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January 6, 2011

BY HAND DELIVERY

Hon. Shira A. Scheindlin
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, N.Y. 10007-1312

Re: NDLON et al. v. ICE et al., No. 10 CV 3488 (SAS)
(KNF)

Dear Judge Scheindlin:

We write on behalf of all Plaintiffs in the above referenced Freedom of Information Act (“FOIA”) action. We write to respectfully request a conference with the Court as soon as the parties can be heard to resolve additional issues that have arisen since the December 9, 2010 hearing and that the parties have been unable to resolve after meeting and conferring. These three issues are critical for Defendants’ compliance with the impending deadlines contained in the Court’s December 17, 2010 Order. Specifically, these issues include: (i) the format of production, (ii) search cut-off dates, and (iii) partial summary judgment.

Format of Production

Despite Plaintiffs’ requests as to a particular format of production (*see, e.g.*, December 22, 2010 letter from Norman R. Cerullo, attached hereto at Tab A), Defendants have refused to produce records in any format other than the largely non-searchable PDF format used in the limited, prior productions. *See* e-mail dated January 4, 2011 from Christopher Connolly, attached hereto at Tab B. These prior PDF productions have, among other deficiencies, stripped electronic records of their metadata, merged electronic with paper records and indiscriminately dumped these merged records into largely non-searchable PDFs.¹ Plaintiffs respectfully request that the Court amend the December 17, 2010 Order to include compliance with the Protocol Governing the Production of Records (“Production Protocol”), attached hereto at Tab C. The Production Protocol, is modeled in large part, on the standard production protocols required by the Division of Enforcement of the United State Securities and Exchange Commission and the Criminal Division of the United States Department of Justice, when these government agencies request documents.

¹ To date, Defendants have produced five PDFs totaling less than 3,000 pages. These PDFs have no information as to what constitutes distinct records, custodian, file path, creation data, parent folders, parent-child relationship and other metadata that is necessary for the access, use and understand the produced records.

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Defendants' PDF format of production is unacceptable and in violation of Defendants' obligations pursuant to FOIA. FOIA, 5 U.S.C. § 552(a)(3)(B), requires the government to "provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." Defendants have failed to present any plausible argument that the requested records are not "readily reproducible by the agency in [the] form or format" requested in the Production Protocol. See *TPS, Inc. v. Dep't of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003) (rejecting the government's refusal to provide electronic copies of records in a "zip" file, as requested, because "a FOIA request must be processed in a requested format if 'the capability exists to respond to the request'" in that format) (citing 32 C.F.R. § 286.4(g)(2)).²

Once requested, Plaintiffs are entitled to the metadata associated with the records because metadata is part of the public records sought. While it does not appear that any federal court has had occasion to specifically recognize that metadata is part of public records under FOIA, several state courts have held that metadata is part of public records under state FOIA counterparts. See, e.g., *Lake v. City of Phoenix*, 218 P.3d 1004, 1007-08 (Az. 2009) ("[T]he metadata in an electronic document is part of the underlying document; it does not stand on its own. When a public officer uses a computer to make a public record, the metadata forms part of the document as much as the words on the page."); *Irwin v. Onondaga Cnty. Res. Recovery Agency*, 72 A.D.3d 314, 319 (N.Y. App. Div. 2010) (finding *Lake* informative, and holding that the request for the disclosure of metadata associated with certain public records should have been disclosed pursuant to the state freedom of information law); *O'Neill v. City of Shoreline*, 240 P.3d 1149, 1154 (Wash. 2010) (agreeing with the *Lake* court in holding that "an electronic version of a record, including its embedded metadata, is a public record subject to disclosure").

While federal courts do not appear to have confronted the precise issue here, there is ample federal authority supporting the proposition that Plaintiffs are entitled to the metadata attached to the public records. See, e.g., *Aguiar v. Immigration and Customs Enforcement*, 255 F.R.D. 350 (S.D.N.Y. 2008) (JGK) (FM) (ordering, in a *Bivens* action, the production of metadata associated with certain records, the production of native Excel files, and ordering a live demonstration of governmental hierarchical databases); *Armstrong v. Executive Office of the President*, 1 F.3d 1274, 1280 (D.C. Cir. 1993) (recognizing as early as 1993, in a suit challenging the record preservation practices of federal agencies, that simply providing paper print-outs of electronic documents violated the Federal Records Act because "essential transmittal information relevant to a fuller understanding of the context and import of the electronic communication will simply vanish"); *Dismukes v. Dep't of Interior*, 603 F. Supp. 760 (D.D.C. 1984) (ruling against requestor as to specific format of production but recognizing that, under FOIA, producing microfiche instead of computer tape could violate FOIA if such a format "somehow affects his access to the information he seeks" because such a format could "reduce

² See also *Sample v. Bureau of Prisons*, 466 F.3d 1086, 1088 (D.C. Cir. 2006) ("Under any reading of the statute, [] 'readily reproducible' simply refers to an agency's technical capability to create the records in a particular format.").

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the quantum of information made available”), *superseded by* Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231.³

Search Cut-Off Dates

Defendants have been unwilling or unable to provide Plaintiffs with any information regarding the search cut-off dates Defendant-agencies are using to comply with the non-opt-out portions of the Court’s December 17, 2010 Order. *See* January 4, 2011 e-mail from Christopher Connolly, at Tab B. Determining the appropriate search cut-off date for the upcoming February 25, 2010 Rapid Production List production is important to ensure that Defendants search for responsive records in the correct timeframe and help the parties avoid unnecessary motion practice. Therefore, Plaintiffs respectfully request that the Court amend the December 17, 2010 Order to include a search cut-off date of October 15, 2010 for the Rapid Production List Production.

Partial Summary Judgment

Defendants have taken the position that they will not submit declarations defending the adequacy of their searches together with their motion for partial summary judgment in conjunction with their January 17, 2011 production of the opt-out records. *See* January 4, 2011 e-mail from Christopher Connolly, at Tab B. However, it will be impossible for Plaintiffs, and the Court, to determine whether Defendants have complied with the January 17, 2011 deadline without understanding what searches have been conducted.

Respectfully submitted,



Norman R. Cerullo

Encls.

³ *Accord* FRCP 34(b) advisory committee notes (“[The responding party’s] option to produce [ESI] in a reasonably usable form does not mean that [it] is free to convert [ESI] from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently”). Moreover, Defendants’ attempt to withhold metadata is contrary to the intent and purpose of FOIA. *See, e.g.*, FOIA Memorandum for the Heads of the Executive Departments and Agencies by President Barack Obama (“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. . . All agencies should use modern technology to inform citizens about what is known and done by their Government.”), *available at* http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/; FOIA Memorandum from the Attorney General, Memorandum for the Heads of the Executive Departments and Agencies (“[T]he [DOJ] will defend a denial of a FOIA request only if . . . disclosure is prohibited by law.”), *available at* <http://www.justice.gov/ag/foia-memo-march2009.pdf>. Nothing in FOIA prohibits the production in the format requested.

