

Form 6A:4 Stipulated Discovery Plan & Order

{CAPTION – FORM 1B:1}

STIPULATED DISCOVERY PLAN & ORDER

{Party}, {name}, and {adverse party}, {name}, make the following stipulated discovery plan and order regarding the procedure for discovery and submit this plan to the Court for approval.

**A. DEFINITIONS**

1. The following definitions apply to this stipulated discovery plan and order:

a. Electronically stored information. The term “electronically stored information” means electronic information that is stored in a medium from which it can be retrieved and examined. It includes, but is not limited to, all electronic files that are electronically stored.

(1) “Electronic file” includes, but is not limited to, the following: voicemail messages and files; e-mail messages and files; deleted files; temporary files; system-history files; Internet- or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies; computer activity logs; metadata; {continue listing examples as necessary}. Unless otherwise defined, each example used to illustrate the term “electronic file” will have the meaning assigned to it by {identify source for definitions, e.g., *Sedona Conference Glossary: E-Discovery & Digital Information Management (Third Edition) (2010)*, *Webster’s New World Computer Dictionary (10th ed. 2003)*, *Microsoft Computer Dictionary (5th ed. 2002)*}.

(2) “Electronic information system” refers to a computer system or network that contains electronic files and electronic storage. Unless otherwise defined, each example used to illustrate the term “electronic information system” will have the meaning assigned to it by {identify source for definitions, e.g., *Sedona Conference Glossary: E-Discovery & Digital Information Management (Third Edition) (2010)*, *Webster’s New World Computer Dictionary (10th ed. 2003)*, *Microsoft Computer Dictionary (5th ed. 2002)*}.

(3) “Electronic storage” refers to electronic files contained on magnetic, optical, or other storage media, such as hard drives, flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart cards, integrated-circuit cards (e.g., SIM cards), {continue listing examples as necessary}. Unless otherwise defined, each example used to illustrate the term “electronic storage” will have the meaning assigned to it by {identify source for definitions, e.g., *Sedona Conference Glossary: E-Discovery*

*& Digital Information Management (Third Edition) (2010), Webster's New World Computer Dictionary (10th ed. 2003), Microsoft Computer Dictionary (5th ed. 2002)}.*

- b. Parties. The term “parties” means the plaintiff and the defendant. The term “plaintiff” or “defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, means the party and, when applicable, {his/her/its} agents, representatives, officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose an obligation on any person who is not a party to the litigation.

*{Continue listing definitions as necessary.}*

## **B. SCOPE OF DISCOVERY**

*{CHOOSE APPROPRIATE PARAGRAPH 2}*

2. The parties stipulate that the presumptive limits on discovery as stated in the Federal Rules of Civil Procedure should apply in this case.

2. The parties stipulate that the presumptive limits on discovery as stated in the Federal Rules of Civil Procedure should not apply in this case because {explain}. Therefore, the parties stipulate that additional discovery will be completed as follows:

- a. Depositions. The number of depositions that each party may take is {insert number}. Each deposition {insert if necessary: other than of {name of deponent}} is limited to the maximum of {insert number} hours unless extended by agreement of the parties. Each deposition may be taken under the following conditions: {describe parties’ agreed procedure for depositions}.
- b. Interrogatories. The number of interrogatories that each party may serve on any other party is {insert number}, including discrete subparts.
- c. Requests for admissions. The number of requests for admissions that each party may serve on any other party is {insert number}.
- d. Requests for production. The number of requests for production that each party may serve on any other party is {insert number}. {Describe any other conditions, e.g., whether the parties should “Bates stamp” all copies of documents and whether limits should be placed on costs to photocopy documents.}

*{Continue listing modifications to presumptive limits as necessary.}*

## **C. ELECTRONICALLY STORED INFORMATION**

### **INFORMAL EXCHANGE OF INFORMATION**

3. The parties stipulate that the procedure for the informal exchange of information about electronically stored information in this case will be as follows:

