

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

CHRISTOPHER FAIN,  
individually and on behalf of all others  
similarly situated, *et al.*,

*Plaintiffs,*

v.

WILLIAM CROUCH, *et al.*,

*Defendants.*

CIVIL ACTION NO. 3:20-cv-00740  
HON. ROBERT C. CHAMBERS

**STIPULATION AND ORDER: ESI PROTOCOL**

In order to streamline discovery to promote a “just, speedy and inexpensive determination” of this action as required by Federal Rule of Civil Procedure 1, the parties hereby stipulate to the following protocol governing the discovery of documents and electronically stored information (“ESI”) in this matter:

**I) GENERAL PROVISIONS**

**A) COOPERATION**

The parties agree that they will adhere to the principles of cooperation, transparency, reasonableness, and proportionality, as set forth in the Federal Rules of Civil Procedure and as interpreted by federal case law, as they conduct discovery in the litigation.

**B) RELEVANT TIME PERIOD**

1. The parties agree that this ESI Protocol will rely on a default discoverable time period beginning January 1, 2016.

2. The parties acknowledge, however, that the relevant time period may vary by discovery topic. Therefore, if the Requesting Party wishes to apply a date range other than the default time period, the Requesting Party shall clearly identify that new range in a particular discovery request. The parties shall confer in good faith to resolve any disputes if the Producing Party disagrees with the time frame adjustment.

## **II) SUMMARY OF PROCESS**

This ESI protocol outlines an iterative process by which the parties will coordinate the identification, collection, and production of custodians, documents, and ESI.

1. The producing party will determine the most efficient and reasonable way to search for, collect, and review responsive documents in its possession, custody, or control.

2. Both parties further agree to disclose to each other the method(s) used to search, collect, and review responsive documents in their possession, custody, or control.

3. As to any systems or requests for which the producing party determines that selecting custodians and search terms is appropriate, the producing party will provide the requesting party with proposed custodians and search terms prior to finalizing its search and collection. The requesting party shall have 7 days to make a counterproposal. Should the requesting party not make a counterproposal within the time period stated above, the producing party shall proceed with its proposed custodians and search terms. Should the requesting party make a timely counterproposal and the parties are not able to reach agreement through meet and confer or other efforts within 7 days of the counterproposal, the requesting party may seek the Court's assistance with resolving the dispute. Should the requesting party not act within a reasonable timeframe of meet and confer efforts concluding, the producing party shall not be later obligated to rerun searches or add new custodians absent a showing of good cause.

4. The parties may undertake the above process more than once should new search term/custodians become relevant as the case develops, including by request of the receiving party.

### **III) INACCESSIBLE DATA**

1. The parties agree to identify to each other when making document productions any responsive ESI that is not reasonably accessible and the reason that the producing party believes the data to be not reasonably accessible.

2. Each party reserves the right to challenge whether data is not reasonably accessible and to seek the Court's assistance with resolving any dispute remaining after meet and confer efforts conclude.

### **IV) COURT ASSISTANCE**

The parties agreed to the above process with the hopes of streamlining discovery efforts and to avoid unnecessary delays and disputes through cooperation and collaboration. Should the parties reach an impasse at any point in the above-outlined process, the parties will submit separate letters, no longer than three pages in length, to the Magistrate Judge describing the dispute, their positions, and the requested relief for the Court's consideration. The Court may rule, or it may further request a phone conference, a hearing, or formal briefing as it deems necessary.

**SO STIPULATED:**

Dated: October 18, 2021

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**ENTERED:** October 19, 2021

  
Cheryl A. Eifert  
United States Magistrate Judge

# **EXHIBIT A**

**Format for the Production of Documents  
Including Electronically Stored Information**

Federal Rule of Civil Procedure 34(b)(1)(C) provides that a party requesting documents “may specify the form or forms in which electronically stored information is to be produced.” Pursuant to Rule 34(b)(1)(C), documents and Electronically Stored Information (“ESI”) should be produced in the forms described below.

**A. PRODUCTION FORMAT**

**1. Hard Copy Documents**

Hard-Copy Documents shall be scanned and produced in pdf format. Each page of the PDF will contain a Bates Number and Confidential Designation, if applicable. File names for PDFs will consist of the first Bates number of the record and Confidential Designation (if applicable). For example: ABC000123\_Confidential.pdf. Alternatively, the producing party may provide this information in a simple cross reference file if doing a PDF production.

**2. Electronic Stored Information**

The Parties have agreed to produce ESI in native format. ESI such as email and their attachments, word processing documents, spreadsheets, and presentation files, PDFs, comma or other delimited text files, and video and audio files will be produced in the file type the items were created in when it’s reasonable to do so. For email, native format means single email .msg or .eml format.

File names for native ESI will be the original file name prepended with a Bates Number and Confidential Designation (if applicable). For example:ABC000123\_Confidential\_OriginalFileName.msg. Alternatively, the producing party may provide this information in the DAT file if doing a standard load file production.

The producing party shall preserve the integrity of the ESI’s contents, i.e. its original formatting and metadata.

**3. Redactions for ESI and Other Documents**

The Producing Party may redact protected and/or privileged items. Redacted items will be produced in PDF format. Each page of the PDF will contain a Bates Number and Confidential Designation, if applicable. File names for redacted ESI will be the original file name (or REDACTED, if privileged) prepended with the first Bates Number of the item and Confidential Designation (if applicable). For example: ABC00123\_Confidential\_OriginalFileName.pdf.

#### **4. Using Confidential Native Items**

Usage and printing of confidential documents produced in native format is controlled by the Protective Order. If a party converts a native item to a static electronic image (e.g., PDF) or to paper for purposes of depositions and/or court exhibits, the Party shall include the Bates number and any Confidentiality designations on the lower right and left hand corners of the document, respectively, in a manner that does not obscure the content of the document, and will apply an appropriate numerical suffix to the Bates number of the file to each page of the document (e.g., ABC000123.001 to ABC000123.005.) As an alternative to printing the Bates number on the document, the receiving party may attach the slip sheet as a cover sheet to identify the document, Bates number, and confidentiality designation.

#### **5. Databases**

It may sometimes be appropriate to produce partial or exported data, such as information housed in applications, mobile devices, cloud services, social media sites, or databases containing more information than is relevant to the case. In these instances, the parties should confer and agree early on concerning the scope of, and methodology for, producing the relevant data in a delimited format.

#### **6. Metadata**

As it relates to documents produced in their native format, the Parties agree to produce metadata inherently present in the document so long as such Metadata is available, responsive, not privileged, and maintained in the party's normal course of business.

As it relates to documents not produced in their native format, the Parties shall meet and confer as to what, if any, Metadata must be provided. However, in no case shall Metadata be provided unless it is available, responsive, not privileged, and maintained in the party's normal course of business.

### **B. PRODUCTION MEDIA**

The parties have agreed to electronic service. Productions shall be provided by FTP or secure link for download. The **parties** will not produce using zipfile attachments to emails.