



**So Ordered**  
/s/ Davis, Eric M Nov 07, 2018

**EFiled: Nov 07 2018 11:57AM EST**  
**Transaction ID 62642863**  
**Case No. N18C-05-159 EMD CCLD**



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

GUERBET IRELAND UNLIMITED )  
COMPANY and LIEBEL- )  
FLARSHEIM COMPANY LLC, )  
 )  
          Plaintiffs, )  
 )  
      v. ) C.A. No. N18C-05-159 EMD [CCLD]  
 )  
SPECGX LLC, )  
 )  
          Defendant. )  
 )  
 )  
 )  
 )  
 )

**E-DISCOVERY PLAN**

Plaintiffs Guerbet Ireland Unlimited Company and Liebel-Flarsheim Company LLC and Defendant SpecGx LLC (each a “Party” and collectively the “Parties”) hereby agree to conduct discovery according to this E-Discovery Plan and the Court’s guidelines for the discovery of electronically stored information (“ESI”).

**TYPE AND PRESERVATION OF ESI**

**A.** ESI shall mean any communication or document stored electronically on a computer hard drive, email server, shared electronic drive, or cloud platform.

**B.** The Parties agree to meet and confer regarding any issues relating to preservation of ESI. A party that acts in compliance with the terms of this Protocol and any Court Order in this case relating to e-discovery may thereafter apply its regular document destruction procedures to any ESI that has not been ordered to be produced and shall not be subject to any discovery motion or sanction for the destruction of ESI that is not subject to its obligation to produce under this Protocol or Court Order.

**C.** This Protocol and any accompanying Court Order may be modified upon application for good cause and shall thereafter be applicable to the preservation of ESI.

**D.** ESI shall be processed in a manner that preserves hidden columns or rows, hidden text or worksheets, speaker notes, tracked changes and comments.

**E.** To the extent documents are collected across different time-zones, all documents collected should be processed in Coordinated Universal Time (UTC) and/or Greenwich Mean Time (GMT).

## **SCOPE OF PRODUCTION**

**F.** The producing Party will identify in good faith custodians aimed at capturing documents responsive to the requesting Party's Requests for Production as drafted, without respect to the objections made by the producing Party. With

respect to the Parties' First Set of Requests for Production, each producing Party will disclose these custodians (including their titles or positions) to the requesting Party on or before November 6, 2018. The requesting Party may object to, and suggest substitute or additional custodians within fourteen (14) days of disclosure of the selected custodians identified by the producing Party. The Parties will work in good faith to resolve any disputes as to the custodians identified, including an additional custodians identified during fact discovery.

**G.** The producing Party will identify in good faith search terms aimed at capturing documents responsive to the requesting Party's Requests for Production as drafted, without respect to the objections made by the producing Party. With respect to the Parties' First Set of Requests for Production, each Party will exchange search terms on or before November 6, 2018. The requesting Party must state any objections to the methodology used within fourteen (14) business days of receiving the methodology utilized by the producing Party. The Parties will work in good faith to resolve any disputes as to the methods or search terms used.

**H.** Each Party will conduct a search for responsive ESI sent, received, authored or otherwise created between January 1, 2014 and the date the Parties execute this Plan.

**I.** The Parties will perform the searches using any software tool or tools that are capable of indexing and searching files and emails, including the contents of the attachments.

**J.** In lieu of (and/or in addition to) search terms and custodians, the Parties may propound requests for production which seek ESI within and by identification of a specific software program and/or electronic file folder, structure, or location.

**K.** The Parties are not obligated to search an electronic repository if, after a reasonable investigation, it is determined to not be reasonably likely to contain relevant information. A party may object to discovery of ESI from sources that the party identifies as not reasonably accessible because of undue burden or expenses and such objection shall identify the reason for such undue burden or expense.

