

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Twanda Marshinda Brown, <i>et al.</i> , Plaintiffs, v. Lexington County, South Carolina, <i>et al.</i> , Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH
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**DECLARATION OF ERIC R. NUSSER IN SUPPORT OF PLAINTIFFS’
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
DEFENDANTS’ MOTION TO STAY DISCOVERY AND SCHEDULING
ORDER DEADLINES OR FOR PROTECTIVE ORDER**

I, Eric R. Nusser, declare as follows:

1. I am an attorney with the law firm of Terrell Marshall Law Group PLLC (“Terrell Marshall”). I am licensed to practice law in the State of Washington and have been admitted to this Court *pro hac vice*. I make this declaration based on personal knowledge, and I am competent to testify regarding the following facts.

2. On November 21, 2017, I received an email communication from the Court’s law clerk, Van Horger, addressed to all counsel of record in this case. Attached hereto as Exhibit A is a true and correct copy of the email I received. This email stated, *inter alia*, that the Court planned to rule on all pending motions at the same time and requested that the parties notify the Court if they did not wish for the Court to take this approach.

3. On October 25, 2017, I sent an email to Defendants’ counsel William H. Davidson, II, and Kenneth P. Woodington offering to discuss document discovery in the interest of making production as smooth as possible for all parties. Attached hereto as Exhibit B is a true

and correct copy of the email I sent to Mr. Davidson and Mr. Woodington. Attached hereto as Exhibit C is a true and correct copy of Terrell Marshall's Document Production Preferences, which was attached to the email sent to Mr. Davidson and Mr. Woodington.

4. Attached hereto as Exhibit D is a true and correct copy of the email I received from Mr. Woodington, which was sent to Plaintiffs' counsel announcing that Defendants intended to file a motion to stay discovery.

5. On October 30, 2017, Plaintiffs' counsel Toby J. Marshall, Susan K. Dunn, and I conducted a telephone conference with Defendants' counsel Mr. Woodington and Mr. Davidson to discuss the issues underlying Defendants' forthcoming Motion for Summary Judgment on Damages Claims (Dkt. No. 50), motion to stay discovery (Dkt. No. 51), and motion to stay consideration of Defendants' Supplemental Motion for Summary Judgment (Dkt. No. 49). During that telephone conference, Plaintiffs' counsel explained that Plaintiffs could not consent to stay discovery because Plaintiff Goodwin and members of the proposed class continued to face an imminent threat of unlawful arrest and incarceration, and Plaintiffs were aware of no evidence demonstrating that Defendants had ceased the alleged unlawful behavior.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed in Seattle, Washington on this 29th day of November, 2017.


By: 
Eric R. Nusser, WSBA #51513

EXHIBIT A

Eric Nusser

From: Van_Horger@scd.uscourts.gov
Sent: Tuesday, November 21, 2017 7:49 AM
To: Eric Nusser; nchoudhury@aclu.org; sdunn@aclusouthcarolina.org; Toby Marshall; kwoodington@dml-law.com; wdavidson@dml-law.com
Subject: 3:17-cv-01426-MBS-SVH Brown et al v. Lexington County

Good morning counsel,

The court has reviewed the reply filed yesterday [ECF No. 61] to the motion to stay the supplemental MSJ. The court understands from the reply that the parties agree that ECF No. 49 can be denied without prejudice. Please confirm that this understanding is accurate.

It also appears that the original motion to certify class [ECF No. 5] may be denied as moot in light of the amended complaint and the July 21, 2017 motion to certify class [ECF No. 21]. Please advise if this is incorrect.

The court plans to rule on all pending motions at the same time. If the parties do not wish for the court to rule on a motion at the same time (such as ECF No. 40), please indicate the same by a filing on the docket withdrawing the motion without prejudice to refile at a later time.

We hope you all have happy Thanksgivings!

