In The
Supreme Court of the United States

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

Before the Special Master

Hon. Ralph I. Lancaster

AGREEMENT REGARDING DOCUMENT PRODUCTION AND ELECTRONIC DISCOVERY PROCEDURES

The purpose of this Agreement Regarding Document Production and Electronic Discovery Procedures (the "Agreement") is to facilitate the conduct of discovery involving electronically stored information ("ESI") in this action, and to promote the resolution of disputes regarding the discovery of ESI without intervention of the Special Master.

While this Agreement intends to provide the parties with a comprehensive framework to address and resolve a wide range of ESI issues, it is not intended to be inflexible. The parties anticipate potential deviations from the portions of the Agreement associated with the form of production of ESI in certain instances, such as in the production of unusual file formats, and the parties agree to meet and confer on any issues associated with deviation of the Agreement and to approve any such deviation in writing. The parties further agree to meet and confer on any discovery disputes regarding ESI, pursuant to the requirements in § 11 of the Case Management

Plan (the "CMP").

Plaintiff State of Florida and Defendant State of Georgia hereby agree to the following:

I.   NON-ESI DISCOVERY PROCEDURES

Non-ESI should be produced to the requesting party as Tagged Image File Format ("TIFF") image files, unless the requesting party agrees to receive the documents in non-electronic form.   When producing TIFF image files, the producing party shall also produce corresponding Optical Character Recognition ("OCR") files as multi-page ASCII text ("TXT") files whose file name is identical to the corresponding first TIFF image file of the corresponding images for a document. The OCR files will be produced in a separate folder.

II.   ESI DISCOVERY PROCEDURES

A.   ESI Production Format

1.   Document Image Format. Except as set forth in paragraph. II.7 below, the parties shall produce single-page TIFF images. The parties shall produce a delimited text file to accompany the TIFF images that indicates document breaks. Each page of a document shall be electronically saved into a Group 4 compression TIFF image. If a document is more than one page, the unitization of the document and any attachments or affixed notes shall be maintained as it existed in the original when creating the image file. Images shall be saved into a unique, sequentially numbered folder (i.e., 001, 002, etc.), and each folder shall consist of no more than 5000 images. Each document image file shall be named with a unique Bates Number consisting of an alpha prefix descriptive of the producing party's name (to be no shorter than 2 digits), followed by a number (to be no

2

shorter than 7 digits) (e.g., GA1234567). No image file shall contain spaces or underscore symbols, and each file name should be followed by a ".tif" extension. The producing party must continue to preserve the integrity of the electronic document's contents.

2. Extracted Metadata. With each production of documents, the parties shall produce a TXT file, appropriately delimited, containing the extracted metadata for each document (the "Load File"). The Load File shall include the fields and content identified in Exhibit A to this Agreement. The Load File shall contain the standard Concordance delimiters.

3. Deduplication. The parties will utilize hash-based deduplication in an effort to produce a single copy of each responsive document. For each document, including documents with multiple custodians, the parties will note the custodian(s) in the Load File in the field CUSTODIAN. For the purpose of deduplication, the parties will treat an email family, including its attachments, as a single entity and will only deduplicate that email family against other email families, but will not deduplicate loose electronic files against email attachments.

4. Family Relationships. Document relationships shall be preserved and related non-privileged documents within a family shall be produced. The producing party shall provide attachment range information as indicated in Exhibit A.

5. Extracted Text Files. For each produced document with extracted text, the parties shall produce a multi-page text file reflecting the full text that has been electronically extracted from the original, native electronic files

3

("Extracted Text"). The Extracted Text shall be provided as TXT files whose file names are identical to the first TIFF image file of the corresponding images for a document, followed by a ".txt" extension. The Extracted Text shall be provided at the same time as the Load File, and shall be placed in a separate folder.

6. Redacted Documents. For documents that are redacted, the type of redaction (e.g., privilege) shall be noted in the Load File in the field REDACTED. OCR shall be run on each of these documents post-redaction to create a multipage text file to be produced instead of the Extracted Text described above. The Redaction Type shall be reflected on the images to indicate where a redaction occurs, and in the multipage text files containing OCR for searching purposes.