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cc: Christopher Connolly and Joseph N. Cordaro, Assistant United States Attorneys,
Southern District of New York (*by e-mail*)
86 Chambers Street, 3rd Floor
New York, New York 10007
Christopher.Connolly@usdoj.gov
Joseph.Cordaro@usdoj.gov

Paula A. Tuffin, Anthony J. Diana, Jeremy D. Schildcrout, Mayer Brown LLP (*by e-mail*)

Peter L. Markowitz, Bridget P. Kessler, Immigration Justice Clinic Benjamin N. Cardozo
School of Law (*by e-mail*)

Sunita Patel, Center for Constitutional Rights (*by e-mail*)

TAB A

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Norman R. Cerullo
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December 22, 2010

BY EMAIL AND OVERNIGHT MAIL

Christopher Connolly
Assistant United States Attorney
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007

Re: NDLON et al. v. ICE et al., No. 10 CV 3488 (SAS)
(KNF)

Dear Chris:

As discussed at the meet and confer between the parties yesterday, enclosed please find the proposed Protocol Governing the Production of Records (Appendix A, "Production Protocol").¹ The Production Protocol is modeled, in large part, on the standard production protocols required by the Division of Enforcement of the United States Securities and Exchange Commission and the Criminal Division of the United States Department of Justice, when these government agencies request documents (Appendix B, "SEC Data Delivery Standards," and Appendix C, "Criminal Division, United States Department of Justice, Data Delivery Standards").

Plaintiffs invited Defendants to engage in a dialogue regarding the format of production as early as July 2010, before any records were produced. Instead, disregarding Plaintiffs' communications, Defendants have simply made their limited productions of records in PDF format, with hundreds of records indiscriminately dumped into individual PDFs. As we explained yesterday, this PDF format of production is unacceptable and in violation of Defendants' legal obligations pursuant to the Freedom of Information Act ("FOIA").

First, the PDF format does not give Plaintiffs even the most basic information needed to access, use and understand the produced records (*e.g.*, the standard metadata regularly produced in any large document production), such as custodian, file path, creation data, parent folders, parent-child relationship, and other metadata that is helpful in identifying the source of the record and in explaining the records' creation and use.² The failure to produce such metadata is

¹ The format requested in the Production Protocol is required by standard review platforms that would facilitate Plaintiffs' ability to access, use and understand the potentially thousands of records in the two-week period Plaintiffs have to respond to Defendants' summary judgment motion per the briefing schedule contained in the Court's December 17, 2010 Order.

² Metadata is also necessary for Plaintiffs to test the adequacy of search and to brief the opposition to Defendants' motion for summary judgment.

Christopher Connolly
December 22, 2010
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itself a failure to properly produce records subject to the public records request. *See, e.g., O'Neill v. City of Shoreline*, No. 823979-9, 2010 WL 3911347 (Wash. Oct. 7, 2010) (Supreme Court of the State of Washington held that the metadata embedded in a document maintained by a public office is, itself, a public record required to be disclosed under the Washington State Public Records Act). Production in PDF format is particularly egregious for certain file types, such as Excel spreadsheets, which may contain many hidden (yet responsive) fields that do not appear when reproduced in PDF format.

Second, arbitrarily producing all records in PDF format, despite specific requests as to a different format of production, is contrary to Defendants' legal obligations. FOIA, 5 U.S.C. § 552(a)(3)(B), requires the government to:

[P]rovide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

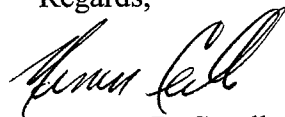
There has been no indication that the requested records are not "readily reproducible by the agency in [the] form or format" requested by Plaintiffs in the Production Protocol. Indeed, the agency declarations submitted in support of Defendants' opposition to Plaintiffs' motion for a preliminary injunction compelling the production of the opt-out records, either provide no basis for the conclusion that the requested format is not readily reproducible, or affirmatively indicate that the records are indeed readily reproducible in the requested format. "Under any reading of the statute, [] 'readily reproducible' simply refers to an agency's technical capability to create the records in a particular format." *Sample v. Bureau of Prisons*, 466 F.3d 1086, 1088 (D.C. Cir. 2006); *cf.* Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, at *2 ("Government agencies should use new technology to enhance public access to agency records and information."). It strains credulity that Defendants—each agencies of the federal government—lack the technical capability to reproduce the records in the format requested; a standard format used by litigants throughout the country in virtually every kind of civil litigation in which electronically stored information is implicated.

In the interest of compromise, Plaintiffs, as an alternative to the Production Protocol, would accept the whole production in native format, which would include all the metadata associated with each record, and allow for the use of a review platform that could effectively facilitate Plaintiffs' access, use and understanding of the records.

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Please let us know by Thursday, December 30, 2010, what the intended format of production will be for Defendants' upcoming productions pursuant to the Court's December 17, 2010 Order.

Regards,



Norman R. Cerullo

Encls.

cc: Joseph N. Cordaro, Assistant United States Attorney, Southern District of New York (*by e-mail*)

Paula A. Tuffin, Anthony J. Diana, Jeremy D. Schildcrout, Mayer Brown LLP (*by e-mail*)

Peter L. Markowitz, Bridget P. Kessler, Immigration Justice Clinic Benjamin N. Cardozo School of Law (*by e-mail*)

Sunita Patel, Center for Constitutional Rights (*by e-mail*)

Appendix A

NDLON et al. v. ICE et al., 1:10-cv-3488 (SAS) (KNF)

PROTOCOL GOVERNING THE PRODUCTION OF RECORDS

I. Production Formats of Electronic Records

Defendants agree that all responsive electronically stored information (“ESI”) shall be produced in the following formats:

- A. **TIFFs.** All images shall be delivered as single page Group IV TIFF image files. Image file names should not contain spaces.
- B. **Unique IDs.** Each image should have a unique file name and should be named with the Bates number assigned to it.
- C. **Text Files.** Extracted full text in the format of multipage .txt files shall be provided. The total number of text files delivered should match the total number of TIFF files delivered. Each text file should match the respective TIFF filename. Text from redacted pages will be produced in OCR format rather than extracted text.
- D. **Parent-Child Relationships.** Parent-child relationships (the association between an attachment and its parent record) should be preserved.
- E. **Database Load Files/Cross-Reference Files.** Records should be provided in a format compatible with Concordance 8x and Opticon 3x in the following format:

Example Concordance Delimited File

þBegDocþ_þEndDoc þ_þBegAttach þ_þ EndAttach þ_þ DocPages þ_þ RecordType
þ_þ MasterDate þ_þ SentOn_Date þ_þ SentOne_Time þ_þ Recvd_Time þ

þ ABC001 þ_þ ABC002 þ_þ ABC001 þ_þ ABC005 þ_þ 2 þ_þ Email þ_þ þ_þ
01/01/2008 þ_þ 13 05 GMT þ_þ 13:08 GMT þ

þ ABC003 þ_þ ABC005 þ_þ ABC001 þ_þ ABC005 þ_þ 3 þ_þ Attachment þ_þ þ
_þ þ_þ þ_þ

Example Opticon Delimited File

There should be one row in each load file per TIFF image. Files that are the first page of a record should contain a “Y” in the file where appropriate.

Format: ProductionNumber,VolumeLabel,ImagePath,DocBreak,
FolderBreak,BoxBreak,PageCount

Example: Record MS000001 – MS000003 and MS000004 – MS000005 on DVD
volume MS001 would be:

MS000001,MS001,D:\IMAGES\001\MS000001.TIF,Y,,,3
MS000002,MS001,D:\IMAGES\001\MS000002.TIF,,,,
MS000003,MS001,D:\IMAGES\001\MS000003.TIF,,,,
MS000004,MS001,D:\IMAGES\001\MS000004.TIF,Y,,,2
MS000005,MS001,D:\IMAGES\001\MS000005.TIF,,,,

- F. **Metadata.** For records that were originally created using common, off-the-shelf software (e.g., Microsoft Word, Microsoft PowerPoint, Adobe PDF), Defendants will provide all metadata fields set forth in the below metadata fields. Defendants must produce all files attached to each email they produce, but only if such files are actually attached to that email in the ordinary course of business. To the extent a Defendant produces email attachments that were originally created using common, off-the-shelf software, a Defendant will produce the metadata for those attached electronic records in accordance with this section.

