IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:24-cv-22142-GAYLES/GOODMAN

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

      Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

      Defendant.

_____/

ORDER REGARDING
THE PRODUCTION OF ELECTRONICALLY STORED
INFORMATION AND HARD-COPY DOCUMENTS[1]

The parties hereby agree that this Order Regarding the Production of
Electronically Stored Information ("ESI") and Hard-Copy Documents ("Order") shall
govern the parties in the above-captioned case.

GENERAL PROVISIONS

1.   This Order will govern the production of ESI and hard-copy documents
(collectively, "Document" or "Documents").

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[1]   The Undersigned substantively modified the proposed stipulated protective order
in numbered paragraphs 2, 8, 13, 17, 19, 20, 21, 24, and 26. I also made minor edits to
correct syntax and grammar issues.

2.   This Order does not supplant the applicable Federal Rules of Evidence, Federal Rules of Civil Procedure, including without limitation Federal Rules of Civil Procedure 26(b)(2), 33, and 34. Rather, the parties agree to the terms and parameters set forth herein, subject to the applicable Federal Rules.

DOCUMENT COLLECTION PROVISIONS

3.   If the producing party is filtering documents using search terms or other culling methodology, the producing party will disclose the list of search terms to the receiving party and provide the receiving party the opportunity to propose additional terms.

4.   A producing party may collect some documents without using search terms and instead may complete "targeted" collections from custodians or sources based on document custodians identified in interviews or other discussions with counsel or by collecting folders identified as containing responsive materials.

5.   Through the pendency of this litigation, the parties shall take reasonable steps to preserve potentially relevant information, including ESI, giving consideration to Rule 26(b)(2)(B) and (C) of the Federal Rules of Civil Procedure and the Sedona Conference principles on the application of the concept of proportionality to civil litigation.[2]

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[2]   *The Sedona Conference Commentary on Proportionality in Electronic Discovery*, 11 Sedona Con. J. 289 (2010).

6. <u>Metadata Fields and Processing:</u>

(a) Each party shall take reasonably proportional efforts to not modify the date-related metadata associated with the documents such as the last modified date.

(b) ESI shall be processed, to the extent practicable, in a manner that preserves hidden columns or rows, hidden text or worksheets, speaker notes, tracked changes, and comments.

(c) ESI items shall be produced with all of the metadata and coding fields set forth in Section 7(g)(ix), to the extent that information is reasonably available.

(d) This Order does not create any obligation to create or manually code fields that are not automatically generated by the processing of ESI, or that do not exist as part of the original metadata of the Document; provided, however, that the producing party must populate, where possible, the (a) BegBates, (b) EndBates, (c) BegAttach, (d) EndAttach, (e) Custodian, (f) NativeFileLink fields, if applicable, and (g) TextPath. These fields should be populated for all produced ESI, as well as paper Documents converted to electronic form, regardless of whether the fields can be populated pursuant to an automated process.

PROVISIONS FOR PRODUCTION OF ESI

7.   Format for ESI Productions: The parties agree that all documents maintained originally in electronic, native format and collected for this case are to be produced in an "imaged" file format, where reasonably feasible, with a corresponding load file containing OCR or extracted text, and metadata fields, as described below. The parties agree that Excel spreadsheets, Microsoft Access files, and .CSV files will be provided in native format with a Tagged Image File Format ("TIFF") placeholder and that other files that cannot be rendered to TIFF in a readable format will be produced in native format as well. Other specific information regarding the production format is provided below:

(a)   Native: Microsoft Access files, Excel files, .CSV files, other similar databases and spreadsheet files, and other files that cannot be rendered in a readable TIFF format shall be produced in the format which the electronically stored information was originally created. Native files will be produced together with a placeholder TIFF image. Each TIFF placeholder will contain language indicating that the document is being produced in native format. A relative file path to the native file shall be provided in the load file as described in item (g), below. To the extent a party obtains through discovery a file or document that they believe is not adequately represented in an image file format, they may request that the producing party produce the file or document in native format, the

4

production of which may not unreasonably be withheld.

