UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

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| Click here to enter text. Choose an item., v.Click here to enter text. Choose an item.. | Case No. Click here to enter text.**(MODEL) DISCOVERY PLAN** |

1. Preservation
	1. **Preservation & Proportionality:** The parties have applied the proportionality standard in Rule 26(b)(1) to determine what information should be preserved and what information should not be preserved.
	2. **Electronically Stored Information (ESI):** With regard to ESI, the parties agree that:
		1. **Date Range:** Only ESI created or received between \_\_\_\_ and \_\_\_\_\_ will be preserved;
		2. **Scope of Preservation:** The parties agree to:
			1. Preserve the Following Types of ESI
				1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
			2. From the Following Custodians or Job Titles:
				1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
			3. From the Following Systems, Servers, or Databases
				1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
		3. **Preserved But Not Searched:** These data sources are not reasonably accessible because of undue burden or cost pursuant to Rule 26(b)(2)(B) and ESI from these sources will be preserved but not searched, reviewed, or produced:
			1. *[E.g.* *backup media of [named] system, systems no longer in use that cannot be accessed, etc.]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.*
		4. **Not Preserved:** Among the sources of data the parties agree are not reasonably accessible pursuant to Rule 26(b)(2)(B), and shall not be preserved, are the following:
			1. *[E.g. voicemails, PDAs, mobile phones, instant messaging, automatically saved versions of documents, backup media created before \_\_\_\_\_\_\_\_, etc.].*
		5. **ESI Retention Protocols:** Going forward, the parties agree *[to modify/not to modify]* the document and ESI retention/destruction protocols of *[party].*
			1. *[if modified, describe modifications here]*
		6. **Cost Sharing:**

[ ] *[The parties agree to share the cost of* *an electronic discovery vendor; shared document repository; or other cost saving measures]*

[ ] *[The parties agree to bear their own costs for preservation of e-discovery]*

1. Initial Disclosures
	1. *[if already provided]* Pursuant to Rule 26(a), initial disclosures were provided on the following dates:
		* Plaintiffs: \_\_\_\_\_\_\_\_\_\_\_\_\_\_.
		* Defendants: \_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	2. *[if not yet provided]* The parties agree to modify the deadlines in Rule 26(a) to allow initial disclosures to be provided on the following dates:
		* Plaintiffs: \_\_\_\_\_\_\_\_\_\_\_\_\_.
		* Defendants: \_\_\_\_\_\_\_\_\_\_\_\_\_.
	3. *[change to form]* The parties agree to modify the form of the Rule 26(a) initial disclosures as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	4. *[exempt]* The parties agree that this proceeding is exempt under Rule 26(a)(1)(B) from the requirement to provide initial disclosures.
2. Scope of Discovery
	1. **Scope:** Discovery is necessary on the following subjects/issues:
		* For Plaintiff:
			1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
			2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
			3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
			4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
			5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
		* For Defense:
			1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
			2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
			3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
			4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
			5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. Discovery Boundaries
	1. **Limits:** The parties agree to limit the number of discovery tools as follows:

[x] Depositions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[x] Interrogatories: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[x] Requests for Production: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. ESI
	1. ***Checklist:*** *The Court has attached the “Checklist” for ESI Discovery prepared by the Federal District Court for the Northern District of California to assist counsel in their meet-and-confer session. Counsel should refer also to Dist. Idaho L. Rule 16.1(b).*
	2. ***Proportionality****: Although not a hard and fast rule, a party from whom ESI has been requested in the typical case will not be expected to search for responsive ESI:*
		* *from more than 15 key custodians;*
		* *that was created more than 5 years before the filing of the lawsuit;*
		* *from sources that are not reasonably accessible without undue burden or cost; or*
		* *for more than 160 hours, inclusive of time spent identifying potentially responsive ESI, collecting that ESI, searching that ESI, and reviewing that ESI for responsiveness, confidentiality, and for privilege or work product protection. The producing party must be able to demonstrate that the search was effectively designed and efficiently conducted.*
	3. **ESI File Format:** The parties agree to produce documents in the following file format[s] *[check any that apply]*:

[ ] PDF;

[ ] TIFF;

[ ] Native; and/or

[ ] Paper.

* 1. **ESI Production Format:** The parties agree that documents will be produced *[check any that apply]*:

[ ] with logical document breaks;

[ ] as searchable;

[ ] with load fields enabling review in common litigation databases such as Summation and Concordance;

[ ] with metadata, and, if so, in the following fields: \_\_\_\_\_\_\_\_\_\_.

