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NOR 42144

Defendant.

MICHAEL L. ROSENTHAL
KAVITA PILLAI
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February 22, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR
ASSOCIATION; AMERICAN FUEL &
PETROCHEMICAL MANUFACTURERS;
THE CHLORINE INSTITUTE; THE
FERTILIZER INSTITUTE; AMERICAN
CHEMISTRY COUNCIL; ETHANOL
PRODUCTS, LLC D/B/A POET ETHANOL
PRODUCTS; POET NUTRITION, INC.; and
CARGILL INCORPORATED,

Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

NOR 42144

**UNION PACIFIC’S REPLY TO COMPLAINANTS’ SECOND STATUS REPORT AND
REQUEST FOR RE-ESTABLISHMENT OF PROCEDURAL SCHEDULE**

Complainants’ status report and request to re-establish the procedural schedule is a thinly veiled effort to bolster their arguments against consolidating this case with nearly identical cases filed in STB Docket Nos. NOR 42150 and 42152. Complainants had no need to file anything at the Board. Discovery is ongoing and is being supervised by Administrative Law Judge John P. Dring. The precise due dates for evidentiary filings necessarily depend on the date on which discovery is completed, as Complainants recognize in their request. Union Pacific does not object to the intervals between the proposed due dates. They are the same intervals originally established by the Board. But there is nothing for the Board to do now, in terms of a procedural

schedule, until it rules on the pending cross-motions to hold in abeyance or to consolidate the various proceedings.

Complainants are trying to bolster their arguments against consolidation by suggesting that discovery in this proceeding is close to complete. However, discovery is not nearly as close to completion as Complainants want the Board to believe. In particular, the following discovery is still pending:

1. *Document productions from Individual Complainants.* Although Complainants state that POET Ethanol and POET Nutrition had “completed their document production to UP in January, 2017” (Status Report at 3), POET Ethanol and POET Nutrition each produced additional documents in February.¹ Cargill does not even claim to have completed its document production. In addition, neither POET Ethanol nor Cargill has fully responded to Union Pacific’s requests for information necessary to decipher their data productions.² Furthermore, Cargill has not yet provided updated responses to Union Pacific’s Requests for Admission, which they agreed to do on the record before Judge Dring. They have not even responded to Union Pacific’s follow-up request regarding these Requests for Admission.³
2. *Document production from Union Pacific.* Union Pacific expects to complete its production of documents and produce an update to its previously produced traffic data by early March. In accordance with the parties’ negotiated “Protocol for the Production of

¹ Letter from Thomas Wilcox to Michael Rosenthal, Feb. 2, 2017 (attached as Exhibit A).

² Letters from Kavita Pillai to Thomas Wilcox, Feb. 13, 2017 (attached as Exhibits B and C); Letter from Thomas Wilcox to Michael Rosenthal, Feb. 17, 2017 (attached as Exhibit D).

³ Transcript of September 29, 2016 Hearing, at 72:12-20; Email from Kavita Pillai to Thomas Wilcox and David Monroe, January 27, 2017 (attached as Exhibit E).

Electronically-Stored Information and Paper Documents,”⁴ Union Pacific will then produce its privilege log within 60 days after the document production has been completed.

3. *Depositions.* Union Pacific noticed depositions of designated representatives from Cargill, POET Ethanol, and POET Nutrition on January 19. POET Ethanol and POET Nutrition have identified deponents and proposed dates, but the depositions have not yet been firmly scheduled. Cargill has not yet responded to Union Pacific’s deposition notice.
4. *TCO discovery.* Union Pacific and four tank car owners (“TCOs”) that Union Pacific subpoenaed are continuing to work to resolve discovery issues. For example, on February 7, counsel for Union Tank Car Company (“UTC”) and American Railcar Industries, Inc. (“ARI”) identified concerns about the search terms to be used for electronic searches of discovery material. Union Pacific, UTC, and ARI have conferred, and are continuing to confer in good faith, about potential revisions to the search terms. However, no TCO has yet produced any documents in this case (although UTC has offered to begin production on a rolling basis). In addition, after extended discussions regarding the terms under which the TCOs would respond to certain subpoena requests by authorizing Railinc to produce certain TCO-related data, the TCOs finalized the authorization on January 24, and Railinc is in the process of developing the requested data.
5. *Privilege logs.* A discovery protocol agreed to by the parties in June 2016 states that privilege logs shall be produced within 60 days of completion of document production.⁵