(b)   Imaged File: Documents will be produced in single page TIFF image

format, converted from the native file. The specifications regarding images are:

(i)   All images shall be produced in 300 DPI Group IV black and

white TIFF. A receiving party may request that an ESI Document be

produced in color format if the original ESI Document contains color text,

markings or graphics, subject to objection by the producing party;

(ii)   Track changes and comments in Word documents and

PowerPoint notes and shall also be imaged so that such content is viewable

on the images;

(iii)   Bates numbers shall be branded to the images;

(iv)   Images shall be single page image files (one file for each page

of a document);

(v)   Page size shall be 8.5 x 11 inches, unless in the reasonable

judgment of the producing party, a particular item requires a different page

size;

(vi)   Each image file will use the Bates number of the page as its

unique file name; and

(vii)   Original document orientation as displayed in the native file

should be maintained in the TIFF image (*i.e.,* portrait-to-portrait and

landscape-to-landscape).

(c)   Image Load Files: An image load file in a standard .opt load file format shall be included:

(i)   The name of the image load file should mirror the name of the delivery volume, and should have the appropriate extension (*e.g.*, ABC001.OPT);

(ii)   The volume names should be consecutive (*e.g.*, ABC001, ABC002, *et seq.*);

(iii)   There should be one row in the load file for every TIFF image in the production;

(iv)   Every image in the delivery volume should be cross-referenced in the image load file;

(v)   The imageID key should be named the same as the Bates number of the page;

(vi)   Load files should not span across media (*e.g.*, CDs, DVDs, hard drives, etc.), *i.e.*, a separate volume should be created for each piece of media delivered or if delivered electronically, a separate volume for each production delivered electronically;

(d)   OCR or Extracted Text File: An OCR or Extracted text file which corresponds to each produced document shall be provided as follows:

6

(i)   Document level OCR text for redacted documents or Extracted text for ESI not containing redaction are to be located in the same directory as its image file;

(ii)   The text file name shall be the same name of the first image page for the document set, followed by .txt; and

(iii)   An OCR or Extracted text file containing the produced document's content will be provided for all documents whether it is produced as an image file or natively;

(e)   de-NISTing: ESI productions shall be de-NISTed using the industry standard list of such files maintained in the National Software Reference Library by the National Institute of Standards & Technology. The parties recognize that to reduce the document review population, additional file types will need to be excluded. Upon request of a receiving party, a producing party shall identify any additional standard, readable, and reviewable file types which have been excluded from its document review population for any production made following the date of this Order.

(f)   Bates Numbering:

(i)   Each TIFF image produced under this Order should be assigned a Bates number that must: (1) be unique across the entire document production; and (2) be sequential within a given Document. The

producing party will identify the Bates number range of each production in a cover letter accompanying the production or in the email with the secure file transfer. If a producing party skips a Bates number or set of Bates numbers in a production, the producing party will identify and note the gap in the cover letter accompanying the production;

(ii)   The producing party will brand all TIFF images in the lower right-hand corner with its corresponding Bates number, using a consistent font type and size. If the receiving party believes that a Bates number obscures the content of a Document, then the receiving party may request that the Document be produced with the Bates number in a different position; and

(iii)   Parent-child relationships for all responsive embedded ESI documents (*e.g.*, the association between an attachment and its parent email, or a spreadsheet embedded within a word processing document), to the extent practicable and without waiving any applicable privilege, shall be preserved by assigning sequential Bates numbers to all responsive non-privileged items within the parent-child group.

(g)   Load File: A load file shall be provided in a ".dat" file format that contains metadata fields in a delimited text load file. For the Concordance .dat, the parties should use Concordance standard delimiters (ASCII 020 corresponding to

a comma, ASCII 254 corresponding to a double quote, ASCII 174 corresponding to

a new line, and a semicolon used to separate values). The production delivery

requirements for the image loads files are as follows:

(i)   The image load file must reference each TIFF file in the

corresponding production, and the total number of TIFF files referenced in

the load file must match the total number of image files in the production.