**L.** Consistent with the obligations set forth elsewhere in this protocol, search terms will be run against applicable ESI content and against any optical character recognition (“OCR”) created from paper content, including emails, their attachments, and related metadata. The fact that any ESI contains a search term does not mean that such document is responsive to any propounded discovery request or that it is otherwise relevant to or admissible in this litigation. The use of search terms in connection with locating potentially responsive information does

not absolve an attorney for a party from reviewing the information to ensure such information is responsive to a particular request for production. Nothing in this protocol 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.

**M.** Parties may leverage commercially available email threading technologies to reduce the volume of email that must be reviewed and produced. A producing Party is required to produce only the most inclusive email chain and associated attachments.

**N.** The following types of data are presumed to be inaccessible and are not subject to discovery absent a particularized need for the data:

- Deleted, slack, fragmented, or other data only accessible by forensics;
- Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating systems;
- Online access data such as temporary internet files, history, cache, or cookies;
- Backup data that is substantially duplicative of data that are more accessible elsewhere; and

- Server, system, or network logs.

**O.** Neither party shall have the obligation to use extraordinary measures to decrypt documents.

**P.** The Parties will de-duplicate their ESI across custodial and non-custodial data sources before disclosure to the requesting party. However, in instances where such deduplication occurs, the Parties agree that they will provide the other party with metadata showing all custodians and/or data sources where such duplicate copies were located.

#### **FORM OF ESI TO BE PRODUCED**

**Q.** With the exception of image or signature files that are otherwise contained in the parent email or document, documents will be produced in full families with appropriate metadata, as set forth in Paragraph S, unless they are non-responsive or privileged as described in Paragraphs R and AA.

**R.** Irrelevant or non-responsive attachments that are part of responsive families should be produced with a slip sheet that states “ Non-Responsive.” Non-responsive parent emails that are part of responsive families must be produced.

**S.** The Parties shall produce ESI in single-page Group 4 TIFF image format with minimum 300 dpi resolution, metadata, and full text extracted to a linked electronic file. When producing ESI in TIFF image format, the party

producing the same shall not remove or reduce any existing word searching or OCR capabilities from the ESI's native file format. The metadata fields should, to the extent such fields exist, include the following: BegBates, EndBates, BegAttach, EndAttach, AttachCount, Custodian, Duplicate Custodian, Author, From, To, CC, BCC, Subject, Title, File Name, Native File Link, Message Sent Date/Time, Message ID (or Conversation ID), Created Date/Time, Modified Date/Time, File Extension, File Size, MD5 Hash, TextLink, Confidentiality Designation, Has Redactions, Has Foreign Language, and Prod Volume. Each TIFF image file should include a unitization file, in standard format (i.e., Opticon) showing the Bates number of each page and the appropriate unitization of documents.

**T.** The Parties shall produce ESI in Native File Format with a TIFF slip sheet that reads "Produced in Native Format" for the following document types: Excel spreadsheets, PowerPoint presentations, audio and visual files, and other file types that when converted to TIFFs take on an appearance noticeably different from the native version of the file.

**U.** Neither Party is required to provide English-language translations of ESI that contains foreign language unless such translation is already in the custody, possession, or control of the producing Party. The Parties agree that any such translations do not need to be certified by the producing Party, and the requesting

Party is responsible for verifying any translations. The Producing Party makes no representations as to the accuracy of any non-certified translations produced in this matter.

V. Specific documents may be requested to be produced in native format if the original produced TIFF version does not image legibly.

W. Specific documents may be requested in color if, after initial production, the party believes that color is necessary to understand the context and/or content of the document.

X. Unless otherwise requested, the Parties shall exchange OPT image load files and Concordance .DAT format data load files. Except for native files, all other pages shall be Bates labeled. Native files should be renamed to correspond with the sequential Bates number and Confidentiality Designation given to the TIFF slip sheet that will be inserted into the production as a placeholder for the native file.