Metadata Fields

- Custodian
- Beginning Bates Number
- Ending Bates Number
- Beginning Attachment Number
- Ending Attachment Number
- Record Type
- Master_Date
- SentOn_Date and Time
- Received_Date and Time
- Create_Date and Time
- Last_Modified Date and Time
- Parent Folder
- Author
- To
- From
- CC
- BCC
- Subject/Title
- OriginalSource
- Native Path
- File Extension
- File Name
- File Size
- Full Text

- G. **Spreadsheets.** For spreadsheets that were originally created using common, off-the-shelf software (e.g., Microsoft Excel), Defendants will produce the spreadsheets in native format and, in addition, in TIFF format.

Appendix B

SEC Data Delivery Standards

The following document describes the technical requirements for electronic productions produced to the Securities and Exchange Commission. Any proposed formats other than what is listed below (including databases) should not be produced without discussions and approval from the legal and technical staff of the Division of Enforcement. The SEC uses Concordance 9.58 and Concordance Image 4.5 to review their electronic document collections.

General Instructions

1. Provide a cover letter with each production which includes the Bates range and a general description of the documents and/or the custodian(s). The cover letter should also summarize the number of records, images, emails and attachments in the production. *The cover letter MUST be imaged and provided as the first record in the delimited text file for all preferred formats discussed below.*
2. Produce documents in the same form that it was created or maintained. Documents created or stored electronically should not be produced in hard copy.
3. Deliver data on CD, DVD, or hard drive. The smallest number of media is required. If the collection is large enough to fit onto a hard drive, the SEC can provide one, if needed.
4. Label all media submitted. Include on the label at least the following information: case number, production date, Bates range and disk number, if applicable.
5. Organize all productions by custodian unless otherwise instructed.
6. Provide all productions free of computer viruses.
7. Provide all passwords for documents, files, or compressed archives provided in the production under a separate cover.
8. Overview of preferred formats for production
 - a. Paper Documents - Scanned paper converted/processed to TIFF files, Bates numbered, and includes OCR text
 - b. Email Collections – Electronic mail converted/processed to TIFF files for the email and attachment(s), Bates numbered, includes a link to the email or native file, and includes full text.
 - c. Native Files – Electronic documents converted/processed to TIFF files, Bates numbered, includes a link to the native file, and includes full text.

Paper Documents

- 1) **Image files.** Images must be Group IV TIFF files (single or multi-page files). All images should be Bates numbered. The number of files per folder should be limited to 1,000 files.
- 2) **Delimited Text file.** At a minimum, this file must contain an IMAGEID field (image key used to reference images in Concordance Image). The image key must be unique, **fixed length**, and CANNOT be the Bates number of the document. If you change the length of the image key in a subsequent production, the production will be rejected. Bates numbers (endorsed on the documents and included in the delimited text file) MUST be delivered in a consistent manner for sorting purposes. For example, if the first production delivered is Bates stamped ABC-0000001-ABC-0005267, subsequent productions with the same prefix must have the same format (spaces, dashes, etc.) and the same number of digits. For example ABC 0005268, ABC0005268 or ABC-00005268 is not acceptable. The delimited text file must also include a header record. The delimiters for the file must be as follows:

Comma – ASCII character 20
Quote - “ “ 254
Newline - “ “ 174

SEC Data Delivery Standards

- 3) **OCR Text.** The OCR text provided to the SEC can be delivered two ways. (1) The OCR text can be delivered as multi-page ASCII files. The name of the file must match the IMAGEID field. (2) The OCR text can be included in the Delimited Text file (OCRTEXT field).

If possible (regardless of delivery method), please place page markers at the beginning or end of each OCR text page as shown:

*** LA000001 ***

The data surrounded by *** is the Concordance Image ImageID (see example below).

- 4) **Concordance Image Cross-Reference file.** The Concordance Image cross-reference file is a comma delimited file consisting of six fields per line. There must be a line in the cross-reference file for every image in the database. The format for the file is as follows:

ImageID, VolumeLabel, ImageFilePath, DocumentBreak, FolderBreak, BoxBreak, PageCount

ImageID: The unique designation that Concordance and Concordance Image use to identify an image.

VolumeLabel: Optional.

ImageFilePath: The full path to the image file.

DocumentBreak: If this field contains the letter "Y," then this is the first page of a document. If this field is blank, then this page is not the first page of a document.

FolderBreak: Leave empty.

BoxBreak: Leave empty.

PageCount: Optional.

SEC Data Delivery Standards

Sample Data

Delimited Text file:

 FIRSTBATES   LASTBATES   IMAGEID 
 MT00000001   MT00000002   IMG0000001 
 MT00000003   MT00000004   IMG0000003 
 MT00000005   MT00000006   IMG0000005 

Concordance Image Cross-reference File:

IMG0000001,,E:\001\00010001.TIF,Y,,
IMG0000002,,E:\001\00010002.TIF,,,,
IMG0000003,,E:\001\00010003.TIF,Y,,
IMG0000004,,E:\001\00010004.TIF,,,,
IMG0000005,,E:\001\00010005.TIF,Y,,
IMG0000006,,E:\001\00010006.TIF,,,,

SEC Data Delivery Standards

Multi-page OCR Text File (IMG0000001.txt):

*** IMG0000001 ***

Protocol Regarding Data and Document Migration

This Protocol Regarding Data and Document Migration ("Protocol"), effective as of February 1, 2002, applies to all Enron employees in North America who are transferring from Enron Corp. or its affiliates (collectively, "Enron") to UBS AG or its affiliates (collectively, "UBS"). All data must be migrated by Friday, February 8, 2002.

In General

Enron has agreed to provide UBS with the information and data that is necessary to operate the gas and power business in North America, subject to the limitations in Section II below. This Protocol will address how employees transferring to UBS should migrate the data or documents that they are entitled to have and that will be necessary for them to do their job at UBS. Employees should migrate only the data that is absolutely necessary for them to perform their job at UBS. If there is a doubt as to whether the information is necessary, the data should not be migrated at this time. If it is deemed necessary in the future, it can be obtained from Enron at that time, using the instructions contained in Exhibit 5.

This Protocol applies to data and information stored in all locations, including files, office computers, home computers, portable devices (such as laptop computers, Blackberry or other handhelds), or other such devices. Laptops should contain only information that is approved for migration.

All employees transferring to UBS must comply with the record preservation order of the U.S. Bankruptcy Court, as described below. All information that is migrated is subject to review by government investigators. To ensure compliance with this Protocol, Enron will conduct random audits of information selected for migration.

II. Limitations on Information to Be Migrated

- * Employees should migrate only information that is absolutely necessary to perform their jobs at UBS.
- * No information on Enron's transactions or business deals that occurred prior to February 8, 2002 may be migrated to UBS without prior approval of the Enron Legal Department.
- * No information about an Enron customer, other than contact and address information, should be migrated to UBS without prior approval of the Enron Legal Department. * Information protected by confidentiality restrictions shall not be migrated to UBS without prior approval by the Enron Legal Department.

III. Migration of Electronic Data

Electronic data may be migrated to UBS, subject to the limitations described in Section II above. All migration of electronic data must be complete by midnight on Thursday, February 7, 2002.

ECd-000006469
CONFIDENTIAL

SEC Data Delivery Standards

*** IMG0000002 ***

A. Electronic Mail

1. E-Mail Address. Employees transferring to UBS will be provided a new email address (in most cases, the new address will be: first name.lastname@ubswenergy.com). IT will set the system to send an automatic response to any external e-mails sent to an Enron email address with the details of the individual's new UBS address.