Accordingly, Union Pacific, Cargill, POET Ethanol, and POET Nutrition, have not yet

⁴ Protocol for the Production of Electronically-Stored Information and Paper Documents (attached as Exhibit F).

⁵ See Exhibit F at 7.

produced privilege logs. Two Association Complainants, North America Freight Car Association (“NAFCA”) and American Fuel & Petrochemical Manufacturers (“AFPM”) have not yet produced privilege logs.

One reason Complainants suggest discovery is nearing completion is that they take the untenable position that “production from non-parties,” namely, the TCOs, “should have no bearing on the end dates for party discovery or data for Complainants’ submittal of Opening Evidence and Argument.” Status Report at 4. As Union Pacific explained when it petitioned for subpoenas, Union Pacific resorted to seeking discovery from the TCOs—four tank car leasing companies that were members of NAFCA—because the Association Complainants had little or no relevant information in their possession and refused to collect and produce information from their members who had relevant information. Without discovery from the TCOs, Union Pacific would have been required to respond to Complainants’ allegations regarding industry conditions with discovery from just the *three* shippers (out of hundreds of trade association members) that joined in the complaint. Discovery from the four TCOs is no substitute for discovery from all of the Association Complainants’ members, but it is better than nothing. By suggesting that the TCOs’ discovery can be ignored in establishing an end date for party discovery and a schedule for the submission of evidence, Complainants seek to further handicap Union Pacific. Union Pacific should have as much time to obtain the TCOs’ discovery material and use that material to develop its arguments and evidence as it would have if it could have obtained responsive information from the Association Complainants.

For the reasons set forth above, Union Pacific requests that the Board take no action at this time.

Respectfully submitted,

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DANIELLE E. BODE
Union Pacific Railroad Company
1400 Douglas Street
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(402) 544-3309

/s/ Michael L. Rosenthal
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Attorneys for Union Pacific Railroad Company

February 22, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2017, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery, on all of the parties of record in NOR 42144.

I also caused a copy of the foregoing document to be served by hand on Administrative Law Judge John P. Dring, Federal Energy Regulatory Commission Office of Administrative Law Judges, 888 First Street, N.E., Washington DC 20426.

/s/Michael L. Rosenthal
Michael L. Rosenthal



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202-342-5248

February 2, 2017

VIA HAND DELIVERY

Michael L. Rosenthal
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

Re: STB Docket No. NOR 42144, *North America Freight Car Association, et al. v. Union Pacific Railroad Company*

Dear Mike:

Contemporaneous with this letter we are producing to you additional documents and information from complainants POET Ethanol (PEP12742 - PEP107526) and POET Nutrition (PNI00122 - PNI00127).

The POET Ethanol production consists of additional car tracing data and cover emails per our recent discussions. Please note that out of an abundance of caution all of this material has been designated Highly Confidential under the Protective Order entered in this case. Please contact me if you believe some of the material should be re designated after you have reviewed it. The POET Nutrition production consists of additional lease documents.

Also pursuant to our discussions, our understanding is that these are the final productions from POET Ethanol and POET Nutrition. We will produce privilege logs for each complainant in due course.

Michael Rosenthal
February 2, 2017
Page 2

Please do not hesitate to call if you have any questions.