Y. All productions totaling less than 5 gigabytes of data shall be produced via secure file transfer such as SFTP or Citrix ShareFile. All productions totaling more than 5 gigabytes of data should be encrypted or otherwise password protected and placed on a generally-accepted electronic medium, such as a USB thumb drive or external hard drive for transmission to opposing party.



**Z.** If a Party intends to use predictive coding, also known as technology assisted review (“TAR”), for the purpose of identifying or culling the documents to be reviewed or produced, the producing party will notify the opposing party with sufficient time to meet and confer in good faith regarding a mutually agreeable protocol for the use of such technologies or alternatives. This discussion will include: (i) whether any culling measures were taken prior to the application of TAR; (ii) the vendor being used to manage the application of the technology; (iii) the method(s) used to derive the seed or exemplar set; (iv) the method for validating the computer decisions; and (v) the measures taken to check the quality of the computer decisions.

## **PRIVILEGED MATERIALS**

**AA.** Privileged documents that are part of responsive and non-privileged families should be produced with a slip sheet that states “Withheld as Privileged.” Each portion of a document that has been redacted for privilege will include an indication on the redacted area that indicates “Redacted—Privileged.” The Parties will provide searchable OCR text for the non-redacted portion of any TIFF files containing redactions.

**BB.** If either Party believes it is required to comply with the General Data Protection Regulation (“GDPR”) and thus redact certain personally identifying information (“PII”), the Parties understand that the Party complying with GDPR will redact the PII and label such redactions as “Redacted – PII.” Each party reserves the right to challenge the producing Party’s PII redactions.

**CC.** The Parties shall meet and confer in good faith during the course of fact discovery regarding the production and contents of any privilege log. The Parties agree to produce a metadata log (Custodian, Duplicate Custodian, Author, From, To, CC, BCC, Subject, Title, File Name, Message Sent Date/Time, Created Date/Time, Modified Date/Time) for any document withheld entirely or in redacted form under a claim of privilege. The Parties will identify attorneys on the privilege log either in a separate list or using symbols, such as an asterisk, within the log itself. The Parties will provide a list of the names and the employers of non-attorneys who are not identified with an email address in a To, From, CC, or BCC field (“Players List”).

**DD.** If a Party believes it needs more information to assess a claim of privilege regarding any document, acceptance of the initial metadata log does not prejudice either party from requesting (a) a brief description of the subject matter of the document, sufficient to enable evaluation of the claim of privilege; and (b)

privilege claimed and the basis therefore. To the extent that the list of individuals includes those not otherwise identified on the “players list,” the Parties agree to update the “players list” to incorporate the new individuals. This information must be provided in the same (or similar) spreadsheet as the information contained in the metadata log. The Parties further agree that there will be no obligation to log any privileged communication created after May 16, 2018.

**EE.** The production of privileged or work-product protected documents is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. In the event a party discovers that it has produced a document that it considers privileged or confidential, or receives a document that it believes was produced on the ground that it is privileged or confidential, the Parties shall undertake to resolve the disclosure issue through the Protective Order to be negotiated and agreed-upon by the parties and entered by the Court in this case.

**FF.** This Protocol shall be interpreted to provide the maximum protection allowed under the applicable laws, including Delaware Rule of Evidence 510. However, nothing contained herein is intended to or shall serve to limit a party’s right to conduct a review of its own documents, ESI, or information (including metadata), for relevance, responsiveness, and/or segregation of privileged and/or

protected information before production. Nothing herein shall limit the receiving party from arguing that the document is not in fact privileged, in accordance with the Protective Order to be negotiated and agreed-upon by the Parties and entered by the Court in this case. Rather, this paragraph is intended only to prohibit arguing that the document has lost its privilege due to production.

**CONFIDENTIAL MATERIALS**

**GG.** The production of confidential ESI shall be addressed pursuant to the Protective Order to be negotiated and agreed-upon by the Parties and entered by the Court in this case.

/s/ Nathan R. Hoeschen  
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**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Honorable Eric M. Davis