2. Copies of Migrated E-Mail. Employees transferring to UBS will not have access to their Enron electronic mailbox after the transaction closes. Employees transferring to UBS must copy all electronic mail items they wish to retain, subject to the restrictions described in Section II above, in accordance with instructions attached as Exhibit I to this Protocol.

B. Contact List, Calendar, and Tasks

The contact list, calendar, tasks, and notes contained in Microsoft Outlook or other office management software programs will be transferred by IT to employees' UBS workstation on February 8, 2002.

If, however, those applications contain confidential data or other inappropriate or unnecessary information as described in Section II above, then each employee should print such information and then delete it from the system before February 8, 2002. Printouts should be provided to Richard Sanders (EB3827) or Harlan Murphy (EB3811) in the Enron Legal Department.

Portable email devices should be cleared of all information that is not migrated pursuant to this Protocol.

C. Common Drives (O and M)

Employees who wish to transfer permissible data from common drives to UBS should copy that data to the following drive: UBSWE 0:. Each employee will be responsible for this task, and each employee will be responsible for compliance with the restrictions set forth in this Protocol. (Lists of documents, directories, or folders to be transferred that were previously provided to IT will not be taken into consideration.) Written instructions on performing these tasks are attached as Exhibit 2.

D. H Drive

All compliant information stored in the H drive should be copied to a new UBS H drive in accordance with the instructions attached as Exhibit 3. Any information not transferred to the new UBS H drive should be left in the former Enron H drive.

E. C Drive

Because the C Drive may physically be moved to UBS, the procedure for C Drive migration differs slightly from that of the other drives. This procedure will require extra care on the part of the user.

If an employee has information that should not be migrated to UBS, please call the Resolution Center at x3-1411 for assistance. If an employee's C-Drive does not contain the file C:\ThMP\TRNEDO..ckc 2

ECd-000006470

CONFIDENTIAL

SEC Data Delivery Standards

Data File with OCR text (first record):

bFIRSTBATESb bLASTBATESb bIMAGEIDb bOCRTEXTb
 bMT00000001b bMT00000002b bIMG0000001b b*** IMG0000001 ***@@Protocol Regarding Data and Document Migration@@This Protocol Regarding Data and Document Migration ("Protocol"), effective as of February 1, 2002, applies to all Enron employees in North America who are transferring from Enron Corp. or its affiliates (collectively, "Enron") to UBS AG or its affiliates (collectively, "UBS"). All data must be migrated by Friday, February 8, 2002. In General Enron has agreed to provide UBS with the information and data that is necessary to operate the gas and power business in North America, subject to the limitations in Section II below. This Protocol will address how employees transferring to UBS should migrate the data or documents that they are entitled to have and that will be necessary for them to do their job at UBS. Employees should migrate only the data that is absolutely necessary for them to perform their job at UBS. If there is a doubt as to whether the information is necessary, the data should not be migrated at this time. If it is deemed necessary in the future, it can be obtained from Enron at that time, using the instructions contained in Exhibit 5. This Protocol applies to data and information stored in all locations, including files, office computers, home computers, portable devices (such as laptop computers, Blackberry or other handhelds), or other such devices. Laptops should contain only information that is approved for migration. All employees transferring to UBS must comply with the record preservation order of the U.S. Bankruptcy Court, as described below. All information that is migrated is subject to review by government investigators. To ensure compliance with this Protocol, Enron will conduct random audits of information selected for migration. II. Limitations on Information to Be Migrated * Employees should migrate only information that is absolutely necessary to perform their jobs at UBS. * No information 01) Enron transactions or business deals that occurred prior to February 8, 2002 may be migrated to UBS without prior approval of the Enron Legal Department. * No information about an Enron customer, other than contact and address information, should be migrated to UBS without prior approval of the Enron Legal Department. * Information protected by confidentiality restrictions shall not be migrated to UBS without prior approval by the Enron Legal Department. III. Migration of Electronic Data Electronic data may be migrated to UBS, subject to the limitations described in Section II above. All migration of electronic data must be complete by midnight on Thursday, February 7, 2002. ECd-000006469 CONFIDENTIAL *** 2/5, 1) 2) @A. Electronic Mail 1. E-Mail Address. Employees transferring to UBS will be provided a new email address (in most cases, the new address will be: first.name.last.name@ubswenergy.com). It will set the system to send an automatic response to any external e-mails sent to an Enron email address with the details of the individual's new UBS address. 2. Copies of Migrated E-Mail. Employees transferring to UBS will not have access to their Enron electronic mailbox after the transaction closes. Employees transferring to UBS must copy all electronic mail items they wish to retain, subject to the restrictions described in Section II above, in accordance with instructions attached as Exhibit I to this Protocol. B. Contact List, Calendar, and Tasks The contact list, calendar, tasks, and notes contained in Microsoft Outlook or other office management software programs will be transferred by IT to employees' UBS workstation on February 8, 2002. If, however, those applications contain confidential data or other inappropriate or unnecessary information as described in Section II above, then each employee should print such information and then delete it from the system before February 8, 2002. Printouts should be provided to Richard Sanders (EB3827) or Harlan Murphy (EB381 1) in the Enron Legal Department. Portable email devices should be cleared of all information that is not migrated pursuant to this Protocol. C. Common Drives (0 and M) Employees who wish to transfer permissible data from common drives to UBS should copy that data to the following drive: UBSWE 0:. Each employee will be responsible for this task, and each employee will be responsible for compliance with the restrictions set forth in this Protocol. (Lists of documents, directories, or folders to be transferred that were previously provided to IT will not be taken into consideration.) Written instructions on performing these tasks are attached as Exhibit 2. D. H Drive All compliant information stored in the H drive should be copied to a new UBS H drive in accordance with the instructions attached as Exhibit 3. Any information not transferred to the new UBS H drive should be left in the former Enron H drive. E. C Drive Because the C Drive may physically be moved to UBS, the procedure for C Drive migration differs slightly from that of the other drives. This procedure will require extra care on the part of the user. If an employee has information that should not be migrated to UBS, please call the Resolution Center at x3-1411 for assistance. If an employee's C-Drive does not C:\ThMP\TRNEDO..ckc 2) ECd-000006470 CONFIDENTIAL b

SEC Data Delivery Standards

Email Collections

Preferred Format: Delimited Text with Images and Native Attachments

- 1) **Image files.** The producing party will provide a TIFF image for each page of the email and attachment(s). Images must be Group IV TIFF files (single or multi-page files). All images should be Bates numbered. The number of TIFF files per folder should be limited to 1,000 files. Refer to the Paper Documents section for Bates and image key numbering rules.
- 2) **Native files.** The producing party will provide a copy of the email and native attachment files. The number of native files per folder should be limited to 1,000 files.
- 3) **Delimited Text file.** The text and metadata of the email and the attachment(s) is extracted and entered in the appropriate fields and provided as an ASCII delimited text file. The email will be the "parent" and the attachment(s) will be the "child." An email may have more than one child. The child attachment's Bates number will be listed in the parent email's coded fields under CHILD_BATES. If there is more than one attachment, list the first Bates number of each attachment and separate them by semi-colons (;). The parent email's Bates number will be listed in the child(s) attachment(s) under PARENT_BATES. The child/children will immediately follow the parent record. The following is a field definition table of the data requested, including sample data for an email and an attachment.

