy format, and
9 documents or records that were originally generated in hard-copy format, shall be
10 converted to a single page .TIFF file and produced following the same protocols set
11 forth herein or otherwise agreed to by the parties. OCR will be provided for such
12 documents. If, however, the Disclosing Party identifies documents or records for
13 which OCR would be overly burdensome, the parties shall meet and confer regarding
14 an appropriate and reasonable alternative.

15 **E. Native Files.** In accordance with section II.A, the parties agree that
16 Documents shall be produced as TIFF images. The exception to this rule shall be
17 presentation-application files (e.g., MS PowerPoint), spreadsheet-application files
18 (e.g., MS Excel), multimedia audio/visual files such as voice and video recordings
19 (e.g., .wav, .mpeg, and .avi files), and other files that are not convertible to a static
20 image for which all ESI items shall be produced in native format. Each native file
21 shall be of the form: <Bates num>.ext where <Bates num> is the BATES number of
22 the document and .ext is the original native file extension. In the event a Document
23 subject to this paragraph requires redaction, it shall be produced in TIFF in accordance
24 with paragraph II.I below. If upon review the receiving party believes the production
25 of such files is inadequate, it shall meet and confer with the producing party regarding
26 whether an alternate method of redaction would be appropriate.

27 **F. Document Unitization.** All productions will include data load files and
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1 image load files as detailed in Section II.L below. Each party will designate its
2 preferred format for receiving production documents. The parties shall meet and
3 confer if either believes the other's preferred format is overly burdensome,
4 technologically unfeasible, or cost prohibitive. The image load file shall reference
5 each TIFF file in the corresponding production, and the total number of TIFF files
6 referenced in the load file shall match the total number of image files in the
7 production. The total number of documents referenced in a production's data load file
8 should match the total number of designated document breaks in the corresponding
9 image load file for that production.

10 *Format for both plaintiff and defendant productions:*

11 **OCR and Extracted Text Files (.TXT Files):**

- 12 • Single text file per document containing all the document's pages
- 13 • Filenames should be of the form:
14 <Bates num>.txt
15 Where <Bates num> is the BATES number of the first page in the
16 document.
- 17 • Text must be encoded in UTF-8.

18 **Images Files:**

- 19 • Single page per image
- 20 • Single image per file
- 21 • TIFF is default FORMAT unless the file is produced in native format per
22 Section II.E or produced as color JPG or PNG per Section II.H.
- 23 • Filenames should be of the form:
24 <Bates num>.<ext>
25 Where <Bates num> is the BATES number of the page, and <ext> is the
26 appropriate extension for the image format (.jpg, .tif, .png, etc.)

27 **Index Files:**

- 1 • .DAT files (separated by standard Concordance delimiters)
- 2 • First line must contain the column/field names (set forth in Section II.L
- 3 herein)
- 4 • Every row must have the same number of columns/fields (empty values
- 5 are acceptable)
- 6 • Text must be encoded in UTF-8
- 7 • Values must be enclosed by Concordance standard delimiters
- 8 •

9 **G. Duplicates.** Removal of duplicate documents shall be performed but
10 shall only be done on exact duplicate documents on either a custodian basis or a global
11 basis (based on MD5 or SHA-1 hash values at the document level). Duplicate
12 documents will not be removed if they are attached to unique family members (e.g.,
13 where two different e-mails are attached to the same document, the MD5 Hash
14 duplicate attachment will not be removed, as it is attached to different cover e-mails).
15 The producing party shall inform the receiving party whether de-duplication was
16 performed on a custodian basis or on a global basis. In addition, the producing party
17 shall provide a “duplicate custodian” field for each document produced—*i.e.*, a list of
18 every custodian of the Party who had that document.

19 **H. Color.** For files not produced in their native format, if an original
20 document contains color, the producing party may produce black and white image(s).
21 At the request of the receiving party, the parties shall meet and confer to discuss
22 production of color image(s) for specific documents.

23 **I. Bates Numbering and Other Unique Identifiers.** For documents not
24 produced in their native format, each page of a produced document shall have a
25 legible, unique page identifier (“Bates Number”) electronically affixed to the bottom
26 right hand corner of the TIFF image in such a manner that information from the source
27 document is not obliterated, concealed, or interfered with. There shall be no other
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1 legend or stamp placed on the document image unless a document qualifies for
2 confidential treatment pursuant to the terms of any Protective Order entered by this
3 Court in this litigation, or has been redacted in accordance with applicable law or
4 Court order. In the case of confidential materials as defined in a Protective Order, or
5 materials redacted in accordance with applicable law or Court order, a designation
6 may be “affixed” onto the document’s image at the bottom left hand corner of the page
7 or on top of the redacted text. Each party should use a different production prefix.