Thanks,
Van



Van Horger
Law Clerk to
United States Magistrate Judge Shiva V. Hodges
803.253.6431

EXHIBIT B

Eric Nusser

From: Eric Nusser
Sent: Wednesday, October 25, 2017 5:49 PM
To: Will Davidson (wdavidson@dml-law.com); Ken Woodington (kwoodington@dml-law.com)
Cc: Toby Marshall; Nusrat Jahan Choudhury (nchoudhury@aclu.org); Susan Dunn (sdunn@aclusc.org); Carl Gavin Snodgrass
Subject: Brown v. Lexington County: Discovery production guide and telephone conference
Attachments: TMLG Document Production Preferences.pdf

Dear Will and Ken,

As you are aware, Plaintiffs submitted their first sets of requests for production to Defendants on October 6 and October 10, 2017. In the interest of making document discovery as smooth as possible for all parties, we would like to take the opportunity to confer with you as soon as reasonably possible regarding any anticipated issues with producing documents responsive to these requests.

Attached, please find Terrell Marshall Law Group's Document Production Preferences, which serves as a guide to help simplify large document productions. We understand you are likely going to have questions regarding this guide and we would be happy to help answer those questions and work together to find the most efficient and effective system of production for all parties.

If you are available next week, we would like to set up a telephone conference to discuss the guide and a mutually agreeable path moving forward. We are available at the following times:

- Monday, October 30, 11am-12pm or 1:30pm-3pm Eastern
- Tuesday, October 31, 11am-2pm Eastern
- Wednesday, November 1, 11am-1pm or 2pm-6pm Eastern

If these windows of time do not work with your schedule, please propose a window of time that does. Thank you in advance for your attention to these matters.

Best regards,

Eric

Eric Nusser
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terrellmarshall.com

EXHIBIT C

Terrell Marshall Law Group PLLC
Document Production Preferences

The following document production protocol is proffered as a guide to simplify large document productions in complex litigation that is likely to result in hundreds to thousands of documents, particularly cases with a potentially significant volume of electronically stored information. It is highly recommended that parties confer in advance of any document production.

Load File:

- 1) **.DAT file:** Load file that contains information about each document. The .DAT file should include a header row for each field, including identifiers for the beginning and end of each document. If the production includes native files, the .DAT file should also include a field for the native file path within the folder structure. *See p.4 for recommended database and metadata fields.*
- 2) **.OPT file:** If the production is imaged an image load file that enables eDiscovery software to display the document images should be included.
- 3) **TEXT folder:** This folder should contain the OCR and/or extracted text .txt files for each of the documents produced.
- 4) **NATIVES folder:** This folder should contain any native files included in the production.
- 5) **IMAGES folder:** This folder should contain the imaged production.

The production should be de-duplicated:

- ESI vendors utilize technology that de-duplicates electronic documents based on their MD5 hash values.
- Our preference is that the minimum number of duplicates be produced and that de-duplication be conducted globally, across custodians. De-duplication across custodian means that exact duplicates of documents held by a particular custodian, as identified by MD5 hash value, but residing with another custodian will not be produced. The parties are permitted to de-duplicate identical emails using MD5 hash technology, across custodians and to reduce/suppress e-mail thread duplicates as well. In order for an email to be suppressed as a "thread duplicate," it must be wholly contained in the later, surviving email and have all of the same recipients and attachments.

The production should be searchable:

- Each hard copy document should be scanned and OCRd.

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Document Production Preferences**

- Text should be extracted from electronic documents that contain active, searchable content including, but not limited to email, spreadsheets, databases, web pages, presentations, delimited text files or any other electronic document created by word-processing, presentation, text-editing, database applications.
- Electronic documents such as .tiff images or .pdf files that contain text that cannot be extracted should be OCRd.

The production should be Bates labeled:

- All imaged documents should be stamped with a Bates label with a minimum six-digit numbering protocol. The number of digits in the label should consider the expected size of the production throughout litigation. A six-digit numbering protocol provides enough room for most cases. If an extraordinary amount of documents are expected to be produced, then additional digits should be considered at the start of litigation. Use underscores and hyphens instead of spaces in the Bates label. *Bates label example: DEF_000001*
- Documents designated as confidential pursuant to a protective order or stipulation should be clearly labeled as such to avoid inadvertent disclosure of confidential information.
- If documents are not being imaged and will be produced in native format only, each native file name should include a Bates number identification in lieu of a Bates label. Original file names and document metadata should be preserved and produced in the production load file.