Sample Data - Email

Field	Sample Data	Comment
FIRSTBATES	BT 000001	First Bates number of email
LASTBATES	BT 000008	Last Bates number of email
BEGATTACH	BT 000001	First Bates number of attachment range
ENDATTACH	BT 000015	Last Bates number of attachment range
PARENT_BATES	BT 000001	First Bates number of parent email
CHILD_BATES	BT 000009; BT 000012	First Bates number of "child" attachment(s); can be more than one Bates number listed; depends on number of attachments
CUSTODIAN	John Smith	Mailbox where the email resided
FROM	John Smith	Sender
TO	Janice Coffman	Recipient(s)
CC	Frank Thompson	Carbon copy recipient(s)
BCC	John Cain	Blind carbon copy recipient(s)
SUBJECT	Board Meeting Minutes for 7/1/03	Subject of the email
DATE_SENT	10/10/2005	Date the email was sent
TIME_SENT	07:05 PM	Time the email was sent; must be a separate field and

SEC Data Delivery Standards

		cannot be combined with the DATE_SENT field
LINK	D:\SEC Production\BT 000001.msg	Hyperlink to the email; should be named per the FIRSTBATES number
FILE_EXTEN	MSG	The file extension of the email; will vary depending on the email format
AUTHOR		Empty for email
DATE_CREATED		Empty for email
TIME_CREATED		Empty for email
DATE_MOD		Empty for email
TIME_MOD		Empty for email
DATE_ACCESSD		Empty for email
TIME_ACCESSD		Empty for email
PRINTED_DATE		Empty for email
FILE_SIZE	5,952	Size of email in KB
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes for 7/1/03.msg	Location of email
TEXT	<p>From: Smith, John [XYZ Corp] Sent: Friday, July 11, 2003 4:42 PM To: Coffman, Janice [CDT Corp] Subject: Board Meeting Minutes for 7/1/03</p> <p>Janice; Attached is a copy of the July Board Meeting Minutes for your review. Please let me know if you have any questions.</p> <p>John Smith Assistant Director Information Technology Phone: (202) 555-1111 Fax: (202) 555-1112 Email: jsmith@xyz.com</p>	Text of the email

Sample Data - Attachment

Field	Sample Data	Comment
FIRSTBATES	BT 000009	First Bates number of attachment
LASTBATES	BT 000011	Last Bates number of attachment
BEGATTACH	BT 000001	First Bates number of the attachment range
ENDATTACH	BT 000015	Last Bates number of the attachment range
PARENT_BATES	BT 000001	First Bates number of parent

SEC Data Delivery Standards

CHILD BATES		email
CUSTODIAN	John Smith	Mailbox where the email resided
FROM		Empty for attachment
TO		Empty for attachment
CC		Empty for attachment
BCC		Empty for attachment
SUBJECT		Empty for attachment
DATE SENT		Empty for attachment
TIME SENT		Empty for attachment
LINK	D:\SEC Production\BT 000009.doc	Hyperlink to the native attachment named per the FIRSTBATES number
FILE_EXTEN	DOC (attachment – ex. Word document)	The file extension will vary depending on the document type
AUTHOR	John Smith	Attachment/native file metadata
DATE_CREATED	10/08/2005	Attachment metadata
TIME_CREATED	07:05 PM	Time the attachment was created; must be a separate field and cannot be combined with the DATE_CREATED field.
DATE_MOD	10/19/2005	Attachment metadata
TIME_MOD	07:05 PM	Time the attachment was modified; must be a separate field and cannot be combined with the DATE_MOD field.
DATE_ACCESSD	10/10/2005	Attachment metadata
TIME_ACCESSD	07:05 PM	Time the attachment was accessed; must be a separate field and cannot be combined with the DATE_ACCESSD field.
PRINTED_DATE	10/19/2005	Attachment metadata
FILE_SIZE	765,952	Size of file in KB
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes for 7/1/03.msg\Meeting Minutes.doc	Path where attachment file was stored
TEXT	Meeting Minutes for Teleconference 10/1/03 Discussion over employee stock options transpired. Decision was made to offer the options as part of the employee's Christmas bonus. Announcement was made regarding Roland Moore	Text of the attachment

SEC Data Delivery Standards

	being promoted to Assistant Director	
--	--------------------------------------	--

The delimited text file must include a header record. The delimiters for the file must be as follows:

Comma – ASCII character 20
 Quote - “ “ 254
 Newline - “ “ 174

- 4) **Full Text.** When the full text is not provided in the ASCII delimited text file or if text exceeds 12MB in the TEXT field, the full text provided to the SEC can be delivered as multi-page ASCII files. The name of the file must match the image key field. Any document in which text cannot be extracted should be OCR'd, particularly in the case of PDFs without embedded text.
- 5) **Concordance Image Cross-Reference file.** The Concordance Image cross-reference file is a comma delimited file consisting of six fields per line. There must be a line in the cross-reference file for every image in the database.

We will also accept the following formats:

PST – a personal storage file native to Microsoft Outlook. You must provide any necessary passwords or decryption.

NSF – a personal storage file native to Lotus Notes. You must provide any necessary passwords or decryption.

Native Files**Preferred Format: Delimited Text with Images and Links to Native Files:**

1. **Image files.** The producing party will provide a TIFF image of the native files. Images must be Group IV TIFF files (single or multi-page files). All images should be Bates numbered. The number of TIFF files per folder should be limited to 1,000 files. Refer to the Paper Documents section for Bates and image key numbering rules.
2. **Native files.** The producing party will provide a copy of the native files. The number of native files per folder should be limited to 1,000 files.
3. **Delimited Text file.** An ASCII delimited file containing the metadata associated with the file, text extracted from the native file, and a directory path to the native file. The fields to be included in the production are as follows:

<u>FIELD</u>	<u>SAMPLE DATA</u>	<u>COMMENT</u>
FIRSTBATES	GT000001	First Bates number of native file
LASTBATES	GT000001	Last Bates number of native file
CUSTODIAN	John Smith	Individual from whom the documents originated

SEC Data Delivery Standards

LINK	D:\SEC Production\GT000001.doc	Hyperlink to native file named per the FIRSTBATES number
AUTHOR	John Smith	
DATE_CREATED	10/08/2005	
TIME_CREATED	07:05 PM	Time the document was created; must be a separate field and cannot be combined with the DATE_CREATED field.
DATE_MOD	10/09/2005	
TIME_MOD	07:05 PM	Time the document was modified; must be a separate field and cannot be combined with the DATE_MOD field.
DATE_ACCESSD	10/10/2005	
TIME_ACCESSD	07:05 PM	Time the attachment was accessed; must be a separate field and cannot be combined with the DATE_ACCESSD field.
PRINTED_DATE	10/10/2005	
FILE_SIZE	765,952	Size of file in KB
PATH	J:\SHARED\SMITHJ\Meeting Minutes.doc	Path where native file was stored
TEXT	Meeting Minutes for Teleconference 10/1/03 Discussion over employee stock options transpired. Decision was made to offer the options as part of the employee's Christmas bonus. Announcement was made regarding Roland Moore being promoted to Assistant Director	Text extracted from native file.

The delimited text file must include a header record. The delimiters for the file must be as follows:

Comma – ASCII character 20
Quote - “ “ 254
Newline - “ “ 174

- 4) **Full Text.** When the full text is not provided in the ASCII delimited text file or if text exceeds 12MB in the TEXT field, the full text provided to the SEC can be delivered as multi-page ASCII files. The name of the file must match the image key field. Any document in which text cannot be extracted should be OCR'd, particularly in the case of PDFs without embedded text.

SEC Data Delivery Standards

- 5) **Concordance Image Cross-Reference file.** The Concordance Image cross-reference file is a comma delimited file consisting of six fields per line. There must be a line in the cross-reference file for every image in the database.