Sincerely,



Thomas W. Wilcox

cc: Jeffrey Moreno
Paul M. Donovan
Justin A. Savage
Louise A. Rinn
(w/o enclosures)

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By Email

February 13, 2017

Thomas W. Wilcox, Esq.
GKG Law
1055 Thomas Jefferson Street NW, Suite 500
Washington, DC 20007

**Re: STB Docket No. NOR 42144, North America Freight Car
Association, et al. v. Union Pacific Railroad Company**

Dear Tom:

We have reviewed Cargill's productions of discovery material to date, and we have several questions about the data that have been produced. Please respond to the questions below or requests as soon as possible so that we can complete our review. We are also available for a call to discuss these issues.

1. Please explain what each unique value represents in the "SIGHTING_CODE" field of the "clm_extract" datasets.
2. Please explain what each unique value represents in the below fields in the "mileage_extract" dataset:
 - a. "ACCOUNT_TYPE"
 - b. "RATE_SOURCE"
 - c. "SOURCE_TYPE"
 - d. "DOCUMENT_TYPE"
 - e. "PAYMENT_ACTION"
 - f. "MILEAGE_SETTLEMENT"
 - g. "SUMMARY_LEVEL"
3. Please explain what each unique value represents in the "TRANSACTION_PURPOSE" field in the "mileage_extract" dataset and whether those values have specific significance when aggregating or reconciling data within this dataset.
4. Please identify how the datasets listed below were created. If they were generated based on querying the "mileage_extract" dataset, or a source database thereof,

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Thomas W. Wilcox, Esq.
February 13, 2017
Page 2

please provide the code used to perform this query and explanation where necessary of the logic used:

- a. "mileage_by_cgl_mark_extract.txt"
 - b. "mileage_paid_extract.txt"
 - c. "owned_tank_car_properties_extract.txt"
 - d. "owned_tank_car_mileage_totals_extract.txt"
 - e. "leased_tank_car_properties_extract.txt"
 - f. "leased_tank_car_mileage_totals_extract.txt"
5. If the "CONTRACT" and/or "CONTRACT_DATA" fields in the "mileage_extract" dataset may be used to identify charges under Item 55-C, please describe how, and state whether this method would cover all such charges assessed to Cargill.
 6. Please explain how the "LOADED_MILES" and "EMPTY_MILES" field values are measured and which railroad is associated with those values in the "mileage_extract" dataset in cases where the railroads in the "CYCLE_START_ROADMARK" and "CYCLE_END_ROADMARK" fields differ. Does the "RAILROAD" field identify the railroad associated with the miles listed for a given record? Is this consistent with the method used to generate the file?
 7. Please explain how the "MILEAGE_RATE" field in the "mileage_extract" dataset is derived based on other fields in this dataset, and how the "TIME_VALUE" and "MILEAGE_VALUE" fields in the "mileage_extract" dataset are calculated.
 8. Please explain what the unique values in the "OWNERSHIP_TYPE" field—including "Net", "FSvc", and "Owned"—in the "shopping_extract" dataset represent. Please explain any ways these definitions differ from how ownership is defined in the "OWNER_MARK" field in the "mileage_extract" dataset and explain how to accurately define car ownership in the "mileage_extract" dataset, including if necessary the use of information from other fields such as "DOCUMENT_IDENTIFIER" and "OWNER_MARK."
 9. Please explain how records in the "mileage_extract" dataset where the "CYCLE_START_ROADMARK" or "CYCLE_END_ROADMARK" field is populated with "SHOP" relate to records in the "shopping_extract" dataset. Does the "shopping_extract" dataset provide records for all shop visits for all of Cargill's leased and owned cars for the time period covered? Do such "SHOP" records in the "mileage_extract" dataset cover a subset of shop visits contained in "shopping_extract" dataset? If otherwise, please explain.

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Thomas W. Wilcox, Esq.
February 13, 2017
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Sincerely,

A handwritten signature in blue ink, appearing to read "Kavita Pillai". The signature is fluid and cursive, with a distinct loop at the end.