Databases and spreadsheets should be produced in native format:

- Parties should confer prior to producing databases to reduce the burden on all parties. Databases may contain much irrelevant data and methods exist to control the output from databases. Conferring prior to production can reduce the amount of time and money spent to produce such data.
- All spreadsheets or databases created and maintained in Microsoft Excel or Microsoft Access should be produced in their native file formats (ie - .xls, .xlsx, .mdb, .csv).
- Any spreadsheets or databases created and maintained in any other format should be exported or converted to a Microsoft Excel, Microsoft Access format or a universal format such as a tab-delimited text file. Most proprietary database applications include exporting functions that provide these options.
- Native files should be named by their Bates number identification. Original file names and document metadata should be preserved and produced in the production load file.
- It is not necessary to convert spreadsheet and database files to .tiffs if they are produced in native format.

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Document Production Preferences**

- Extracted text must be included in the load file for any documents produced in native format.
- The load file must link to the native files.

Webpages

- Parties should confer before producing webpages and files. While in most cases it is acceptable to print the content of web pages and extract the text for searchability, sometimes the user interface and design elements are relevant and the production format needs to be discussed. There are many ways to produce webpages: print, screenshot, active URLs that are password protected, active URLs that are not password protected, and more.

Audio, Video and Other File Formats

- Parties should confer prior to producing any audio and video files or any other file formats not specifically addressed above.

See following page for Metadata Fields.

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Document Production Preferences**

Recommended metadata fields are:

FIELD NAME	DESCRIPTION
BEGDOC	The starting Bates number of the document
ENDDOC	The ending Bates number of the document
BEGATTACH	If the document is an attachment, this is the starting Bates number of the parent document (ie-the document it is attached to)
ENDATTACH	If the document is an attachment, this is the ending Bates number of the parent document
TO	ESI ONLY - The name of the recipient(s)
FROM	ESI ONLY - The name of the sender(s)
CC	ESI ONLY - The document is electronic mail or correspondence, the identity of the person or entity who received a copy
BCC	ESI ONLY - If the document is electronic mail or correspondence, the identity of the person or entity who received a blind copy
SENT	ESI ONLY - If the document is electronic mail or correspondence, the date the document was sent
RECEIVED	ESI ONLY - If the document is electronic mail or correspondence, the date the document was received
SUBJECT	ESI ONLY - The subject of the document, typically included with correspondence and memoranda
FILENAME	ESI ONLY - The original name of the native file
EXTENSION	ESI ONLY - The application extension of the native file, for example: .doc, .xls, .docx, .xlsx, .mdb, .txt
CREATEDATE	ESI ONLY - The date the document was created
LASTMODIFIED	ESI ONLY - The date the document was last modified
PAGECOUNT	ESI ONLY - The number of pages in the document
CUSTODIAN	The name of the custodian from whom the document was obtained
MD5HASH	ESI ONLY - The unique numerical identifier of the document
NATIVEPATH	ESI ONLY – The path within the load file structure to the native file, if a native file produced
CONFIDENTIAL	Whether or not the document is labeled designated as confidential pursuant to a protective order

EXHIBIT D

Eric Nusser

From: Kenneth P. Woodington <kwoodington@DML-LAW.com>
Sent: Thursday, October 26, 2017 7:28 AM
To: Nusrat Jahan Choudhury (nchoudhury@aclu.org); Susan Dunn (sdunn@aclusc.org); Eric Nusser; Toby Marshall
Cc: William H. Davidson II
Subject: Motion to stay supplemental motion for summary judgment
Attachments: Motion to stay SJ motion (01006428xBE0C9).docx

Dear counsel:

Attached is a proposed motion to stay consideration of our recent supplemental motion for summary judgment. The reason for the motion is that we are asking the court to dispose of our original motion for summary judgment on declaratory and injunctive relief prior to taking up the supplemental motion. Additional details are set forth in the motion itself.

I would also advise that in the next day or so, we will be filing a motion for summary judgment on damages based solely on legal grounds, as well as a motion to stay discovery. I will forward the latter motion for consultation purposes once it has been prepared.

If you consent to this motion, I would probably follow up by sending a shorter version of it.

Regards,

Ken