The total number of Documents referenced in a production's data load file

should match the total number of designated Document breaks in the

corresponding image load file for that production;

(ii)   The first line of the .DAT file should contain the field names

arranged in the same order as the data is arranged in subsequent lines;

(iii)   All date fields should be produced in mm/dd/yyyy format, if

possible;

(iv)   All produced attachments should sequentially follow the

parent Document/email;

(v)   Use carriage-return to indicate the start of the next record;

(vi)   The name of the data load file should mirror the name of the

delivery volume, and should have a .DAT extension (*e.g.,* ABC001.DAT);

(vii)   The volume names should be consecutive;

(viii) Each deliverable volume should limit directory contents to

approximately 1,000 files per folder; and

(ix)   The fielded data should include all the below metadata fields for each document produced. The first line of the data load file should contain the field headers indicating the contents of each field, and each subsequent line should contain the fielded data for each document, where such fielded data is reasonably available.

FIELD NAME[3]	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
BEGBATES	Beginning production number for a given file/document	Email, E-Doc, Native, and Other[4]
ENDBATES	Ending production number for a given file/document	Email, E-Doc, Native, and Other
ATTACHNAME	File name of the attachment	Email, E-Doc, Native,
BEGATTACH	Production number of first page of parent	Email, E-Doc, Native, and Other
ENDATTACH	Production number of last page of last attachment	Email, E-Doc, Native, and Other
CUSTODIAN	Person or other source from whom/which files were collected	Email, E-Doc, Native, and Other

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[3]   Should the "allsourcepath" field become relevant on an individual document or documents, the receiving party may request it and it will be provided, absent undue burden.

[4]   "Other" is defined as documents maintained in image file format or that were scanned from hard copy.

FIELD NAME[3]	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
ALLCUSTODIAN	Other custodians the producing party agreed to produce and who had the file but where the file was eliminated through de-duplication	Email, Native, E-Doc, and Other
FILESIZE	Size of the source native file	Native
SOURCEFILEPATH	The directory structure or path where the original file was stored on the party's source computer system, ending in the filename. Any container name (such as ZIP or PST containers) is included in the path	Email, E-Doc, Native, and Other
FILEEXT	File extension	Email, E-Doc, Native,
HASH	MD5 Hash Value	Email, E-Doc, Native,
APPLICATION	Indicates software application that generated the ESI item (*e.g.*, Outlook, Word, etc.)	Email, E-Doc, Native,
PAGES	Number of pages of the produced document	Email, E-Doc, Native
SUBJECT	Subject	E-mail
FROM	Sender	E-mail
TO	Recipient	E-mail
CC	Copyee	E-mail

11

FIELD NAME[3]	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
BCC	Blind Copyee	E-mail
ATTACHCOUNT	Number of attached, embedded or grouped items	E-mail, E-Doc
DATECREATED	The creation date field	Native, E-mail, E-Doc
DATESENT	Date Sent & Time (MM/DD/YYYY HH:MM)	E-mail
DATERECEIVED	Date Received & Time (MM/DD/YYYY HH:MM)	E-mail
AUTHOR	Author	Native, E-Doc,
DATELASTMOD	Date modified & Time (MM/DD/YYYY HH:MM)	Native, E-Doc,
FILENAME	Original file name	Native, E-Doc,
TITLE	Any value populated in the title field of the source file metadata or item properties	Native, E-Doc,
NATIVEFILE	Path to native file as produced	Native
TEXTPATH	Path to OCR or extracted text file	E-mail, E-Doc, and Other
SLIPSHEET	User-generated field that will indicate if the document was produced with a slipsheet to indicate that the document was not produced	Native
REDACTED	User-generated field that will indicate	Native, E-mail, E-Doc, and Other

FIELD NAME[3]	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
	redactions. "X," "Y," "Yes," "True," are all acceptable indicators that the document is redacted. Otherwise, blank.	
CONFIDENTIALITY	User-generated field that will indicate confidentiality. "X," "Y," "Yes," "True," are all acceptable indicators that the document is Confidential. Otherwise, blank.	Native, E-mail, E-Doc, and Other

8.   Documents from Structured Data/Databases: The producing party will produce data exported from databases in a reasonably useable format, such as Excel. If data from databases or other structured data sources cannot be produced in a reasonably useable format, then the parties will meet and confer to discuss the issue. If they cannot agree, then the matter may be brought to the Court's attention in accordance with the Court's Discovery Procedures Order.