**{CHOOSE APPROPRIATE PROCEDURES}**

- a. The parties agree to a preliminary exchange of information about electronically stored information by {date}. The information exchange will include {explain, e.g., the identity of custodians of relevant electronically stored information; the identification of relevant electronic systems, including the nature, scope, character, organization, accessibility, and formats used in each system; and the identification of document-retention policies and the identity of persons responsible for those policies}. {See O'Connor's Federal Rules, "Sources of ESI," ch. 6-C, §7.2.2, p. 496.}
- b. The parties agree to {insert number} preliminary interrogatories focused on the discovery of electronically stored information beyond the 25-interrogatory limit. {Explain, e.g., parties will exchange questionnaires that include interrogatory-style questions about the architecture and operation of each party's computer and information systems and the identity of witnesses with knowledge of those systems.} {See O'Connor's Federal Rules, "Involvement of ESI," ch. 6-C, §7.2.1, p. 496.}
- c. The parties agree to preliminary depositions of persons with knowledge of each party's computer and information systems and electronically stored information. {Explain, e.g., identify each person to be deposed, the subject matter of the deposition, and the dates and locations of each deposition.} {See O'Connor's Federal Rules, "Knowledgeable persons," ch. 6-C, §7.2.4, p. 497.}

{Continue listing procedures for informal exchange of information as necessary.}

**DISCLOSURE PROTOCOLS**

4. The parties stipulate that the protocols for the disclosure of electronically stored information in this case will be as follows: {describe parties' agreed stipulations on disclosures, e.g., whether parties will delay initial disclosures until after informal exchange of information about electronically stored information, and if so, when disclosures will take place and in what format disclosures will be made}. {See O'Connor's Federal Rules, "Initial disclosures," ch. 6-C, §9.1, p. 498.}

**DISCOVERY PROTOCOLS**

5. The parties stipulate that the protocols for the discovery of electronically stored information will be as follows:

**{CHOOSE APPROPRIATE DISCOVERY PROTOCOLS}**

- a. The parties agree to an electronic-information expert to *{identify expert's duties and responsibilities, e.g., perform on-site inspection of electronically stored information, retrieve electronically stored information}*. *{Explain, e.g., whether expert will be subject to discovery requests.}*
- b. The parties agree to make mirror images of relevant computers, portable hard drives, *{continue listing items to be imaged}*.
- c. The parties agree that the following sources will be used to retrieve electronically stored information: *{list sources by identifying systems, document types, or fields.}* *{See O'Connor's Federal Rules, "Sources," ch. 6-C, §7.2.2(1), p. 496.}*
- d. The parties agree to limits on searches of electronically stored information. *{Explain, e.g., limit scope for searching electronically stored information to keyword searches and provide specific terms, names of individuals or business organizations, and data ranges.}* *{See O'Connor's Federal Rules, "ESI Search Techniques," ch. 6-C, §5, p. 490.}*
- e. The parties agree to a procedure to identify relevant electronically stored information. *{Describe procedure, e.g., predictive coding.}* *{See O'Connor's Federal Rules, "ESI Search Techniques," ch. 6-C, §5, p. 490.}*
- f. The parties agree to the following *{form/forms}* of production of electronically stored information: *{identify form or forms of production}*. *{Explain, e.g., (1) produce in native format all relevant information currently maintained in a reasonably accessible format, that is, data that does not need to be restored or otherwise manipulated to be usable, (2) identify, but do not immediately produce, information maintained in an inaccessible format, that is, data that must be restored before it can be accessed and used, and (3) provide a detailed statement about the ability to restore the information maintained in an inaccessible format.}* *{See O'Connor's Federal Rules, "Form of production," ch. 6-C, §7.2.5, p. 497.}*
- g. The parties agree to a cost-sharing plan for retrieving and producing electronically stored information. *{Describe cost-sharing plan.}* *{See O'Connor's Federal Rules, "Costs," ch. 6-C, §7.2.6, p. 497.}*

*{Continue listing discovery protocols as necessary.}*

#### **D. PRESERVATION OF PRIVILEGES & PROTECTIONS**

6. The parties stipulate that the procedure for the preservation of privileges and protections will be as follows: *{describe procedure for preserving privileges and protections, e.g., state in detail the parties' "clawback" agreement, which allows responding party to timely assert a claim of privilege or protection when documents, electronically stored information, or tangible things are produced inadvertently}*. *{See Fed. R. Civ. P.*

26(f)(3)(D); FORM 6A:5; O'Connor's Federal Rules, "Asserting claims of privilege & protection," ch. 6-A, §4.4.5(4), p. 417.

**E. {OTHER DISCOVERY PROCEDURE}**

7. {Describe any procedure governing discovery that the parties agree on or intend to change.}

APPROVED:

\_\_\_\_\_  
{Name of attorney for plaintiff}

APPROVED:

\_\_\_\_\_  
{Name of attorney for defendant}

SO ORDERED on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
U.S. DISTRICT JUDGE