7. Native Format. The parties shall produce the following files in native file format: spreadsheets (e.g., .xls, .xlsx, .csv), Microsoft Project files, Microsoft Access databases, design image files (e.g., AutoCAD), and audio and video files. Documents produced in native format shall be produced in the manner such files were maintained electronically in the ordinary course of business. The parties reserve the right to request that additional file types be produced in native format. A placeholder TIFF shall be produced indicating the Bates number of the native file and any applicable confidentiality designation. Files shall be renamed to incorporate Bates number schema into the filename, followed by the original document extension (e.g., .xls). Additionally, filenames should indicate confidentiality designations, if any (e.g.,

4

FL0000123_CONFIDENTIAL.xlsx). The parties shall produce as part of the Load File the original file name, corresponding Bates number, and the associated SHA-1 hash value. In the event any document produced in native format is to be used as an exhibit at deposition, trial, or otherwise, the party using such exhibit shall cause the SHA-1 programmatic hash value of the underlying electronic file from which the exhibit is derived to be provided to all parties at the time such exhibit is first used.

8.   <u>Databases.</u> Florida and Georgia agree that they will meet-and-confer regarding the proper format for producing any databases responsive to the parties' respective discovery requests and agree on the proper format for making such productions prior to producing such databases.

9.   <u>Models.</u> Florida and Georgia agree that they will meet-and-confer regarding the proper format for producing any models responsive to the parties' respective discovery requests and agree on the proper format for making such productions prior to producing such models.

10.   <u>Production Media.</u> The parties shall produce documents on appropriate media (CD, DVD, or external hard drive). If a party deems it necessary to encrypt the production media, the party must supply the appropriate information and passwords to allow the receiving party to access the data. The production material should be produced in the following folder structure:

