

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT
TRIAL COURT DEPT.

PAUL O'KEEFE, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JOHN JOSEPH O' KEEFE III; PAUL O'KEEFE,
INDIVIDUALLY; JOHN O'KEEFE II;
MARGARET O'KEEFE; and MARGARET
O' KEEFE AS GRANDPARENT / GUARDIAN
OF KAYLEY FURBUSH,

Plaintiffs,

v.

C&C HOSPITALITY, LLC d/b/a C.F.
MCCARTHY'S; G&S HOSPITALITY, LLC d/b/a
C.F. MCCARTHY'S; WATERFALL BAR &
GRILL, LTD d/b/a WATERFALL BAR & GRILL;
and KAREN READ,

Defendants.

C.A. NO. 2483CV00692

**STIPULATED PROTOCOL FOR THE PRODUCTION OF DOCUMENTS AND
ELECTRONICALLY STORED INFORMATION (ESI)**

Pursuant to Massachusetts Rule of Civil Procedure 26(f), the parties in the above-captioned Action (collectively, "the Parties"), by and through their respective counsel, have agreed upon and jointly stipulated to the terms of this Stipulated Protocol for the Production of Documents and Electronically Stored Information (the "ESI Protocol").¹

I. SCOPE

A. Pursuant to the Massachusetts Rules of Civil Procedure, this ESI Protocol shall govern the production of electronically stored information ("ESI") by the Parties in the above-captioned Action (the "Action") from the date it is fully executed below through the end of the Action.

B. The ESI Protocol does not alter the Parties' obligations to comply with the applicable

¹ The parties are in the process of reviewing this protocol with their respective client's and e-discovery vendors, and this protocol may be subject to amendment in the near term following this review.

Massachusetts Rules of Civil Procedure or any applicable Court rules.

C. Nothing in this ESI Protocol establishes any agreement regarding the subject matter, scope, or timing of discovery in this Action, or the relevance, authenticity, or admissibility of any ESI in this Action.

D. Nothing in this ESI Protocol shall be interpreted to require production of ESI protected from disclosure by the attorney-client privilege, work product doctrine, common interest doctrine, or any other applicable protection or privilege. Nor shall this ESI Protocol be interpreted to require production of ESI prohibited from disclosure under any other law, regulation, rule, or Court order. The Parties do not waive any objections to the production, discoverability, or confidentiality of Documents, ESI, or any other discovery materials, including but not limited to: objections regarding the proportionality, burden, or overbreadth of the discovery request or the relevance of any discovery materials.

E. Any practice or procedure set forth herein may be varied by written agreement of the Parties.

II. PRODUCTION FORMAT

A. **Paper Documents:** Paper records will be scanned or otherwise converted into electronic form from paper Documents in the following format:

1. **TIFFs.** All Documents shall be scanned to single page Group 4, TIFF format, at least 300 dpi and 8 ½ x 11-inch page size, except for Documents requiring higher resolution or different page size. Documents with color in native format (e.g., color photographs or graphical representations) should be imaged to single page, JPEG format, to retain color. Each image file should have a unique file name which shall be the Bates number of the page plus the appropriate file extension.

2. **Coding Fields.** The following coding fields should be provided, if applicable:

Field Name	Field Description
BegBates	Beginning Bates# (including Prefix)
EndBates	Ending Bates# (including Prefix)
BegAttach	Beginning Bates number of the first document in an attachment range (only in emails with attachments)
EndAttach	Ending Bates number of the last document in attachment range (only in emails with attachments)
PgCount	Number of pages in the item
Custodian	Name of Custodian(s) of document (Last Name, First Name format) as available
Redacted	User-generated field that will indicate redactions using "Y" for yes and "N" or Blank for no redaction.