Kavita Pillai

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By Email

February 13, 2017

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**Re: STB Docket No. NOR 42144, North America Freight Car
Association, et al. v. Union Pacific Railroad Company**

Dear Tom:

We have reviewed Poet Ethanol's productions of discovery material to date, and we have several questions about the data that have been produced. Please respond to the questions below as soon as possible so that we can complete our review. We are also available for a call to discuss these issues.

1. Do the "weekly trace data" include any cars not leased by Poet Ethanol at the time reported? Are there additional cars leased by Poet Ethanol that are not included in this data? If the answer to either question is "yes," please identify the cars.
2. Do records in the "weekly trace data" where the "Train.ID" field is listed as "SHOP" identify all shop visits for Poet Ethanol cars? If not, please identify the additional shop visits.
3. Please provide a decoder that includes an item description for each unique value in the "Event" field of the "weekly trace data"
4. Does the spreadsheet "PEPo6280.xlsx," originally entitled "Empty Bill Charges for Shop Cars.xlsx," contain information on all charges for empty shop moves which Poet Ethanol has been assessed in 2015 and 2016? If spreadsheet covers some other timeframe, please specify the timeframe. If the spreadsheet is not comprehensive for the covered time period, please provide comparable information for all empty shop moves not included in this document.
5. Does the spreadsheet "PEP10046.xlsx," originally entitled "2012-15 Bad Order Summary.xlsx," contain information for all Poet Ethanol leased cars that were bad-ordered and sent to repair facilities during the 2012 to 2015 timeframe?

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Thomas W. Wilcox, Esq.
February 13, 2017
Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read "Kavita Pillai". The signature is fluid and cursive, with a period at the end.

Kavita Pillai



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February 17, 2017

VIA E-Mail

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Re: STB Docket No. NOR 42144, *North America Freight Car Association, et al. v. Union Pacific Railroad Company*

Dear Mike:

This letter responds to your letter to me of February 13, 2017 listing five questions (with subparts) about POET Ethanol's document production to UP. The answers to each question are as follows:

1. The "weekly trace data" includes some cars that are not leased by POET Ethanol. There are no additional cars leased by POET Ethanol that are not included in this data. The cars that are not leased by POET Ethanol that show up in the data can be identified by UP by reviewing documents produced to UP that contain the car numbers for all cars leased by POET Ethanol.
2. The records in the "weekly trace data" where the "Train.ID" field is listed as "SHOP" do not identify all the shop visits for POET Ethanol cars. POET does not possess information that

Letter to Michael Rosenthal
February 17, 2017
Page 2

identifies all shop visits of the cars it leases, so it cannot identify shop visits that are not included in the trace data.

3. POET Ethanol will supply a “decoder” or other documentation that should provide the information requested.
4. The answer to the first question posed is “Yes,” so there is no need to address the remainder of this question.
5. The answer is “No.” As with question 2, POET Ethanol has some of this data but not all of it since this is data typically collected by the car owner. Also, this spreadsheet includes cars that were bad-ordered but repaired using mobile repair crews.

Please give me a call or email me with any questions or if you want to discuss.

Sincerely,

A handwritten signature in blue ink that reads "Tom Wilcox".

Thomas W. Wilcox

From: [Pillai, Kavita](#)
To: twilcox@gkglaw.com; [David K. Monroe \(dmonroe@gkglaw.com\)](mailto:dmonroe@gkglaw.com)
Cc: [Rosenthal, Michael](#)
Subject: Cargill discovery (NAFCA v. UP)
Date: Friday, January 27, 2017 11:05:22 AM

Counsel:

Following up on outstanding discovery, we have not yet received Cargill's updated responses to Union Pacific's requests for admission for those requests to which Cargill agreed to respond following our September 26 meet and confer and the September 29 hearing before Judge Dring. The requests at issue are RFA Nos. 2, 4 and 5. Additionally, please let us know if Cargill will be producing more documents and/or information. If so, please let us know what we can expect and when. Thank you and have a good weekend.

Best regards,

Kavita

Kavita Pillai

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; and CARGILL INCORPORATED

VS.