Optional Format:

Native files will be delivered in Custodian named folders.

If PDFs are delivered, all PDF files must meet the following requirements:

1. All PDFs must be unitized i.e. each PDF represents a discrete document; a single PDF cannot contain multiple documents
2. All PDFs must contain embedded text to include all discernable words within the document, not selected text.
3. If Bates endorsed, the PDF file will be named as the Bates range, with ALL document text contained within.

Appendix C

Data Delivery Standards

The following document describes the technical requirements for electronic productions produced to the Criminal Division, United States Department of Justice. Any proposed formats other than what is listed below (including databases) should not be produced without discussions and approval from the Criminal Division Litigation Support Staff. Please provide a summary of the number of records, images, emails, and attachments in the production; so that we can confirm that everything was loaded into our system. The Criminal Division uses Concordance 8.2 and Opticon 3.2 to review their electronic document collections.

I. Scanned Collections

- 1) **Image files.** Images must be Group IV TIFF files (single or multi-page files). File names cannot contain embedded spaces. The number of files per folder should be limited to 500 files.
- 2) **Delimited Text file.** At a minimum, this file must contain an IMAGEID field (image key used to reference images in Opticon). The image key must be unique, fixed length, and cannot be the Bates number of the document. The delimited text file must include a header record. The delimiters for the file must be as follows:

Comma - ASCII character	20
Quote - " "	254
Newline - " "	174

- 3) **OCR Text.** The OCR text provided to the SEC can be delivered two ways. (1) The OCR text can be delivered as multi-page TXT files. The name of the file must match the IMAGEID field. (2) The OCR text can be included in the Delimited Text file (OCRTEXT field).

If possible (regardless of delivery method), please place page markers at the beginning or end of each OCR text page as shown:

*** LA000001 ***

The data surrounded by *** is the Opticon ImageID (see example below).

- 4) **Opticon Cross-Reference file.** The Opticon cross-reference file is a comma delimited file consisting of six fields per line. There must be a line in the cross-reference file for every image in the database. The format for the file is as follows:

ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount

ImageID: The unique designation that Concordance and Opticon use to identify an image.

VolumeLabel: Leave this field empty.

ImageFilePath: The full path to the image file.

DocumentBreak: If this field contains the letter "Y," then this is the first page of a document. If this field is blank, then this page is not the first page of a document.

FolderBreak: Leave empty.

BoxBreak: Leave empty.

PageCount: Leave empty.

Sample Data

Delimited Text file:

þFIRSTBATESþ þLASTBATESþ þIMAGEIDþ
þMT00000001þ þMT00000002þ þIMG0000001þ
þMT00000003þ þMT00000004þ þIMG0000003þ
þMT00000005þ þMT00000006þ þIMG0000005þ

Opticon Cross-reference File:

IMG0000001,,E:\001\00010001.TIF,Y,,,
IMG0000002,,E:\001\00010002.TIF,,,,
IMG0000003,,E:\001\00010003.TIF,Y,,,
IMG0000004,,E:\001\00010004.TIF,,,,
IMG0000005,,E:\001\00010005.TIF,Y,,,
IMG0000006,,E:\001\00010006.TIF,,,,

Multi-page OCR Text File (IMG0000001.txt):

*** IMG0000001 ***

**The Securities and Exchange Commission
VISION**

The Securities and Exchange Commission (SEC) aims to be the standard against which federal agencies are measured. The SEC will strengthen the integrity and soundness of U.S. securities markets, and will conduct its work in a manner that is as sophisticated, flexible, and dynamic as the securities markets it regulates.

MISSION

The mission of the Securities and Exchange Commission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.

VALUES

Managing the evolving needs of a complex marketplace and in pursuing its mission, the Securities and Exchange Commission embraces the following values:

INTEGRITY

As the federal agency entrusted with enforcing and regulating the U.S. securities markets, each member of the SEC staff has a personal responsibility to demonstrate the highest ethical standards to inspired confidence and trust in one another and in the public the

agency serves.

FAIRNESS

As an agency with both regulatory and enforcement powers, the SEC must treat investors and market participants fairly in accordance with the law. As an employer, the SEC must seek to hire and retain a diverse staff, and ensure that all decisions affecting employees and applicants are fair and ethical. As professionals, the staff must treat all others with respect and dignity.

ACCOUNTABILITY

The SEC staff embraces the responsibility with which it is charged. In carrying out its mission, the staff readily holds itself accountable to the public it serves and takes personal responsibility for achieving SEC goals.

RESOURCEFULNESS

*** IMG0000002 ***

The SEC staff strives to work creatively proactively, and effectively in assessing and addressing risk to the securities markets, the public, and other market participants. The staff is committed to finding flexible and innovative approaches to the Commission's work and using independent judgment in exploring new ways to fulfill the SEC's mission in the most efficient manner possible.

TEAMWORK

The SEC recognizes that its success requires a diverse, coordinated team committed to the highest standards of trust, hard work, cooperation, and communication. The staff is committed to these values and is striving to work more effectively as a team – rather than as separate divisions or offices – and to coordinate more effectively with business, governments, and organizations in the U.S. and abroad.

COMMITMENT TO EXCELLENCE

The SEC demands the highest standards of excellence, integrity, commitment, and dedication from its staff. The investing public and the U.S. securities markets deserve nothing less.

Data File with OCR text (first two records):

 FIRSTBATES   LASTBATES   IMAGEID   OCRTEXT 
 MT00000001   MT00000002   IMG0000001     *** IMG0000001 *** The Securities and Exchange Commission VISION The Securities and Exchange Commission (SEC) aims to be the standard against which federal agencies are measured. The SEC will strengthen the integrity and soundness of U.S. securities markets, and will conduct its work in a manner that is as sophisticated, flexible, and dynamic as the securities markets it regulates. MISSION The mission of the Securities and Exchange Commission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. VALUES Managing the evolving needs of a complex marketplace and in pursuing its mission, the Securities and Exchange Commission embraces the following values: INTEGRITY As the federal agency entrusted with enforcing and regulating the U.S. securities markets, each member of the SEC staff has a personal responsibility to demonstrate the highest ethical standards to inspired confidence and trust in one another and in the public the agency

serves. **AIRNESS** As an agency with both regulatory and enforcement powers, the SEC must treat investors and market participants fairly in accordance with the law. As an employer, the SEC must seek to hire and retain a diverse staff, and ensure that all decisions affecting employees and applicants are fair and ethical. As professionals, the staff must treat all others with respect and dignity. **ACCOUNTABILITY** The SEC staff embraces the responsibility with which it is charged. In carrying out its mission, the staff readily holds itself accountable to the public it serves and takes personal responsibility for achieving SEC goals. *** IMG000002 *** **RESOURCEFULNESS** The SEC staff strives to work creatively proactively, and effectively in assessing and addressing risk to the securities markets, the public, and other market participants. The staff is committed to finding flexible and innovative approaches to the Commission's work and using independent judgment in exploring new ways to fulfill the SEC's mission in the most efficient manner possible. **TEAMWORK** The SEC recognizes that its success requires a diverse, coordinated team committed to the highest standards of trust, hard work, cooperation, and communication. The staff is committed to these values and is striving to work more effectively as a team – rather than as separate divisions or offices – and to coordinate more effectively with business, governments, and organizations in the U.S. and abroad. **COMMITMENT TO EXCELLENCE** The SEC demands the highest standards of excellence, integrity, commitment, and dedication from its staff. The investing public and the U.S. securities markets deserve nothing less. p

II. Email Collections

Preferred Format:

Delimited Text with Images and Native Attachments:

- 1) The producing party will provide a TIFF image of the email and the attachment(s), and a copy of the native attachment file(s). The text and metadata of the email and the attachment(s) is extracted and entered in the appropriate fields and provided as an ASCII delimited text file. All images are bates numbered. The email image will be the "parent" and the attachment(s) will be the "child." An email may have more than one child. The child attachment's bates number will be listed in the parent email's coded fields under CHILD_BATES. If there is more than one attachment, list the first bates number of each attachment and separate them by semi-colons (;). The parent email's bates number will be listed in the child(s) attachment(s) under PARENT_BATES. The child/children will immediately follow the parent record. The following is a field definition table of the data requested, including sample data.