B. Electronically Stored Information: The Parties will produce ESI in TIFF format according to the following specifications:

1. All TIFF formatted documents will be single page, Group 4 TIFF at 300 x 300 dpi resolution and 8½ x 11-inch page size, except for documents requiring different resolution or page size. The requesting party retains the right to request a TIFF image in a higher resolution or larger page size if necessary to render the image legible or reasonably usable.

2. To the extent practicable, each individual document based on an electronic file shall be accompanied by a corresponding text file with text that is extracted from the electronic file. The exception to this will be redacted documents, as discussed below.

3. An image load file, in standard Opticon format (OPT) or standard IPro format (LFP), showing the Bates number of each page and the appropriate unitization of the documents, will accompany all document images.

4. Each imaged version of an electronic document will be created directly from the original electronic document. Word processing files, including Microsoft Word files, will be

produced with tracked changes and comments showing and searchable in the extracted text. Presentation files, including Microsoft PowerPoint files, will be produced with speaker notes searchable in the extracted text. Documents that contain languages other than English, in whole or in part, shall be produced in the original language(s).

5. The following metadata fields associated with each electronic document will be produced: (SEE NEXT PAGE)

Field Name	Field Description	Required for Email	Required for Non-E- mail ESI
Custodian	Name of Custodian(s) of email(s) or file(s) produced (Last Name, First Name format) as available	X	X
Duplicate Custodian or AllCustodians (if globally deduplicated)	Name of duplicate Custodian(s) of email(s) or file(s) produced	X	X
BegBates	Beginning Bates# (including Prefix)	X	X
EndBates	Ending Bates# (including Prefix)	X	X
BegAttach	Beginning Bates number of the first document in an attachment range (only in emails with attachments)	X	X
EndAttach	Ending Bates number of the last document in attachment range (only in emails with attachments)		
From	From field extracted from an email message	X	
Author	Author field extracted from the metadata of a non-email document		X
To	To or Recipient extracted from an email message	X	
Cc	Carbon Copy ("Cc") field extracted from an email message	X	
Bcc	Blind CarbonCopy ("Bcc") field extracted from an email message	X	
Subject	Subject line extracted from an email message	X	
Filename	File name — Original name of file as appeared in original location		X
Title	Title field extracted from the metadata of a non-email document		X
DateSent	Sent date of an email message (mm/dd/yyyy format) (a given email will have either a DateSent or Date Rcvd, but not both)	X	
DateRcvd	Received date of an email message (mm/dd/yyyy format) (a given email will have either a DateSent or Date Rcvd, but not both)	X	
DateCreated	Date that a non-email file was created (mm/dd/yyyy format)		X
Date Last modified	The application recorded time on which the document was last modified		X
TimeSent	Time e-mail was sent (hh:mm:ss format) (a given email will have either a	X	

	TimeSent or Time Rcvd, but not both)		
TimeRcvd	Time e-mail was received (hh:mm:ss format) (a given email will have either a TimeSent or Time Rcvd, but not both)	X	
FilePath	File path storage location of the document or email if the source application allows for the creation of folders	X	X
Native Link	Relative path to any files produced in native format	X	X
Text Link (if text is exchanged)	Relative path to any OCR/extracted text files in the production set	X	X
Confidentiality Designation	The designated level of confidentiality pursuant to the Protective Order.	X	X
Hash Value	MD5 or SHA-1 hash value used to deduplicate the data	X	X
Redacted	User-generated field that will indicate redactions using "Y" for yes and "N" or Blank for no redaction.	X	X
Folder	Original physical folder name or location (scanned documents)		X
EmailFolder	Original email folder structure, including inbox, sent items, deleted items, trash, drafts, outbox, archive, or equivalent email folders	X	
MessageID	Message number created by email application	X	
Conversation- Index	Email thread identifier created by email system	X	
Revision	Numeric version of the revision count if provided in the original document's internal metadata		X

6. Notwithstanding the foregoing, the Parties will produce the following ESI types in native file format: (a) spreadsheets, including Microsoft Excel files; (b) audio or video files; (c) PowerPoint presentations; (d) word processing files, including Microsoft Word files, that contain track changes or hidden text; and (e) any files that cannot be imaged. PowerPoint presentations and word processing files that are produced in native file format should also be produced with image files to facilitate assigning of Bates numbers for each page of the document.