**UNION PACIFIC RAILROAD
COMPANY**

DOCKET NO. NOR 42144

PROTOCOL FOR THE PRODUCTION OF ELECTRONICALLY-STORED INFORMATION AND PAPER DOCUMENTS

I. GENERAL PROVISIONS

A. Except as specifically limited herein, the procedures and protocols (the “Protocol”) set forth below govern the production of electronically-stored information (“ESI”) and paper documents by all parties in, and during the pendency of, this matter.

B. Preservation of Rights. Nothing in this Protocol shall be interpreted to require disclosure of wholly irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The parties do not waive any objections as to the production, discoverability, relevancy, admissibility, or confidentiality of paper documents and ESI.

C. **Right to Supplement.** This Protocol, including terms and procedures set forth herein, are based on the parties' knowledge and understanding of the facts at this time. The

parties specifically reserve their rights to supplement and/or amend this Protocol based on information that becomes known to the parties through discovery or otherwise.

D. Any production made pursuant to this Protocol will also be subject to the requirements and protections set forth in the *Protective Order* agreed to by the parties and entered by the Board now or in the future.

E. **Definitions.** The following definitions serve to further clarify the scope of this Protocol:

1. The term “Document” has the same full meaning as construed by Fed. R. Civ. P. 34.

2. A “Document Family” means any group of two or more documents intended to be analyzed together in the normal course of business; including, but not limited to, facsimile cover sheets and attachments, paper letters and original enclosures, and email messages and all attached files.

3. The term “Native File(s)” means ESI in the electronic format of the application in which such ESI is normally created.

F. **Applicable Bates Labeling.** For purposes of this Matter, the parties agree to use the following Bates number prefixes:

Party	Shall use the Bates Number Prefix:
North American Freight Car Association	NAFCA
American Fuel & Petrochemicals Manufacturers	AFPM
The Chlorine Institute	TCI
The Fertilizer Institute	TFI
American Chemistry Counsel	ACC
Ethanol Products, LLC d/b/a Poet Ethanol Products	PEP
Poet Nutrition, Inc.	PNI
Cargill Incorporated	CI
Union Pacific Railroad Company	UPRR

The parties agree that Bates numbers will appear in the lower right-hand corner of each document image.

II. PRODUCTION OF ELECTRONICALLY STORED INFORMATION

A. **De-Duplication.** For ESI, a party is required to produce only one copy of a responsive Document Family. Parties will de-duplicate responsive ESI globally based on MD5 hash values at the Document Family level.

B. **Metadata Fields and Processing.** The parties will produce for each document the Metadata fields set forth in Appendix A.

C. **TIFFs.** Images of native files shall be generated from the native file. Single page Group IV TIFFs should be provided, at 300 dpi. Each image should have a unique file name corresponding with the Bates number of the document. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape).

D. **Extracted Text Files.** For each document, an extracted text file should be provided along with the image files and Metadata. The text file name should be the same as the page Bates number on the first page of the document. File names should not have any special characters or embedded spaces. The text of Native Files should be extracted directly from the Native File. However, if a document has been redacted, OCR of the redacted document will suffice in lieu of extracted text.

E. **Load Files.** Documents should be provided with (a) a delimited data file (.txt, .dat, or .csv), and (b) an image load file. Each TIFF in a production must be referenced in the corresponding load file. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load files in the production.

F. **Bates Numbering.** All images must be assigned a Bates number that must always: (1) be unique across the entire document production; (2) maintain a constant length (0-padded) across the entire production; (3) contain no special characters or embedded spaces; and (4) be sequential within a given document. The producing party shall notify recipients of any gaps or missing numbers within the produced Bates range or alternatively provide a slip sheet noting the intentional gap in the Bates numbers.

G. **Parent-Child Relationships.** Parent-child relationships (the association between an attachment and its parent document) should be preserved as they are maintained. For example, if a party is producing an e-mail with its attachments, the attachments should be processed in order behind the e-mail.