Field	Sample Data	Comment
FIRSTBATES	BT 000001	First bates number of email
LASTBATES	BT 000008	Last bates number of email
BEGATTACH	BT 000009	First bates number of attachment(s)
ENDATTACH	BT 000015	Last bates number of attachments (s)
PARENT_BATES	BT 000001	First bates number of parent email
CHILD_BATES	BT 000009, BT 000012	First bates number of "child" attachment(s); can be more than one bates number listed; depends on number of attachments
CUSTODIAN	John Smith	Mailbox where the email resided
FROM	John Smith	For email
TO	Janice Coffman	For email
CC	Frank Thompson	For email
BCC	John Cain	For email
SUBJECT	Changes to Access Database	Subject of the email
DATE SENT	10/10/2005	Date the email was sent
TIME SENT	07:05 PM	Time the email was received
LINK	D:\SEC Production\7/1/03 Meeting Minutes.pdf	Hyperlink to native attachment (listed as file name)
FILE_EXTEN	PST (email) DOC (attachment - ex. Word document)	The file extension will vary depending on whether the document is a parent email or a child attachment
AUTHOR	John Smith	Attachment metadata
DATE CREATED	10/08/2005	Attachment metadata

DATE MOD	10/19/2005	Attachment metadata
DATE ACCESSD	10/10/2005	Attachment metadata
PRINTED DATE	10/19/2005	Attachment metadata
FILE_SIZE	765,952	Attachment metadata (in KB)
PATH	J:\SHARED\SMITHJ	Path where attachment file was stored
INTFILEPATH	Personal Folders/Deleted Items	Location of email
TEXT	<p>From: Smith, John [XYZ Corp] Sent: Friday, July 11, 2003 4:42 PM To: Coffman, Janice [CDT Corp] Subject: Board Meeting Minutes for 7/1/03</p> <p>Janice; Attached is a copy of the July Board Meeting Minutes for your review. Please let me know if you have any questions.</p> <p>John Smith Assistant Director Information Technology Phone: (202) 555-1111 Fax: (202) 555-1112 Email: jsmith@xyz.com</p>	Text of the email or attachment

The delimited text file must include a header record. The delimiters for the file must be as follows:

Comma - ASCII character 20
Quote - " " 254
Newline - " " 174

We will also accept the following formats:

PST - a personal storage file native to Microsoft Outlook. You must provide any necessary passwords or decryption.

NSF - a personal storage file native to Lotus Notes. You must provide any necessary passwords or decryption.

III. Native Files**Preferred Format:**

Native files will be delivered with an ASCII delimited file containing the metadata associated with the files, text extracted from the native file, and a directory path to the native file. The fields to be included in the production are as follows:

FIELD	SAMPLE DATA	COMMENT
DOCID	GT000001	Unique sequential number
TEXT	Meeting Minutes for Teleconference 10/1/03 Discussion over employee stock options transpired. Decision was made to offer the options as part of the employee's Christmas bonus. Announcement was made regarding Roland Moore being promoted to Assistant Director	Text extracted from native file.
LINK	D:\SEC Production\10/1/02 Meeting Minutes.pdf	Hyperlink to native file (listed as file name)
AUTHOR	John Smith	
DATE CREATED	10/08/2005	
DATE MOD	10/09/2005	
DATE ACCESSD	10/10/2005	
PRINTED DATE	10/10/2005	
FILE SIZE	765,952	
PATH	J:\SHARED\SMITHJ	Path where native file was stored

Optional Format:

Native files will be delivered in Custodian named folders.

IV. Media Form

The data can be delivered on CD, DVD, or portable USB hard drive. The smallest number of media is preferred.

TAB B

Bridget Kessler

From: Connolly, Christopher (USANYS) [Christopher.Connolly@usdoj.gov]
Sent: Tuesday, January 04, 2011 4:19 PM
To: Bridget Kessler
Cc: Cordaro, Joseph (USANYS); Peter Markowitz; Sunita Patel; Darius Charney; phillipstarkweather@gmail.com; james.f.horton@gmail.com; Hannah Weinstein; Cerullo, Norman
Subject: RE: NDLO et al. v. ICE et al., No. 10 Civ. 3488 (SAS)

Bridget,

In our e-mail last Thursday, we indicated that we would respond to plaintiffs' December 22 and December 23 letters this week. We still plan to do so. As you are well-aware, the defendant agencies are focused on meeting the Court's January 17 deadline for production of the opt-out records, which plaintiffs have identified as urgent. Nonetheless, in light of your inclination to contact the Court if three of the issues raised in your letters are not resolved by the end of the day, we will respond briefly.

The agencies do not agree to plaintiffs' proposed format of production protocol. Plaintiffs identify no case law for the proposition that production of metadata and searchable files is the default in FOIA matters, and contrary to the allegation in your December 22 letter, plaintiffs never requested this production format prior to the letter. The agencies have completed identification of well over 50,000 pages of potentially responsive opt-out records, and are in the midst of processing this large volume of records for production on January 17. The agencies are in no position to recreate their searches, generate thousands of pages of unspecified metadata, and re-process many thousands of pages prior to January 17. Moreover, with respect to your new request for metadata, you make no showing that such records are relevant to your understanding of the Government's position on whether states or localities may opt-out of Secure Communities.

Likewise, your demand that the agencies submit adequacy-of-search declarations on January 17 is contrary to the Court's expectations as expressed during the December 9 conference and in the subsequent order. The Court ordered that the agencies move for summary judgment only on their claimed exemptions, so that the Court could issue a ruling that would govern future productions. Plaintiffs did not object to this procedure at the hearing, which would have been the logical time to do so. Moreover, the Court's written order, which plaintiffs drafted at the Court's direction, and which was discussed in great detail before it was submitted, clearly reflects that the partial summary judgment motion will embrace only the exemptions, which is wholly consistent with the Court's remarks at the hearing.

Finally, with respect to the search cut-off date for the remainder of the Rapid Production List, DOJ and DHS regulations provide that the search cut-off date for records ordinarily is the date the agency component begins its search for them. See 28 C.F.R. 16.4(a), 6 C.F.R. 5.4(a). Of course, the Government is abiding by the Court-imposed cut-off date with respect to the opt-out records; insofar as the remainder of the RPL is concerned, we intend to abide by the regulations, but are willing to discuss this issue with you after the Court's January 17 opt-out deadline. Moreover, as you are well aware, ICE and the FBI already specified search cut-off dates in their declarations in opposition to the plaintiffs' motion for a preliminary injunction. Nevertheless, if plaintiffs wish to challenge any search cut-off date in the future, the Government will take the position that a ruling on this issue can only be made in the context of a summary judgment motion, on a complete record.

If plaintiffs intend to contact the Court, we ask that we be given advance notice so that we may expect to receive a simultaneous copy of any letter plaintiffs send, or, if you plan to call the Court, that we may participate in the call. We look forward to receiving your revised FOIA request on January 7.

