

The Honorable Ronald B. Leighton

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JUDITH COLE, a single person; LOUISE  
MICHAEL, a single person; DAVID  
JOHNSON, a single person,  
  
Plaintiffs,  
  
v.  
  
KEYSTONE RV COMPANY, a foreign  
business entity,  
  
Defendant.

NO. 3:18-cv-05182-RBL

**STIPULATION REGARDING  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION  
AND ORDER**

**I. STIPULATION**

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information ("ESI") in this matter:

**A. General Principles**

1. An attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

1           2.     The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be  
2 applied in each case when formulating a discovery plan. To further the application of the  
3 proportionality standard in discovery, requests for production of ESI and related responses  
4 should be reasonably targeted, clear, and as specific as possible.

5     **B.    ESI Disclosures**

6           Within 45 days after the filing of the parties' Stipulation Regarding Discovery of  
7 Electronically Stored Information, each party shall disclose to the other:

8           1.     Custodians. The five custodians most likely to have discoverable ESI in their  
9 possession, custody or control. The custodians shall be identified by name, title, connection  
10 to the instant litigation, and the type of the information under his/her control.

11           2.     Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared  
12 drives, servers, databases, etc.), if any, likely to contain discoverable ESI.

13           3.     Third-Party Data Sources. A list of third-party data sources, if any, likely to  
14 contain discoverable ESI (e.g. third-party email and/or mobile device providers, cloud-based  
15 storage, cloud-based applications, cloud-based databases, social media accounts,  
16 messaging applications, etc.) and, for each such source, the extent to which a party is (or  
17 is not) able to preserve information stored in the third-party data source.

18           4.     Inaccessible Data. A list of data sources, if any, likely to contain discoverable  
19 ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically  
20 identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ.  
21 P. 26(b)(2)(B). Data sources listed below in Section C(3)(a) need not be included on this  
22 list.  
23  
24

1 **C. Preservation of ESI**

2 The parties acknowledge that they have a common law obligation to take reasonable  
3 and proportional steps to preserve discoverable information in the party's possession,  
4 custody or control. With respect to preservation of ESI, the parties agree as follows:

5 1. Absent a showing of good cause by the requesting party, the parties shall not  
6 be required to modify the procedures used by them in the ordinary course of business to  
7 back-up and archive data; provided, however, that the parties shall preserve all discoverable ESI  
8 in their possession, custody or control.

9 2. All parties shall supplement their disclosures in accordance with Rule 26(e) with  
10 discoverable ESI responsive to a particular discovery request or mandatory disclosure where that  
11 data is created after a disclosure or response is made (unless excluded under (C)(3) or (D)(I)-  
12 (2) below).

13 3. Absent a showing of good cause by the requesting party, the following categories  
14 of ESI need not be preserved:

- 15 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 16 b. Random access memory (RAM), temporary files, or other ephemeral data that is  
17 difficult to preserve without disabling the operating system.
- 18 c. On-line access data such as temporary internet files, history, cache, cookies, and  
19 the like.
- 20 d. Data in metadata fields that are frequently updated automatically, such as last-  
21 opened dates (see also Section (E)(5)).
- 22 e. Back-up data that are substantially duplicative of data that are more accessible  
23 elsewhere.
- 24 f. Server, system or network logs.

- 1 g. Data remaining from systems no longer in use that is unintelligible on the  
2 systems in use and where there is no reasonable or proportional way to convert  
3 the data to a universal format such as CSV, XLSX, TXT, SQL, XML, etc.
- 4 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from  
5 mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided that  
6 a copy of all such electronic data is routinely saved elsewhere (such as on a server,  
7 laptop, desktop computer, or "cloud" storage).
- 8 i. Text messages, instant messages, and voicemail not retained in the ordinary  
9 course of business.

