

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALICIA MARSHALL, et al.,

Plaintiffs,

v.

PRESTAMOS CDFI, LLC and CHICANOS
POR LA CAUSA, INC.,

Defendants.

Case No. 5:21-cv-04337-JMG

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

Plaintiffs and Defendants Prestamos CDFI, LLC and Chicanos Por La Causa, Inc. have indicated that they believe that relevant information may exist or be stored in electronic format, and that this content is potentially responsive to current or anticipated discovery requests of the parties. This Stipulation and [Proposed] Order (and any subsequent ones) shall be the governing document(s) by which the parties and the Court manage the electronic discovery process in this action. The parties and the Court recognize that this Stipulation and [Proposed] Order is based on facts and circumstances as they are currently known to each party, that the electronic discovery process is iterative, and that additions and modifications to this Stipulation may become necessary as more information becomes known to the parties.

1. Production of ESI

a. TIFFs. Documents not produced in native format should be produced in the form of single-page, Group IV TIFFs at 300 dpi. Each TIFF image should be named as its corresponding Bates number. Absent special circumstances or undue burden,

original document orientation should be maintained (*i.e.*, portrait to portrait and landscape to landscape). Document shall be processed and produced, to the extent practicable, in a manner that preserves hidden columns or rows, hidden text, worksheets, speaker notes, tracked changes, and comments. Bates numbers, confidentiality designations, and redactions should be incorporated into the TIFF image files. TIFF image files should be provided in a self-identified “Images” folder.

b. System Files. Common system and program files as defined by the NIST library (which is commonly used by discovery vendors to exclude system and program files from document review and production) need not be processed, reviewed or produced. NIST files should be removed before production.

c. Metadata Fields and Processing. Absent special circumstances, each of the metadata and coding fields set forth below that can be extracted from a document shall be produced for that document, to the extent already in existence. To the extent that metadata does not exist, nothing in this document shall require any party to extract, capture, collect or produce such data. The parties are not obligated to populate manually any of the fields if such fields cannot be extracted automatically from a document using standard processing software, with the exception of the following fields: (1) BegBates, (2) EndBates, (3) BegAttach, (4) EndAttach, (5) Confidentiality Designation (“Confidential” or “Highly Confidential” under the Parties’ Stipulated Protective Order), (6) NativeLink (if applicable), and (7) TextLink, which may be populated by the party or the party’s

vendor. Any metadata fields for redacted documents that would reveal privileged information shall be excluded.

Custodian	Individual from whom the produced document was collected
All Custodians	Individuals who had exact copies of the email message or document (Required if population was globally deduplicated)
BegBates	Beginning document number
EndBates	Ending document number
BegAttach	Beginning document number of family unit
EndAttach	Ending document number of family unit
Page Count	Total number of pages in the document
Attachment Count	Number of attachments
Author	Author field extracted from the metadata of the native file
Recipient	Persons who received the document if there is applicable metadata
FROM	Sender of the email message
TO	Recipient(s) of the email message
CC	Recipient(s) of “carbon copies” of the email message
BCC	Recipient(s) of “blind carbon copies” of the email message
Subject	Subject field extracted from the metadata of the native file
Date Sent	Date the email message was sent
Time Sent	Time the email message was sent

DateLastModified	Date document was last edited
TimeLastModified	Time document last edited
Source File Extension	File extension of document (.msg, .doc, .xls, etc.)
File Name	Name of original file
File Size	File size in kilobytes (MB, KB, GB)
Title	Any value populated in the “Title” field of the document properties
Redaction	Redaction status of a document
Hash Value	MD5 Hash Value, unique document identifier
NativeLink	Link to Native File
TextLink	Link to Text File
Creation Date and Time	Date and Time created for non-email document
DateRcvd	Date document was received
TimeRcvd	Time document was received
FilePath	Directory location of document

All date fields should be in the MM/DD/YYYY format and all time fields should be in HH:MM:SS.

d. Non-Discoverable ESI. Consistent with the proportionality standard in FRCP 26(b)(1), and absent a Party’s specific written notice for good cause, the following categories of ESI are presumed to be inaccessible and not discoverable:

- i.** Deleted, “slack,” fragmented, or unallocated data only accessible by forensics;