H. **Spreadsheets.** Spreadsheet documents will be produced in native format. Native copies of spreadsheets should be produced with a link in the NativeLink field, along with extracted text and applicable Metadata fields set forth in Appendix A.

I. **Audio and Video Files.** Audio and video files will be produced in their native format.

J. **Requests for other Native Files.** Other than as specifically set forth above, a producing party need not produce documents in native format. If good cause exists to request production of specified files in native format, the party may request such production and provide an explanation of the need for Native File review, which request shall not unreasonably be denied. The requesting party will provide a specific Bates range for documents it wishes to be produced in native format. Any Native Files that are produced should be produced with a link in the NativeLink field, along with all extracted text and applicable Metadata fields set forth in Appendix A.

K. **Printing Native Documents.** To the extent that any native documents are printed by the receiving party each page of the print-out shall bear the original document Bates number and any confidentiality designation, which should be embossed on the header or footer of each page of the printed document.

L. **Color Images.** TIFF images of documents containing color in their original form need not be produced initially in color. However, if an original document contains color necessary to understand the meaning or content of the document, the producing party will honor reasonable requests for a color image of the document. Documents produced in native format do not need to be produced as a color TIFF.

III. PRODUCTION OF HARD COPY DOCUMENTS

A. **TIFFs.** Single page Group IV TIFFs should be provided, at least 300 dpi. Each image should have a unique file name corresponding to the Bates number of the document. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape).

B. **Coding Fields.** The following information shall be produced in the delimited data files accompanying hard copy documents: (a) ProdBeg, (b) ProdEnd, (c) BegAttach, (d) EndAttach, (e) Custodian, (f) Confidentiality and (g) OCR text.

C. **Load Files.** Documents should be provided with (a) a delimited data file (.txt, .dat, or .csv), and (b) an image load file, as detailed in Appendix 1. Each TIFF in a production must be referenced in the corresponding load file. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load files in the production.

D. **Bates Numbering.** All documents must be assigned a Bates number that must always: (1) be unique across the entire document production; (2) maintain a constant length (0-

padded) across the entire production; (3) contain no special characters or embedded spaces; and (4) be sequential within a given document. If a Bates number or set of Bates numbers is skipped in a production, the producing party will so note in a cover letter, production log or privilege log accompanying the production.

E. **Unitizing of Documents.** In scanning paper documents, distinct documents should not be merged into a single record, and single documents should not be split into multiple records (i.e., paper documents should be logically unitized). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – the document behind each tab should be scanned separately, but the relationship among the documents in the binder should be reflected in proper coding of the beginning and ending document and attachment fields. The parties will reasonable efforts to unitize documents correctly.

IV. MISCELLANEOUS PROVISIONS

A. **Modifications.** Any practice or procedure set forth herein may be varied by agreement of the parties, confirmed in writing, where such variance is deemed appropriate to facilitate the timely and economical exchange of documents or ESI.

B. **Non-Party Discovery.** The parties will undertake best efforts to persuade non-party document or ESI custodians, from which a party to this Protocol seeks discovery pursuant to subpoena or other means, to conform such non-party production to the terms set forth herein.

C. **No Effect on Cost Shifting.** Nothing in this Agreement shall affect, in any way, a producing party's right to seek reimbursement for costs associated with collection, review, and/or production of documents or ESI.

D. **Non-Responsive Attachments.**

1. Non-responsive attachments to a document may be withheld from production. Any attachments so withheld shall be described with reasonable particularity in a non-responsive attachment log(s).

2. Logs shall be produced within sixty (60) days after document production has been completed in the case, or within any other time period mutually agreed upon by the parties. Logs shall be produced in “.pdf” format, and shall contain one entry for each attachment withheld. If available, the following information shall be included on logs for each attachment withheld: a description of the Document Family, the title or heading of the attachment, and the general subject-matter of the attachment or a description of the withheld information.