9.   De-duplication and Threading: The parties may de-duplicate ESI across custodial and non-custodial data sources (i.e., global deduplication) as long as Duplicate Custodian information is provided, as specified above. The parties may also choose to produce only the most inclusive e-mail threads and eliminate non-inclusive threads

where the non-inclusive thread is completely encompassed in the inclusive thread. Duplicates shall be identified by using industry standard MD5 or SHA-1 values only to create and compare hash values for exact matches only. For email items, duplicates shall be identified using a MD5 hash value. The resulting hash value for each item shall be reflected in the HashValue field specified in Section 7(g)(ix).

10. <u>Confidential Documents:</u> If a particular Document has a confidentiality designation, the designation shall be stamped on the face of all TIFF images pertaining to such Document, in the lower left-hand corner of the Document, or as close thereto as possible while preserving the underlying image. If the receiving party believes that a confidentiality designation obscures the content of a Document, then the receiving party may request that the Document be produced with the confidentiality designation in a different position. If a file produced in native format is designated as "Confidential," the Confidentiality designation may be indicated in the file name and/or on the slipsheet for the native file.

11. <u>Redactions:</u>

(a) The parties agree that where ESI items need to be redacted, they shall be produced solely in TIFF format with each redaction clearly indicated. Any

unaffected data fields specified in Section 7(g)(ix) shall be provided unless

privileged or contain confidential irrelevant Personally Identifiable Information.

(b)   If Excel spreadsheets are redacted, then they may be redacted

natively. If PowerPoints are redacted in TIFF, then the TIFF version should show

the comments/notes pages in the PowerPoint.

PROVISIONS FOR PRODUCTION OF HARD-COPY DOCUMENTS

12.   Format for Hard-Copy (*i.e.*, non-ESI) Productions and Static Images: The

following applies to documents that exist only in hard-copy format or in static image file

format and are therefore unavailable in native ESI format (*e.g.*, documents scanned from

hard-copy, or documents maintained in static image format, like TIFF or PDF). All such

documents that are amenable to being imaged should be produced in the same format

specified for ESI, above, except that the only metadata fields provided will be BegBates,

EndBates, BegAttach, EndAttach, Custodian, TextPath, and any Confidential Designation

applied to that Document. OCR will also be provided, if reasonably available, instead of

extracted text. To the extent practicable, hard-copy Documents shall be produced in the

manner in which those Documents were kept in the ordinary course of business. Where

a Document or group of Documents has an identification spine, "post-it note," or any

other label, the information on the label shall be scanned and produced to the extent

reasonably practicable. The parties will utilize reasonable best efforts to ensure that paper

records for a particular custodian, which are included in a single production, are produced in consecutive Bates stamp order.

PROVISIONS GOVERNING PRIVILEGED DOCUMENTS

13.   Privileged Documents: The parties recognize that some Documents may be redacted or withheld on the grounds of attorney-client privilege, work-product doctrine, or other applicable privilege or immunity from disclosure (collectively, "privilege"). For each responsive Document withheld or redacted because of privilege, the parties agree to include the following information on the privilege log unless it creates an undue burden:[5]

(a)   Custodian or source (the name of the person(s) or non-custodial source from which the Document was collected);

(b)   Date of the Document, based on the metadata;

(c)   Author(s);

(d)   For Documents produced, but redacted on the ground of privilege, the starting and ending Bates number and for other documents not produced, a numerical identifier;

(e)   Recipient(s) fields (To, CC(s), BCC(s));

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[5]   If, due to the number of privileged documents involved, creating a privilege log with the information noted above would create an undue burden, then the parties will meet in good faith and discuss whether a categorical log, metadata log or another procedure may be appropriate.

(f)   General description of the nature and subject matter of the Document;

(g)   Specification of the privilege claimed; and

(h)   The basis for the privilege claim.