7. Any document produced in native format will be produced according to the following specifications:

- a. A unique bates number shall be used as the file name and the original file name and file extension shall be preserved in the corresponding load file.
- b. The native format documents shall be accompanied by reference information that sets forth, for each document, sufficient information to allow the Parties to track and authenticate the native format documents produced, including: (i) the name of the custodian from whose files the electronic file is produced; (ii) an appropriately calculated "MD-5 Hash Value"; and (iii) the original name of the file.
- c. With the exception of presentations and word processing documents, any file produced in native format need not be imaged. Instead, a single page placeholder image shall be provided that indicates the file was produced in native format and contains the bates number of the corresponding file and any confidentiality designation.
- d. If a document produced in native format is reduced to hardcopy or a PDF file for use in correspondence or as an exhibit at a deposition, hearing, or trial, its Bates number and confidentiality designation (if any) will be branded on the hardcopy by the offering Party.

8. OLE embedded objects (embedded MS Office files, etc.) shall be extracted as separate files and treated as attachments to the parent document. Images embedded in emails shall not be produced as attachments unless they are substantive and responsive to a discovery request served upon the Producing Party.

9. Absent good cause shown, a party is not required to preserve, search, collect, review, or produce the following categories of electronic files:

- a. Any electronic file which matches the Reference Data Set published by the National Institute of Standards and Technology's National Software Reference Library.
 - b. System or executable files (.exe, .dll, etc.).
 - c. Structural files not material to individual file contents that do not contain substantive content (.css, .xsl, .xml, .dtd, etc.).
 - d. Backup data files that are maintained in the normal course of business for purposes of disaster recovery, including backup tapes, disks, SAN, and other forms of media, and that are substantially duplicative of data that are more accessible elsewhere. Absent a party's specific written notice for good cause, no party shall be required to modify or suspend procedures, including rotation of backup media, used in the usual course of business to back up data and systems for data recovery purposes.
 - e. Deleted, slack, fragmented, or unallocated data.
 - f. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
 - g. On-line access data such as temporary internet files, history files, cache files, and cookies.
 - h. Data remaining from systems no longer in use that are unreadable on the systems in use.
10. No party shall be required to modify or suspend procedures, including rotation of backup media, used in the normal course of business to back up data and systems for disaster recovery purposes.
11. To avoid discrepancies caused by custodians who worked or traveled across

multiple time zones, emails should be processed with time normalization based on UTC time.

C. Redacted Files

Extracted text will not be provided for ESI that has been redacted—*e.g.*, for privilege or trade secrets—because the extracted text would reveal the redacted information. Instead, these files should be run through a reliable OCR process to capture the visible text only and the results exchanged in lieu of the original extracted text. The portion of the redacted text shall be clearly identified on the face of the TIFF image.

D. Data Load Files/Cross-Reference Files

Fielded data should be exchanged via a document-level-database load file in one of two delimited formats. Either standard Concordance (DAT) or comma delimited (CSV). All image data should be delivered with a corresponding image load file in one of two formats: standard IPro (LFP) or Opticon (OPT). The total number of images files referenced in the image load file should match the total number of images in the production delivery.

E. Databases.

A Party possessing databases that contain relevant information shall produce the information in the agreed upon format for ESI, in Excel, or Access, except where the Requesting Party can show particularized need for another format. The Parties agree to meet and confer in good faith regarding discovery from relevant and proportional applications and databases.

F. Encrypted Data/Password Protected Files

Certain files may contain encrypted data or be password protected. When the key or password can be obtained through reasonable efforts, a Producing Party should apply the appropriate key or password to the file and produce the file unencrypted. If the party cannot obtain the key or password through reasonable efforts, the Producing Party should provide the file's

metadata in accordance with Section III.B in the production load file and a slip-sheet should be included in the image set, stating the file is an exception.