* 1. **ESI Search Methodology**: The parties have agreed to use the following search methodology:

[ ] Predictive coding (or technology assisted review);

[ ]  Keyword search;

[ ] Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

* 1. **Search Methodology – Transparency:** The parties agree that they will share their search methodology for responding to requests for production of ESI to the following extent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	2. **General ESI Production vs. E-mail Production:** The parties agree that general ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or other forms of electronic correspondence (collectively “e-mail”). To obtain e-mail parties must propound specific e-mail production requests.
	3. **E-mail Custodian List Exchange:** On or before *[date],* the parties agree to exchange lists identifying (1) likely e-mail custodians, and (2) a specific identification of the *[15]* most significant listed e-mail custodians in view of the pleaded claims and defenses.
	4. **Discovery Re E-mail Custodians, Search Terms & Time Frames:** Each requesting party may propound up to *[5]* written discovery requests and take *[one]* deposition per producing party to identify the proper custodians, proper search terms, and proper time frame for e-mail production requests. The court may allow additional discovery upon a showing of good cause.
	5. **Form of E-mail Production Requests:** E-mail production requests shall identify the custodian, search terms, and time frame. The parties shall cooperate to identify the proper custodians, proper search terms, and proper time frame.
	6. **Limits on E-mail Production Requests – Custodians:** Each requesting party shall limit its e-mail production requests to a total of *[8]* custodians per producing party for all such requests. The parties may jointly agree to modify this limit without the court’s leave.
	7. **Limits on E-mail Production Requests – Keyword Search Terms:** Each requesting party shall limit its e-mail production requests to a total of *[10]* keyword search terms per custodian per party. The parties may jointly agree to modify this limit without the court’s leave. The keyword search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company’s name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction.
	8. **Liaison:** Each party *[has identified*/*will identify]* a Liaison who is responsible for, and knowledgeable about (or has access to a person knowledgeable about), that party’s ESI. This includes the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the Liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.
1. Deadlines
	1. The deadline for the completion of fact discovery is: \_\_\_\_\_\_\_\_\_\_\_\_\_.
	2. The deadline for completion of expert witness discovery is: \_\_\_\_\_\_\_\_\_.
2. Phased or Issue-Specific Discovery
	1. *[Phased Discovery]* The parties agree to conduct discovery in phases, focusing in the first phase on key information that is easily accessible. The parties will then use that the results of that initial phase of discovery to guide further discovery.
		* **First Phase of Discovery**: During the first phase, the parties will conduct discovery on the following subject[s]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
		* **Scope of First Phase**: During the first phase of discovery, the parties shall take the following discovery:
			+ Depositions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
			+ Interrogatories: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
			+ Requests for Production: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
		* **Deadline for Completion of First Phase**: The parties shall complete the first phase of discovery on or before \_\_\_\_\_\_\_\_\_\_\_\_\_.
		* **Further Discovery**: Following completion of the first phase of discovery, the parties will meet together to determine what discovery, if any, is needed in the next phase.
	2. *[Issue-Specific Discovery]* The parties agree that discovery should be focused first on *[jurisdiction] [venue] [qualified immunity] [affirmative defenses that may be dispositive] [information necessary to engage in meaningful settlement discussions] [etc.].*
		* **Deadline for Completion of Issue-Specific Discovery**: The discovery on the issue of *[jurisdiction] [venue] ][qualified immunity][affirmative defenses that may be dispositive][information necessary to engage in meaningful settlement discussions] [etc.]* will be completed on or before \_\_\_\_\_\_\_\_, at which time the parties will meet to determine what needs to be done next.
3. Documents Protected From Discovery
	1. **Clawback:** Pursuant to Fed. R. Evid. 502(d), the parties must request the Court to enter an Order that production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding. The Court will enter such an order in its scheduling order unless the parties object or otherwise request that no such order be issued during the telephone scheduling conference.
	2. **Quick Peek:** The parties

[ ] *[agree that a “quick peek” process pursuant to Fed.R.Civ.P. 26(b)(5) is not necessary in this case]*

[ ] *[agree to a “quick peek” process pursuant to Fed.R.Civ.P. 26(b)(5) as set forth herein: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].*

* 1. **Post-Complaint Communications:** 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.
1. Protective Order
	1. The parties have agreed to the terms of a Protective Order to protect *[trade secrets, proprietary material, personal information, etc]* and will submit that to the Court for its approval.
	2. *To aid the parties, the District of Idaho has developed a model protective order that can be found on the Court’s website:* [*https://id.uscourts.gov/district/forms\_fees\_rules/Civil\_Forms.cfm*](https://id.uscourts.gov/district/forms_fees_rules/Civil_Forms.cfm)
	3. The parties understand that, even if they agree to seal material filed with the Court, they must still file a motion to seal and obtain Court approval that the sealing meets the Ninth Circuit standards for sealing. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).