10 **D. Privilege**

11 1. Claims of Privilege:

12 a. Where a document is withheld from production pursuant to a claim of  
13 attorney-client privilege or work-product protection:

- 14 (i) The attorney asserting the privilege shall identify the nature of  
15 the privilege (including work product) being claimed; and
- 16 (ii) The following information shall be provided in a privilege log,  
17 unless divulging such information would cause disclosure of the  
18 allegedly privileged information:

- 19 (a) The type of document, e.g., letter or memorandum;
- 20 (b) The general subject matter of the document;
- 21 (c) The date of the document; and
- 22 (d) Such other information as is sufficient to identify the  
23 document, including, where provided, the author of the  
24 document, the addressees of the document, and any  
25 other recipients shown in the document, with legal  
personnel designated by asterisk;

1           b.     Privilege logs will be provided on a rolling basis, with the first log  
2 provided within 45 days of the first production and the final log within 45 days of the last  
3 production.

4           c.     Legal personnel shall be identified as such by adding an asterisk after  
5 their names in the privilege log.

6           d.     For a chain of privileged emails, the Producing Party need include only  
7 one entry on the privilege log for the entire email chain and need not log each email  
8 contained in the chain separately. The privilege log entry for the email chain needs to  
9 provide in the applicable privilege log fields (1) the Bates number for the entire email chain,  
10 (2) the author, recipient(s), copyee(s), and subject line for the last-in-time email, and (3)  
11 the privilege log entry will disclose all third parties on the string that may not be reflected in  
the metadata, with legal personnel designated by asterisk.

12           2.     With respect to privileged or work-product information generated after the  
13 filing of the complaint, parties are not required to include any such information in privilege  
14 logs. Redactions from produced documents also are not required to be logged provided the  
15 reason for the redaction appears on the redaction label (*e.g.*, Privileged, Work Product).

16           3.     Activities undertaken in compliance with the duty to preserve information are  
17 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

18           4.     When a producing party gives notice to receiving parties that certain  
19 inadvertently produced material is subject to a claim of privilege or of protection as trial-  
20 preparation material, the obligations of the receiving parties are those set forth in Fed. R.  
21 Civ. P. 26(b)(5)(B), and its production shall not constitute a waiver of such protection in this  
22 matter or any other federal or state proceeding, if: (i) such information appears on its face  
23 to have been inadvertently produced or (ii) the producing party provides notice within 15  
24 days of discovery by the producing party of the inadvertent production.

1 **E. ESI Discovery Procedures**

2 On-site inspection of electronic media. Such an inspection shall not be permitted  
3 absent a demonstration by the requesting party of specific need and good cause or by  
4 agreement of the parties.

5 1. Search methodology. The parties shall timely attempt to reach agreement on  
6 appropriate search terms, or an appropriate computer-or technology-aided methodology,  
7 before any such effort is undertaken. The parties shall continue to cooperate in revising the  
8 appropriateness of the search terms or computer- or technology-aided methodology.

9 2. The parties will meet and confer regarding search terms. Any request for  
10 additional search terms shall be pursuant to the terms of subparagraphs 3.c and 3.d. Part  
11 of this meet and confer process may involve providing information to assess the burden  
12 and to determine appropriate edits to the proposed search term list.

13 3. In the absence of agreement on appropriate search terms, or an appropriate  
14 computer- or technology-aided methodology, the following procedures shall apply:

15 a. A producing party shall disclose the search terms or queries, if any,  
16 and methodology that it proposes to use to locate ESI likely to contain discoverable  
17 information. The parties shall meet and confer to attempt to reach an agreement on the  
18 producing party's search terms and/or other methodology.

19 b. Upon reasonable request and if appropriate for this case, a producing  
20 party shall also disclose information relating to network design, the types of databases,  
21 database dictionaries, the access control list and security access logs and rights of  
22 individuals to access the system and specific files and applications, the ESI document  
23 retention policy, organizational chart for information systems personnel, or the backup  
24

1 and systems recovery routines, including but not limited to, tape rotation and  
2 destruction/overwrite policy.