8 For any ESI produced in native data format, the producing party shall produce a
9 single-page TIFF slipsheet indicating that a native item was produced and reflecting
10 the production Bates number, any confidential designation and text stating “Document
11 Produced in Native Format.” .

12 In cases where documents to be provided in native format are to be redacted and
13 cannot be imaged in a readable manner (e.g., Excel spreadsheets), the producing party
14 may redact the information from the native version of the document (but keeping a
15 pristine non-redacted image intact and preserved) by replacing the redacted text in the
16 appropriate columns, cells, or locations with a black box. If a party performs
17 redactions on native copies of documents, it will notify the receiving party of the Bates
18 numbers of the documents redacted in this manner in accordance with section II.L.

19 **J. Production Media.** Documents shall be produced on CD-ROM, DVD,
20 external hard drive (with standard PC compatible interface), or such other readily
21 accessible computer or electronic media as the parties may hereafter agree upon (the
22 “Production Media”). Each item of Production Media shall include: (1) text
23 referencing that it was produced in this lawsuit (2) the production date, (3) the
24 production volume for the party; and (4) the Bates number range of the materials
25 contained on such Production Media item. As an alternative, documents may be
26 produced electronically using secured file transport protocols (e.g., SFTP or SSL/TLS
27 over HTTPS).

1 **K. Electronic Text Files.** Text files for nonredacted produced documents
2 shall be produced reflecting the full text that has been electronically extracted from the
3 original, native electronic files (“Extracted Text”). The Extracted Text shall be
4 provided in UTF-8 text format and shall be labeled and produced on Production Media
5 in accordance with the provisions of paragraph II.J above, “Production Media”. The
6 text files will be named with the unique Bates number of the first page of the
7 corresponding document followed by the extension “.txt.” with the relative pathing to
8 these text files included in the “index file” on the production media.

9 **L. Metadata.** The production of Metadata produced will be provided in
10 connection with native data format ESI requested, and includes without limitation,
11 file, application and system metadata, to the extent reasonably available. The
12 Metadata fields identified below will be extracted and produced (to the extent
13 reasonably available) in a flat delimited text file or .dat format with values enclosed by
14 Concordance standard delimiters:

- 15 ▪ Application Name;
- 16 ▪ AttachCount (number of attachments);
- 17 ▪ Beginning Bates Document Number;
- 18 ▪ Ending Bates Document Number;
- 19 ▪ BegAttach (the Beginning Bates Document Number of the parent
20 document);
- 21 ▪ EndAttach (the Ending Bates Document Number of the last
22 attachment);
- 23 ▪ Conversation Index;
- 24 ▪ Custodian;
- 25 ▪ Confidentiality designation;
- 26 ▪ Redacted (populated “Yes” if document has been redacted);
- 27 ▪ FileExt (the extension of the filename, e.g., “DOC” for an MS
28 Word document);
- Filename (the original filename);
- Folderpath;
- FileSize (in KB);
- Date and Time Created (“operating-system”-level metadata is
 volatile and may not reflect actual document creation date/time));
- Date and Time Last Modified;

- 1 ▪ Author;
- 2 ▪ To/From/Cc/Bcc fields;
- 3 ▪ Date and Time Sent;
- 4 ▪ Date and Time Received;
- 5 ▪ Time Zone Processed (time zone set during data processing);
- 6 ▪ Email Subject;
- 7 ▪ MD5 Hash;
- 8 ▪ MessageID (message ID of the email header);
- 9 ▪ Page Count;
- 10 ▪ Path to Extracted Text files;
- 11 ▪ Path to Native files;
- 12 ▪ Volume (indicative of production volume); and

13 The parties are not obligated to populate manually any of these fields if such fields
14 cannot be extracted from a document, with the exception that CUSTODIAN shall be
15 populated by the producing party to the extent that a custodian can be identified.

16 **M. Attachments.** Email attachments and embedded files or links must be
17 mapped to their parent by the inclusion of the BegAttach and End Attach fields. The
18 BegAttach field should list the first page of the parent document and the End Attach
19 field should list the last page of the last attachment.

20 **N. Compressed Files.** Compression file types (i.e., .CAB, .GZ, .TAR, .Z,
21 .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is
22 decompressed into the lowest possible compression resulting in individual folders
23 and/or files.

24 **III. OBJECTIONS TO ESI PRODUCTION**

25 **A.** For responsive files not produced in their native format, documents that
26 present imaging or format production problems shall be promptly identified and
27 disclosed to the requesting party; the parties shall then meet and confer to attempt to
28 resolve the problems.