E. Withholding of Documents or Partial Redaction of Produced Documents based on Privilege. A producing party need not produce a slip-sheet in place of any document withheld for privilege. Redactions for privilege must appear on TIFF images as a black box with the word “REDACTED” in white text.

F. Privilege Logs.

1. All documents withheld or redacted on the grounds of attorney-client privilege, work-product doctrine or any other applicable privilege, immunity or protection from disclosure recognized by law or any other reasonable basis shall be described with reasonable particularity on a privilege log(s).

2. Logs shall be produced within sixty (60) days after document production has been completed in the case, or within any other time period mutually agreed upon by the parties. Logs shall be produced in “.pdf” format, and shall contain one entry for each Document Family withheld or redacted. If available, the following information shall be included on logs for each document withheld or redacted: the date the document was created (or in case of emails, the date

that the withheld/redacted email was sent), author, recipient, copyee, blind copyee, the general subject-matter of the documents or a description of the withheld or redacted information, and the basis for withholding or redacting the document.

3. Single documents containing email exchanges or discussion strings need be logged only as one entry, with the meta-data from most recent email appearing on the log. An email thread for which a party claims a privilege may be logged in a single entry.

4. Written or oral communications between a party and its in-house and/or outside counsel after commencement of this litigation, and work product material created after commencement of this litigation or the any litigation relating to this litigation, need not be included on a privilege log.

F. **Non-Waiver.** The production of privileged or work-product protected documents, including ESI, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other proceeding. In the event that a party produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party within a reasonable time may make a written request that another party return the privileged material. A party that received the privileged material must either return the material or destroy it immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the material, the receiving party is not conceding that the material is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the production waived the privilege. The protections in this paragraph are intentionally broader than the protections set forth in Paragraph 9 of the *Protective Order* dated and filed with the Board on January 28, 2016.

G. **Production Delivery Format.** A producing party shall produce documents on a CD-ROM, DVD, external hard drive, or such other readily accessible computer or electronic media as the parties may hereafter agree upon, or via a Secure File Transfer Protocol or other file sharing software. Information that shall be identified on the face of the production media, or in a cover e-mail or letter, shall include: (1) the case number for this case; (2) the producing party's name; (3) the production date; (4) the Bates number range(s) of the documents, and (5) the confidentiality designation pursuant to any protective order entered by the Court or any confidentiality agreement entered into by the parties in this case, if the production contains protected information.

* * * *Signature Page Follows* * * *



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Appendix A

Meta-Data Field Type	Standardized Field Name	Email	Non-Email E-Documents	Paper Files
Custodian	Cust	X	X	X
Email Author	Email_Sent	X		
Email Recipient	Email_Received	X		
Email Copyee	Email_cc	X		
Email Blind Copyee	Email_bcc	X		
Email Subject or "Re" Line	Email_Subject	X		
Email Date Sent	Email_SentDate	X		
Email Time Sent	Email_SentTime	X		
Beginning Bates Number	BegDoc	X	X	X
Ending Bates Number	EndDoc	X	X	X
Beginning Attachment Bates Number	BegDoc_Attach	X	X	X
Ending Attachment Bates Number	EndDoc_Attach	X	X	X
Page Count	Page_Count	X	X	X
Attachment Count	Attach_Count	X	X	X
Text File Path	Meta_Text_Path	X	X	X
Confidentiality	Conf_Desig	X	X	X
MD5 Hash Tag Value	MD5_Hash	X	X	X
OCR				X
File Name	Meta_File_Name	X	X	
File Extension	Meta_File_Ext	X	X	
Native File Size	Meta_File_Size	X	X	
Native File Link	Meta_File_Link	X	X	X
Author	Meta_Author		X	
Title	Meta_Title		X	
Original File Path	Meta_File_Path		X	
Date Created	Meta_Create_Date		X	
Time Created	Meta_Create_Time		X	
Date Last Modified	Meta_Modify_Date		X	
Time Last Modified	Meta_Modify_Time		X	