3 c. If search terms were used to locate ESI likely to contain discoverable  
4 information, a requesting party is entitled to no more than 5 additional terms or queries to  
5 be used in connection with further electronic searches absent a showing of good cause  
6 or agreement of the parties. The parties shall confer in good faith on the 5 additional  
7 queries. The 5 additional terms or queries, if any, must be provided by the requesting party  
8 within 30 days of receipt of the producing party's production.

9 d. Focused terms and queries should be employed; broad terms or  
10 queries, such as product and company names, generally should be avoided. Absent a  
11 showing of good cause, each search term or query returning more than 250 megabytes of  
12 data is presumed to be overbroad, excluding Microsoft PowerPoint files, color images,  
13 audio/video files, and similarly large file types.

14 e. The producing party shall search both non-custodian data sources and  
15 ESI maintained by the custodians identified above.

16 4. Document Format. The parties agree that ESI will be produced to the  
17 requesting party with searchable text, in a format to be decided between the parties. The  
18 parties shall meet and confer regarding reliable methods for converting the data for  
19 production. Unless otherwise agreed to by the parties, files that are not easily converted  
20 to image format, such as spreadsheets and media files, should be produced in native  
21 format. Documents produced in native file format will be named with a Bates number and,  
22 where applicable, a confidentiality designation. When possible, extracted text should be  
23 provided for any documents produced in native file format. Documents should be  
24 produced with natural document breaks so that it is apparent where each document begins  
25 and ends. Separate documents should not be combined for purposes of production into

1 one contained image file. Documents that are locked by a password or encrypted as they  
2 are kept in the ordinary course of business shall be produced in a form that is unlocked or  
3 decrypted or with passwords under separate cover, provided the producing party is able  
4 to unlock or decrypt the document using reasonable and proportional means.

5 5. The parties shall meet and confer regarding production format of databases  
6 and other structured data sources before their production. The parties will work to identify  
7 an appropriate format that will allow the requesting party to use and search the data in a  
8 meaningful way, such as an already existing and reasonably available report, or an export  
9 from the original database of discoverable information in a format compatible with  
10 Microsoft Excel or Microsoft Access produced in native format. A producing party shall  
11 neither be obligated to create and/or produce a copy of the database, nor provide another  
12 party with access to the database, unless good cause is shown (after the parties meet  
13 and confer) that other means of obtaining the data in a usable format are not available.

14 6. The parties agree that ESI will be produced to the requesting party in the form;  
15 set forth in Section E(4). Productions that are smaller than five gigabytes may be produced  
16 through an FTP site. Productions larger than five gigabytes will be produced on industry  
17 standard media such as external hard drives or "thumb drives."

18 7. De-duplication. The parties will undertake reasonable efforts to de-duplicate  
19 their ESI production across custodial and non-custodial data sources. To "de-duplicate"  
20 across custodians means that exact duplicates of documents held and produced by a  
21 particular custodian, as identified by MD5 or SHA1 hash values, but also residing with another  
22 custodian will not be produced twice. The parties may de-duplicate identical e-mails using  
23 MD5 or SHA1 hash technology, across custodians to reduce or suppress e-mail thread  
24 duplicates. To suppress an email as a "thread duplicate," it must be wholly contained in the  
25 later, surviving email, and have all the same recipients and attachments.