When the Document is an e-mail thread containing one or more separate e-mails, it shall be logged as one entry. The Date, Author, Recipient(s), CC(s), and BCC(s) fields on the log can be populated from the top line e-mail as long as the party withholding Documents adequately describes the basis of the privilege claim. Each Document within a family for which a party claims a privilege shall be separately logged. The parties agree that a party need not include on its privilege log any Document or communication for which the party asserts privilege that is: (i) dated after August 21, 2023, and (ii) covered by the attorney-client privilege, the attorney work product protection, and/or any other applicable privilege or protection. If any disputes arise concerning any privilege log, then the parties shall meet and confer to try to reach a mutually agreeable solution. If they cannot agree, then the matter may be brought to the Court's attention in accordance with the Court's Discovery Procedures Order [ECF No. 38].

14. The production of privileged or work-product Documents or ESI (collectively, "Protected Information"), whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding.

15. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

16. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of Documents or ESI for relevance, responsiveness, and/or segregation of privileged and/or protected information before production.

17. In the event of disclosure of Protected Information, the producing party shall promptly notify the party receiving the Protected Information that it has disclosed that Protected Information without intending a waiver by the disclosure. Upon such notification, the receiving party must promptly: (a) notify the producing party that it will make best efforts to identify and return or destroy the Protected Information and any reasonably accessible copies it has, and (b) provide a certification that it will cease further review, dissemination, and use of the Protected Information.

18. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the producing party that such materials have been produced.

19. In the event of disclosure, inadvertent or otherwise, of Documents or ESI that should be designated "Confidential" (the "Confidential Information") pursuant to an appropriate protective order in this case, the producing party shall promptly notify the party receiving the Confidential Information that it has disclosed that Confidential

18

Information without intending a waiver by the disclosure and must produce a copy of the Confidential Information bearing the appropriate designation. Upon such notification, the receiving party must promptly: (a) notify the producing party that it will make best efforts to identify and replace the undesignated Confidential Information and any reasonably accessible copies it has, and (b) provide a certification that it will cease further dissemination and use of the undesignated version of the Confidential Information.

20.   The parties agree that no party is required to conduct a search or prepare a privilege log for any discovery request or portion thereof to which objections have been made until the objections have been overruled. Additionally, the right to object based on the attorney-client privilege or work product doctrine is preserved until that time.

MISCELLANEOUS PROVISIONS

21.   All productions shall be made by secure file transfer. If a receiving party requires its production on CD-ROM, DVD, or external drive, then it must notify the producing party in advance of the production. If a producing party cannot make a production via secure file transfer, then it must likewise notify the receiving party in advance and accommodate an alternative requested media. The transmitting email or other production media must identify: (1) the producing party's name; (2) the production range; (3) the production date; and (4) a statement of whether the file transfer or media contains information that is subject to a Protective Order or confidentiality designation.

If the production is made via secure file transfer, then it must also provide instructions for downloading the materials and the required timeframe for the download.

22.   Nothing in this Order shall be interpreted to require disclosure of either irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. By entering this Stipulated Order, the parties do not waive any objections as to the production, discoverability, authenticity, admissibility, or confidentiality of Documents and ESI.
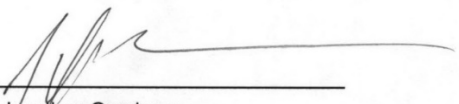
23.   All documents produced in the format specified in this protocol will be deemed produced in the usual course of business pursuant to Rule 34(b)(2)(E)(i).

24.   Recognizing that each producing party may experience production issues due to, among other things, individual and/or proprietary electronic mail or other data systems that may not be fully compatible with the technical specifications set forth herein, any practice or procedure set forth herein may be varied by agreement of the parties, confirmed in writing, to accommodate such issues and/or where such variance is deemed appropriate to facilitate the timely and economical production of Documents or ESI. No party shall unreasonably object to any such variance. Any dispute as to a variance shall be resolved through a meet and confer process and, if agreement cannot be reached, by presentation to the Court for resolution. Any relief sought from the Court must be made in accordance with the Court's Discovery Procedures Order [ECF No. 38].

25.   Any party may file a motion to seek individual relief from this protocol.

26.   The parties acknowledge that the drafting of their proposed Order was a

joint effort, that the Order shall be construed as a whole, according to its fair meaning,

and not in favor of or against any party.

DONE AND ORDERED in Chambers, in Miami, Florida, on September 20, 2024.

Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Darrin P. Gayles
All Counsel of Record