- ii. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
 - iii. Electronic data (e.g., call logs, email, calendars, contact data, notes, etc.) sent to or from mobile devices (e.g., iPhone, iPad and Android, devices);
 - iv. Voicemail, including Telephone or VOIP voice messages;
 - v. Text messages and instant messages;
 - vi. De-NISTing - Software files included on the National Institute of Standards and Technology (NIST) Modern RDS (minimal) list obtained from <https://www.nist.gov/itl/ssd/software-quality-group/nsrl-download/current-rds-hash-sets>;
 - vii. Structural files not material to individual file contents (e.g. .CSS, .XSL, .XML, .DTD, etc.);
 - viii. Operating System files that do not store user-created content (e.g. CAT, DLL, DMP, EXE, FON, PNF, OPS, SYS, etc.); and
 - ix. Application source code, configuration, and other similar files necessary for the function of an application that do not store user-created content during ordinary use (e.g. BAK, BIN, CFG, DBF, DAT, JS, JSON, JAR, LUA, MSB, RES, WINNT, YTR, etc.).
- e. **Extracted Text Files.** For each document, an extracted text file should be provided along with its corresponding TIFF image file(s) and metadata. The file name of each extracted text file should be identical to that of the first image page

of its corresponding document, followed by .txt. File names should not contain any special characters, confidentiality designations 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. Also, if extracted text is not available in the native file, the documents should be processed by an OCR tool prior to production to extract available text so that the record is searchable. Text files should be produced in a self-identified “Text” director.

f. Database Load Files/Cross-Reference Files. Production format will be in Relativity format and should include a delimited file (preferably .DAT) containing document and meta data fields, an Opticon load file for images, Group IV, 300 dpi B&W (or for color, compressed JPGs) single page image files, document-level text files, and native files for electronically stored information (ESI). Delimiters should be standard Concordance delimiters.

g. Native Files. Absent special circumstances, non-redacted Excel files, .CSV files and other similar spreadsheet files, photos and digital photos, word processing documents, media files, presentation files, and non-document file types (such as .wav, .mp3, .aiff, .avi, .mov, .mp4) shall be produced in native format (“Native Files”). Native Files should be provided in a self-identified “Natives” directory. Each Native File should be produced with a corresponding single-page TIFF placeholder image, which will contain language indicating that the document is being produced as a Native File. For Native Files that require redactions, the Parties may apply the redactions directly on the native file itself. Native Files should be

named with the beginning Bates number that is assigned to that specific record in the production. A “NativeLink” entry for each spreadsheet should be included in the .DAT load file indicating the relative file path to each native file in the production. Native Files should be produced with extracted text and applicable metadata fields as set forth in part c. above. If a Native File is used at a deposition or hearing in this Action, or attached to a motion or other filing, it shall be accompanied by its production number-stamped placeholder TIFF image in order to facilitate tracking and authentication thereof.

h. Requests for Other Native Files. Other than as specifically set forth herein, a producing party need not produce documents in native format. If good cause exists for the receiving party to request production of certain documents in native format, the receiving party may request production in native format by providing in writing: (1) a list of the Bates numbers of documents it requests to be produced in native format; and (2) an explanation of the need for reviewing such documents in native format. The producing party shall not unreasonably deny such requests. Each document produced in response to such requests shall be produced with a “NativeLink” entry in the .DAT load file indicating the relative file path to each Native File in the production volume, and all extracted text and applicable metadata fields set forth in part c. above.

i. Structured Data. If a discovery request requires production of relevant and responsive ESI contained in a database, the parties will meet and confer on the production of the materials into a reasonably usable and exportable format (for example, in Excel or CSV format).

j. Color. Documents containing color need not be produced in color in the first instance. However, if good cause exists for the receiving party to request production of certain documents in color, the receiving party may request production of such documents in color by providing in writing a list of the Bates numbers of documents it requests to be produced in color format. The producing party shall not unreasonably deny such requests, unless such requests are unreasonably costly.

j. Parent-Child Relationships. Parent-child relationships (the association between e-mails and attachments) will be preserved to the extent possible and as it existed in the ordinary course of business. E-mail attachments will be consecutively produced with the parent e-mail record. For example, if a party produces an e-mail with its attachments, such attachments should be produced behind the e-mail in the order in which they were attached. If a responsive, non-privileged email or document has a privileged attachment, the producing party may replace the attachment with a Bates numbered slip sheet indicating that the attachment was withheld on privilege grounds or may redact the privileged material. Documents shall not be withheld or redacted for non-responsiveness if the document or its family contains responsive information.

k. Audio and Video Files. Audio and video files, to the extent their contents can be determined to be responsive, will be produced in native form, or in a reasonably usable form if native software is not practicable, as may be agreed upon by the Parties, along with a slip-sheet TIFF placeholder image to the extent the file gets produced in native form.