1 8. Metadata fields. The parties agree to produce the following metadata fields,  
2 where applicable and available:

<b>FIELDNAME</b>	<b>DESCRIPTION</b>
<b>TO</b>	The name of the recipient(s)
<b>FROM</b>	The name of the sender(s)
<b>CC</b>	The document is electronic mail or correspondence, the identity of the person or entity who received a copy
<b>BCC</b>	If the document is electronic mail or correspondence, the identity of the person or entity who received a blind copy
<b>DATESENT</b>	If the document is electronic mail or correspondence, the date the document was sent

<b>FIELDNAME</b>	<b>DESCRIPTION</b>
<b>DATERECEIVED</b>	If the document is electronic mail or correspondence, the date the document was received
<b>SUBJECT</b>	The subject of the document, typically included with correspondence and memoranda
<b>FILENAME</b>	The original name of the native file
<b>EXTENSION</b>	The application extension of the native file, for example: .doc, .xls, .docx, .xlsx, .mdb, .txt
<b>CREATEDATE</b>	The date the document was created
<b>PAGECOUNT</b>	The number of pages in the document
<b>CUSTODIAN</b>	The name of the custodian from whom the document was obtained
<b>CONFIDENTIAL</b>	Whether or not the document is labeled designated as confidential pursuant to a protective order

1 9. Best Efforts Compliance. The parties agree to use their best efforts to comply  
2 with and resolve any differences concerning compliance with any provision/s of the  
3 agreement. If a producing party cannot comply with any aspect of the Agreement, such  
4 party shall inform the requesting party in writing before the time of production why  
5 compliance with the Agreement is unreasonable or not possible. No party may seek relief  
6 from the Court concerning compliance with the Agreement until it has met and conferred  
7 with the other party pursuant to those Rules requiring a good faith effort to resolve or  
8 narrow the area of disagreement.

9 DATED THIS 8th day of March, 2019.

10 LAW OFFICES OF EUGENE N. BOLIN, JR., P.S. CORR|DOWNS PLLC

11 s/Eugene N. Bolin, Jr.

12 Eugene N. Bolin, Jr., WSBA #11450  
13 144 Railroad Ave., Suite #308  
14 Edmonds, WA 98020  
[eugenebolin@gmail.com](mailto:eugenebolin@gmail.com)  
Telephone: 425.582.8165

s/Joseph P. Corr

Joseph P. Corr, WSBA #36584  
100 W. Harrison. St., Ste. N440  
Seattle, WA 98119  
[jcorr@corrdowns.com](mailto:jcorr@corrdowns.com)  
Telephone: 206.962.5040

15 BERRY & BECKETT, PLLP

JONES WALKER, LLP

17 s/ Guy W. Beckett

18 Mr. Guy W. Beckett  
19 1708 Bellevue Ave.  
Seattle, WA 98122  
[gbeckett@beckettlaw.com](mailto:gbeckett@beckettlaw.com)

s/Ryan E. Johnson

Ryan E. Johnson (*pro hac vice*)  
8555 United Plaza Blvd., 5<sup>th</sup> Floor  
Baton Rouge, LA 70809  
[jpercy@joneswalker.com](mailto:jpercy@joneswalker.com)  
Telephone: 225.248.2080

21 LAW OFFICES OF RICHARD F. DEJEAN

*Attorneys for Defendant  
Keystone RV Company*

23 s/Richard F. DeJean

24 Richard F. DeJean, WSBA #2548

25 STIPULATION REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION  
AND ORDER - 10  
3:18-cv-05182-RBL

Law Offices of Eugene N. Bolin, Jr., P.S.  
144 Railroad Avenue, Suite 308  
Edmonds, WA 98020  
206-527-2700 / 425-582-8165  
Toll Free / Fax: 888-527-2710

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PO Box 867  
Sumner, WA 98390  
[rdejean@dejeanlaw.comcastbiz.net](mailto:rdejean@dejeanlaw.comcastbiz.net)  
Telephone: 253.863.0922

*Attorneys for Plaintiffs*

**STIPULATION REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION  
AND ORDER - 11**

3:18-cv-05182-RBL

**Law Offices of Eugene N. Bolin, Jr., P.S.  
144 Railroad Avenue, Suite 308  
Edmonds, WA 98020  
206-527-2700 / 425-582-8165  
Toll Free / Fax: 888-527-2710**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**I. ORDER**

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Honorable Ronald B. Leighton  
United States District Judge