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Name ▲
📁 Images
📁 Natives
📁 Text
🗋 CTRL-005.dat
🗐 CTRL-005.opt
```
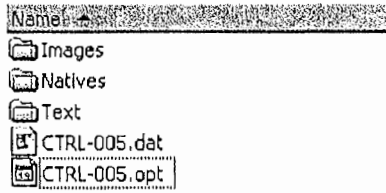
11. Supplementation. Parties shall be required to supplement any information provided under this Order in accordance with Fed. R. Civ. P. 26(e) and Section 15 of the Case Management Plan.

12. Amendment of Procedures. Amendment of this Order may be made by written agreement between the parties.

III. Confidential Material

For ESI, Confidentiality designations made in accordance with the Case Management Plan shall be captured in the Load File in the CONFIDENTIAL field shown in Exhibit A.

IV. Sources Not Reasonably Accessible

The parties agree that, as a general proposition, archival and backup storage sources (e.g., DAT tape, LTO tape) are not reasonably accessible, and absent exceptional circumstances, such sources will not be collected or searched as part of the discovery process. The parties agree to work cooperatively to identify other sources not reasonably accessible, in order to limit the scope of discovery to proportional levels congruent with the discovery need of the parties.

V. 502(d) Order

The parties agree to propose and present an agreed 502(d) clawback order, attached hereto, for entry by the Special Master, and further agree to waive any arguments that reasonable precautions were not taken by the parties or their agents to prevent disclosure of privileged or confidential information.

IT IS SO AGREED to this 11th day of February, 2015, by:
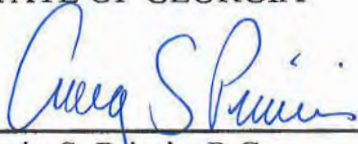
FOR PLAINTIFF
STATE OF FLORIDA

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8

EXHIBIT A

Production Load File Fields

FIELD	DESCRIPTION	Non-ESI	ESI
BEGBATES	Beginning Bates number assigned to each document. Format XXXXXX00000001	Y	Y
ENDBATES	Ending Bates number assigned to each document. Format XXXXXX00000001	Y	Y
BEGATTACH	Beginning Bates number assigned to the group of documents to which the parent document and any attachment documents are associated. Format XXXXXX00000001	Y	Y
ENDATTACH	Ending Bates number assigned to the group of documents to which the parent document and any attachment documents are associated. Format XXXXXX00000001	Y	Y
CREATDATE	The date extracted from a field which contains the date a file was created. Formatted as MM/DD/YYYY	N	Y
MODDATE	The date extracted from a field which contains the date a file was last modified. Formatted as MM/DD/YYYY	N	Y
DATESENT	The date and time an email was sent. Formatted as MM/DD/YYYY HH:MM:SS (in EST)	N	Y
DATERECD	The date and time an email was received. Formatted as MM/DD/YYYY HH:MM:SS (in EST)	N	Y
FILENAME	The filename of the electronic file.	N	Y
SUBJECT	The subject line of the email.	N	Y
FROM	The originator of the email message.	N	Y
RECIPIENT	The recipient(s) of an email. Multiple recipients should be separated by a semicolon (;)	N	Y

FIELD	DESCRIPTION	Non-ESI	ESI
CC	Names of copied recipients of an email. Multiple recipients should be separated by a semicolon (;)	N	Y
BCC	Names of blind copied recipients of an email. Multiple recipients should be separated by a semicolon (;)	N	Y
CUSTODIAN	Consistent with Section II(B)(3) of this Order, name of the individuals, departments or servers where the file was stored or kept.	Y	Y
HASH	Programmatic hash value of the native electronic file from which a given TIFF image or group of TIFF images is derived.	N	Y
NATIVE	Y/N Field	Y	Y
REDACTION	If a document has been redacted, indicates the type of redaction - Personal Information, Privilege, Non-Responsive	Y	Y
CONFIDENTIAL	Y/N Field	Y	Y
PRODTEXT LINK	Link to produced text	Y	Y
NATIVE LINK	Link to native	N	Y

No. 142, Original

In the

SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,

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Before the Special Master

Hon. Ralph I. Lancaster

PROTECTIVE ORDER CONTAINING CLAWBACK PROVISION

Because the parties to this case or non-parties may be required to produce documents, answer interrogatories, and provide testimony and other information that may contain information covered by the attorney-client privilege, work product protection, or that may be confidential in nature, and in order to permit discovery to proceed without delay and avoid possible disputes regarding the privileged, protected, or confidential nature of such information, the Special Master hereby **ORDERS**:

Due to the large volume of electronic and hard copy data in the possession, custody, or control of the parties and concerns regarding attorney-client privilege and work product protection the Special Master enters this clawback provision to expedite and facilitate the production of electronic and hard copy data, information, models, and documents, and to protect

1

against inadvertent disclosure of attorney-client privileged communications and work product materials. The parties agree to waive any arguments that reasonable precautions were not taken by the parties or their agents to prevent disclosure of privileged or confidential information. Moreover, the inadvertent disclosure[1] or production of any information or document that is subject to an objection on the basis of attorney-client privilege or work-product protection will not be deemed to waive any claim to its privileged or protected nature (and will not be construed as subject-matter waiver), and will not estop any party or privilege holder from designating the information or document as attorney-client privileged or protected work product doctrine at a later date.[2]

Any party that receives documents, models, or information that are privileged shall alert the producing party that it has received such information , irrespective of whether the producing party first alerted the recipient or requested a clawback. *See* Florida Rules Regulating the Florida Bar 4.4(b); Georgia Rules of Professional Conduct 4.4. Moreover, any party receiving documents, models, or information that are subject to an objection on the basis of attorney-client privilege or work-product protection shall return such documents, models, or information upon request from the producing party. Upon receiving such a request as to specific information, models, or documents, the receiving party shall return the information, models, or documents to the producing party within five (5) business days, regardless of whether the receiving party agrees with the claim of privilege or work-product protection. The receiving party may object to

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[1] For purposes of this agreement, an "inadvertently produced document" is a document (or portion of a document) produced to a party in this litigation that could have been withheld or redacted, in whole or in part, based on a legitimate claim of the attorney-client privilege, the work-product doctrine, or any other applicable privilege recognized under applicable law.

[2] The treatment of confidential documents will be governed by Section 10 of the Special Master's December 3, 2014 Case Management Plan.

the producing party's designation of information, models, or documents as privileged by providing written notice of the objection to the producing party within 7 days of receiving a written demand for the return of such information, models, or documents. The burden of establishing any privilege or protection will remain on the producing party. Pending resolution[3] of the privilege determination, the parties (a) shall promptly return the specified documents (and any copies) subject to a claim of privilege; (b) must not use for any purpose any information, models, or documents that are claimed to be privileged; (c) must take reasonable steps to retrieve the information if the receiving party disclosed it before being notified; and (d) after meeting and conferring, may promptly present the issue to the Special Master for a determination of the claim. *See* Federal Rule of Civil Procedure 26(b)(5)(B).

This Order and clawback provision shall be governed by Federal Rule of Evidence 502(d) and is entered pursuant to Federal Rule of Civil Procedure 26(c)(1).

Dated: _____

Ralph I. Lancaster
Special Master

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3 Resolution will be achieved if the parties agree to a privilege designation (or lack thereof) in writing, or -- if the parties cannot agree -- when the Special Master rules on a claim of privilege.