B. If either party objects to producing the requested information on the
 grounds that such information is not reasonably accessible because of undue burden or
 cost, or because production in the requested format is asserted to be not reasonably

1 accessible because of undue burden or cost, before asserting such an objection, the
2 responding party will inform the requesting party of the format in which it is willing to
3 produce it, the nature and location of the information claimed to not be reasonably
4 accessible, and/or the reason(s) why the requested form of production would impose
5 an undue burden or is unreasonably costly, and afford the requesting party opportunity
6 to propose an alternative means of compliance with the request. Such proposal may
7 include alternative cost estimates for ESI discovery production, may offer a proposal
8 for ESI discovery cost allocation, or both. Notwithstanding anything contained herein
9 to the contrary, a producing party shall not produce ESI in a format not requested or
10 designated by the requesting party unless (i) the parties have met and conferred, and,
11 having been unable to resolve such format production conflict at such meet and confer
12 session, (ii) prior to referral to and resolution of such issue by the court.

13 **C. ESI of Limited Accessibility.** If a Producing Party contends that any
14 responsive ESI, excluding back-up tapes or other long-term storage media that were
15 created for use as a disaster recovery mechanism, is not reasonably accessible within
16 the meaning of Fed. R. Civ. P. 26(b)(2)(B), that Party shall timely identify such ESI
17 with reasonable particularity and shall provide the Requesting Party with the basis for
18 declining to produce such ESI, including but not limited to information about the
19 nature of any limitations on access, an estimate of the likely costs that might be
20 incurred in producing such ESI, the method used for storage of ESI (for example, the
21 type of system used to store the ESI), and/or where such ESI is kept. The parties agree
22 that back-up tapes or other long-term storage media that were created for use as a
23 disaster recovery mechanism are presumed not to be reasonably accessible within the
24 meaning of Fed. R. Civ. P. 26(b)(2)(B) and, absent a particular discovery dispute
25 concerning such materials, do not need to be identified as described above. The
26 parties shall negotiate in good faith concerning the production of any such ESI. If the
27 Parties are unable to reach agreement, the Parties shall submit any dispute to the
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1 Court, who shall determine what burden may be imposed upon the Producing or
2 Requesting Parties to resolve the dispute and whether or to what extent the costs of
3 such production shall be borne by the Producing or Requesting Parties.

4 **IV. CATEGORIES OF ESI DISCOVERABLE ONLY UPON A SHOWING**
5 **OF GOOD CAUSE**

6 The following categories of ESI are discoverable only upon a showing of good
7 cause: (1) “deleted,” “slack,” “fragmented,” or “unallocated” data on hard drives; (2)
8 random access memory (RAM) or other ephemeral data; (3) on-line access data such
9 as temporary internet files, history, cache, cookies, etc.; (4) data in metadata fields that
10 are frequently updated automatically, such as last-opened dates; (5) e-mails and
11 structured data on systems no longer regularly in use by the Party in the normal course
12 of their business, provided that such data is not reasonably accessible within the
13 meaning of Fed. R. Civ. P. 26(b)(2)(B); and (6) data on backup tapes.

14 **V. MISCELLANEOUS**

15 **A.** Nothing herein shall be construed to affect the discoverability or
16 admissibility of any Document or data. All objections to the discoverability or
17 admissibility of any Document or data are preserved and may be asserted at any time.

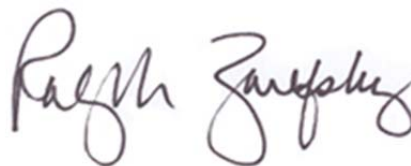
18 **B.** The enumeration of a protocol for the production, processing, or
19 treatment of ESI in any particular format or from any particular source of ESI shall not
20 be construed as a concession that such formats or sources of ESI contain reasonably
21 retrievable or relevant data or that they must be searched in response to the document
22 requests or in response to any particular document request.

23 **C.** This Stipulated Order is not intended to govern any protections or
24 restrictions related to the production of privileged litigation material. The Parties have
25 separately addressed the process for handling the production of privileged litigation
26 materials in the Stipulated Protective Order.

27 **D.** Limited 28 U.S.C. § 1920 Waiver. While neither party is taking a
28 position in this document that e-discovery costs under 18 U.S.C. § 1920 are taxable or

1 not, the parties agree that if a party seeks e-discovery costs under 18 U.S.C. § 1920,
2 that party will not seek the reimbursement of any costs relating to the production,
3 storage, and maintenance of the ESI produced by that party in TIFF format over native
4 format.

5 **IT IS SO ORDERED.**



7 DATED: 3/24/15

By: _____

8 HONORABLE RALPH ZAREFSKY
9 UNITED STATES MAGISTRATE JUDGE

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