1. Time Zone. ESI should be processed and produced using Coordinated Universal Time (UTC).

2. Production of Hard Copy Documents

a. Creation and production of electronic copy. A party may produce a hard copy document by scanning it to create an electronic copy and producing such electronic copy in accordance with the requirements of Sections 1.a and 1.d. Absent special circumstances, such documents should be produced with at least the following searchable information in accompanying delimited data files: (1) BegBates, (2) EndBates, (3) Confidentiality Designation (under the Parties' Protective Order), and (4) TextLink. The receiving party should treat such document in accordance with Section 1.1.

b. Grouped Hard Copy Documents. If a folder with hard copy documents—such as a folder, clipped bundle, or binder—is produced, the label of that folder should be scanned and produced as a first document along with the unitized, responsive electronic copies of documents in the folder.

c. Unitization of Documents. In general, scanned, hard copy documents should be logically unitized.

d. Parent-Child Relationships. Parent-child relationships (the association between folders, clipped bundles, or binders and the individual documents collected therein) will be preserved to the extent possible and as it existed in the ordinary course of business. Where a hard copy document, or a group of hard copy documents, such as in a folder, clipped bundle, or binder, has an identification spine or other label, the information on the label shall be scanned and produced as a first

document in a unitized grouping of the documents. Documents contained within a folder, clipped bundle, or binder will be consecutively produced with the parent label in the order in which they were included in the grouping. If a responsive, non-privileged document has a privileged attachment, a party may replace the attachment with a Bates numbered slip sheet indicating that the attachment was withheld on privilege grounds or may redact the privileged material. Documents shall not be withheld or redacted for non-responsiveness if the document or its family contains responsive information.

3. Bates Numbering

Each TIFF image should be assigned a Bates number that: (1) is unique across the entire document production; (2) maintains a constant length across the entire production (*i.e.*, padded to the same number of characters); (3) contains no special characters or embedded spaces; and (4) is 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 or production log accompanying the production.

4. Confidentiality Designations.

If a receiving party reduces to hard copy form any Native Files or other ESI designated as Confidential, it shall mark the hard copy with the appropriate confidentiality designation. All other confidentiality designations shall be made by the producing party.

5. De-Duplication

A party is required only to produce a single copy of a responsive document, and a producing party may, but is not required to, de-duplicate responsive ESI across custodians by the use of MD5 or SHA-1 hash values at the document family level. However hard-copy documents

shall not be eliminated as duplicates of responsive ESI. To the extent deduplication occurs, it must be performed in a manner consistent with standard practices in the industry.

6. Shipment/Encryption

Electronic data productions may be shipped on thumb drives or hard drives or transferred through a secure file sharing program, such as a File Transfer Protocol (“FTP”). The physical media label should contain the case name and number, confidentiality designation, production date, and Bates range being produced, or such information shall otherwise be provided in connection with the secure file transfer.

To maximize the security of information in transit, any media on which documents are produced must be encrypted by the producing Party. In such cases, the producing party shall transmit the encryption key or password to the requesting Party, under separate cover, contemporaneously with sending the encrypted media. The encryption program used for production media should be one that is readily available and would not create delays accessing the encrypted data.

7. Password Protected Files.

The parties will make reasonable efforts to remove passwords or other security protection from ESI documents prior to production.

8. Processing of Third-Party Documents

A party that issues a non-party subpoena (“Issuing Party”) shall include a copy of this Stipulation with the subpoena and state that the parties to the litigation have requested that third-parties produce documents in accordance with the specifications set forth herein. The Issuing Party shall promptly produce any documents obtained pursuant to a non-party subpoena to the opposing party in the formats which were provided by the third party. The Issuing Party is under no

obligation to incur any additional cost to reformat any document obtained from a third party prior to production.

9. Objections Preserved

Nothing in this ESI Order shall be interpreted to require disclosure of irrelevant information (except as otherwise expressly provided herein) 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, admissibility, or confidentiality of documents and/or ESI.

10. Miscellaneous Provisions

Except as to the formatting for production agreed to herein, all documents (electronic or otherwise) shall be produced as kept and maintained by the producing party in the ordinary course of business. All productions are subject to the Protective Order entered by the Court in this Action.

The parties shall make good faith efforts to comply with and resolve any differences concerning compliance with these specifications. No party may seek relief from the Court concerning compliance with these specifications unless it has conferred with other affected parties.

Nothing in these specifications shall preclude the parties from meeting and conferring regarding applicable search terms, date ranges, custodians, and other parameters or methods used to cull data for review and production. Nothing in these specifications shall preclude the parties from meeting and conferring on the use of technological solutions to assist in the review of documents, such as intelligent review or predictive coding.

Dated: July 21, 2023

SO ORDERED:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge

The parties to this Action hereby stipulate to the entry of this Order.

Respectfully submitted,

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