Chris Connolly

From: Bridget Kessler [mailto:bkessle1@yu.edu]
Sent: Monday, January 03, 2011 1:23 PM
To: Connolly, Christopher (USANYS)
Cc: Cordaro, Joseph (USANYS); 'Peter Markowitz'; 'Sunita Patel'; 'Darius Charney'; phillipstarkweather@gmail.com; james.f.horton@gmail.com; 'Hannah Weinstein'; 'Cerullo, Norman'
Subject: RE: NDLON et al. v. ICE et al., No. 10 Civ. 3488 (SAS)

Dear Chris,

REDACTED

Please note that Plaintiffs will contact the Court about (1) the format of production protocol, (2) the search cut-off date, and, (3) the summary judgment briefing schedule if we do not resolve these particular issues before COB Tuesday, January 4, 2011.

I am available to discuss further this afternoon if you would like.

Happy New Year.

Warm regards,

Bridget P. Kessler
Clinical Teaching Fellow
Immigration Justice Clinic
Benjamin N. Cardozo School of Law
55 Fifth Avenue
New York, New York 10003
Tel: 212-790-0213
Fax: 212-790-0256

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From: Connolly, Christopher (USANYS) [mailto:Christopher.Connolly@usdoj.gov]
Sent: Thursday, December 30, 2010 5:43 PM
To: Bridget Kessler
Cc: Cordaro, Joseph (USANYS); Peter Markowitz; Sunita Patel; Darius Charney; phillipstarkweather@gmail.com; james.f.horton@gmail.com; Hannah Weinstein; Cerullo, Norman
Subject: RE: NDLON et al. v. ICE et al., No. 10 Civ. 3488 (SAS)

Bridget,

We have received plaintiffs' letters dated December 22, 2010 and December 23, 2010, and are discussing their contents with the defendant agencies. We will respond next week.

Chris

From: Bridget Kessler [mailto:bkessle1@yu.edu]
Sent: Thursday, December 23, 2010 4:43 PM
To: Connolly, Christopher (USANYS)
Cc: Cordaro, Joseph (USANYS); 'Peter Markowitz'; 'Sunita Patel'; 'Darius Charney'; phillipstarkweather@gmail.com; james.f.horton@gmail.com; 'Hannah Weinstein'; 'Cerullo, Norman'; 'Bridget Kessler'
Subject: NDLON et al. v. ICE et al., No. 10 Civ. 3488 (SAS)

Dear Chris,

Please see attached.

Best holiday wishes to both you and Joe.

Sincerely,

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TAB C

NDLON et al. v. ICE et al., 1:10-cv-3488 (SAS) (KNF)

PROTOCOL GOVERNING THE PRODUCTION OF RECORDS

I. Production Formats of Electronic Records

Defendants agree that all responsive electronically stored information (“ESI”) shall be produced in the following formats:

- A. **TIFFs.** All images shall be delivered as single page Group IV TIFF image files. Image file names should not contain spaces.
- B. **Unique IDs.** Each image should have a unique file name and should be named with the Bates number assigned to it.
- C. **Text Files.** Extracted full text in the format of multipage .txt files shall be provided. The total number of text files delivered should match the total number of TIFF files delivered. Each text file should match the respective TIFF filename. Text from redacted pages will be produced in OCR format rather than extracted text.
- D. **Parent-Child Relationships.** Parent-child relationships (the association between an attachment and its parent record) should be preserved.
- E. **Database Load Files/Cross-Reference Files.** Records should be provided in a format compatible with Concordance 8x and Opticon 3x in the following format:

Example Concordance Delimited File

þBegDocþ_þEndDoc þ_ þBegAttach þ_ þ EndAttach þ_ þ DocPages þ_ þ RecordType
þ_ þ MasterDate þ_ þ SentOn_Date þ_ þ SentOne_Time þ_ þ Recvd_Time þ

þ ABC001 þ_ þ ABC002 þ_ þ ABC001 þ_ þ ABC005 þ_ þ 2 þ_ þ Email þ_ þ þ_ þ
01/01/2008 þ_ þ 13 05 GMT þ_ þ 13:08 GMT þ

þ ABC003 þ_ þ ABC005 þ_ þ ABC001 þ_ þ ABC005 þ_ þ 3 þ_ þ Attachment þ_ þ þ
_ þ þ_ þ þ_ þ

Example Opticon Delimited File

There should be one row in each load file per TIFF image. Files that are the first page of a record should contain a “Y” in the file where appropriate.

Format: ProductionNumber,VolumeLabel,ImagePath,DocBreak,
FolderBreak,BoxBreak,PageCount

Example: Record MS000001 – MS000003 and MS000004 – MS000005 on DVD
volume MS001 would be:

MS000001,MS001,D:\IMAGES\001\MS000001.TIF,Y,,,3
MS000002,MS001,D:\IMAGES\001\MS000002.TIF,,,,
MS000003,MS001,D:\IMAGES\001\MS000003.TIF,,,,
MS000004,MS001,D:\IMAGES\001\MS000004.TIF,Y,,,2
MS000005,MS001,D:\IMAGES\001\MS000005.TIF,,,,

- F. **Metadata.** For records that were originally created using common, off-the-shelf software (*e.g.*, Microsoft Word, Microsoft PowerPoint, Adobe PDF), Defendants will provide all metadata fields set forth in the below metadata fields. Defendants must produce all files attached to each email they produce, but only if such files are actually attached to that email in the ordinary course of business. To the extent a Defendant produces email attachments that were originally created using common, off-the-shelf software, a Defendant will produce the metadata for those attached electronic records in accordance with this section.

Metadata Fields

- Custodian
- Beginning Bates Number
- Ending Bates Number
- Beginning Attachment Number
- Ending Attachment Number
- Record Type
- Master_Date
- SentOn_Date and Time
- Received_Date and Time
- Create_Date and Time
- Last_Modified Date and Time
- Parent Folder
- Author
- To
- From
- CC
- BCC
- Subject/Title
- OriginalSource
- Native Path
- File Extension
- File Name
- File Size
- Full Text

- G. **Spreadsheets.** For spreadsheets that were originally created using common, off-the-shelf software (*e.g.*, Microsoft Excel), Defendants will produce the spreadsheets in native format and, in addition, in TIFF format.

II. Production Format of Hard Copy Records

Defendants agree that all responsive hard copy records shall be produced in the following formats:

- A. **TIFFs.** All images shall be delivered as single page Group IV TIFF image files. Image file names should not contain spaces.
- B. **Unique IDs.** Each image should have a unique file name and should be named with the Bates number assigned to it.
- C. **OCR.** High-quality multipage OCR text should be provided. Each text file should match the respective TIFF filename.
- D. **Database Load File/Cross-Reference Files.** Records should be provided in a format compatible with Concordance 8x and Opticon 3x in the formats identified in Section I.E above.
- E. **Unitizing of Records.** In scanning hard copy records, distinct records should not be merged into a single record, and single records should not be split into multiple records (*i.e.*, hard copy records should be logically unitized).
- F. **Parent-Child Relationships.** Parent-child relationships (the association between an attachment and its parent record) should be preserved.
- G. **Objective Coding Fields.** The following objective coding fields should be provided:
 - Beginning Bates Number
 - Ending Bates Number
 - Beginning Attachment Number
 - Ending Attachment Number
 - Source/Custodian
- H. **Objective Coding Format.** The objective coding fields should be provided in the following format:
 - Fields should be Pipe (|) delimited.
 - String values within the file should be enclosed with Carats (^).
 - Multiple entries in a field should have a semi-colon (;) delimiter.
 - The first line should contain metadata headers and below the first line there should be exactly only one line for each record.
 - Each field row must contain the same amount of fields as the header row.