G. Residual, Fragmented, Damaged, or Temporary Data

Parties reserve the right to not produce the following ESI files: data stored in a computer's RAM, any data on unreadable or damaged disc sectors, readable data stored in proprietary format determined to be corrupted by the software capable of rendering the format, and data that would require forensic reconstruction. A party may, after good cause is shown by the requesting party, be required to produce such files if identified with specificity.

H. Parent-Child Relationships for ESI Documents

Parent-child relationships (the association between an attachment and its parent document) shall be preserved to the extent possible. Attachments are to be produced contemporaneously and sequentially immediately after the parent document. For example, when the attachment (child document) is produced, the parent document associated with the attachment shall be produced regardless of whether it is responsive or itself contains an ESI search term. The parent document associated with the responsive attachment will not be produced if it is protected by attorney-client privilege, the attorney work product doctrine, allied litigant/common interest privilege, and/or any other applicable privilege; the privilege log entry for the withheld parent document will indicate the bates number of the produced attachment.

III. PRODUCTION OF DISCOVERY MATERIALS CONTAINING POTENTIALLY PRIVILEGED OR PROTECTED INFORMATION

A. The Parties shall follow the following procedure regarding the clawback of potentially privileged or protected discovery materials: a Producing Party shall notify any Party that received documents or information that the Producing Party alleges are privileged, protected, or otherwise nondiscoverable, of such claim and the basis for it. After being notified, a Party

must, consistent with Paragraph V.B and Massachusetts Rule of Civil Procedure 26(b)(5)(B), promptly return, sequester, or destroy the specified documents or information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the Party disclosed it before being notified; and must promptly present the information to the Court under Trial Court Rule VIII, Uniform Rules on Impoundment Procedure, for a determination of the claim, as described below.

B. Prior to seeking resolution with the Court, the Parties shall first meet and confer within fourteen (14) calendar days of notification of the production of such documents or information to resolve any disagreement over whether the documents or information is protected by attorney-client privilege, attorney work product doctrine, common interest doctrine, and/or any other applicable privilege or protection. Within fourteen (14) calendar days of conclusion of the meet and confer process, the Receiving Party must file a motion with the Court, under Trial Court Rule VIII, Uniform Rules on Impoundment Procedure, seeking resolution of any remaining disagreement as to whether the information is protected by attorney-client privilege, attorney work product doctrine, common interest doctrine, and/or any other applicable privilege or protection. The Receiving Party may not challenge the privilege or protection claim by arguing that the disclosure of the information itself is a waiver of any applicable privilege or protection.

IV. HANDLING OF PRIVILEGED MATERIAL ANALYSES

A. Any analyses, memoranda, or notes which were internally generated based upon such produced information shall immediately be placed in sealed envelopes, and shall be destroyed in the event that (a) the Receiving Party does not contest that the information is privileged or protected, or (b) the Court rules that the information is privileged or protected. Such analyses, memoranda, or notes may only be removed from the sealed envelopes and returned to its intended purpose in the event that (a) the Producing Party agrees in writing that the information is not privileged or

protected, or (b) the Court rules that the information is not privileged or protected.

V. PRIVILEGE LOGGING

A. At the conclusion of their productions, each Party shall provide a privilege log that complies with Mass. R. Civ. P. 26(b)(5)(A).

B. The following documents presumptively need not be included on a privilege log:

- i. Written or oral communications between a Party and its counsel after August 26, 2024; or
- ii. Work product created by counsel, or by the direction of counsel, that is not subject to discovery under the Massachusetts Rules of Civil Procedure.

Approved as to form and submitted by:

PLAINTIFFS,
By their attorneys,

/s/ Daniel T. Buck

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SIGNED this ____ day of _____ 2025.

JUDGE PRESIDING