UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GUY M. LACROSSE and JOJEMAR MENDOZA, individually and as Representatives of a Class of Participants and Beneficiaries of the Jack Henry & Associates, Inc., Savings/Retirement Plan,
 	
    Plaintiffs,
 	
v.
 	
JACK HENRY & ASSOCIATES, INC., UNDER 29 U.S.C. § 1132(a)(2)
 	
and
 	
RETIREMENT COMMITTEE OF THE JACK HENRY & ASSOCIATES, INC. 401(k) RETIREMENT SAVINGS PLAN,
 	
    Defendants.
	Case No. 3:23-cv-05088-SRB

ORDER GOVERNING DISCOVERY OF
ELECTRONICALLY STORED AND HARD COPY INFORMATION

Before the Court is a Joint Motion for Entry of ESI Protocol. (Doc. #57.) For good cause shown, and as set forth below, the motion is GRANTED.

Plaintiffs Guy M. Lacrosse and Jojemar Mendoza ("Plaintiffs") and Defendants Jack Henry & Associates, Inc. and the Retirement Committee of the Jack Henry & Associates, Inc. 401(k) Retirement Savings Plan ("Defendants") (collectively the "Parties") have stipulated as follows with respect to the production of electronically stored information ("ESI"). The Court hereby enters the following order in accordance with the parties' stipulation:

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1. PURPOSE

This ESI Protocol will govern discovery and production of electronically stored information ("ESI") in this case as a supplement to the Federal Rules of Civil Procedure and any other applicable orders and rules.

Nothing herein shall enlarge or affect the proper scope of discovery in this case as set forth in the Federal Rules of Civil Procedure and other applicable law, nor shall anything herein imply that any documents or ESI collected or produced under the terms of this Protocol are properly discoverable, relevant, or admissible in this Action or any other proceeding.

2. PRESERVATION

Each Party is responsible for taking reasonable and proportionate steps to preserve relevant and discoverable ESI within its possession, custody, or control. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the Parties agree to the following:

    a. The Parties shall preserve non-duplicative discoverable information currently in their possession, custody or control. Nothing in this paragraph affects the objections of any Party as to the relevance or discoverability of any documents or document categories.

    b. Counsel for Plaintiffs has advised that Plaintiffs have been instructed on their preservation obligations.

    c. Counsel for Defendants has advised that Defendants have been instructed on their preservation obligations.

3. CUSTODIANS, DOCUMENT CATEGORIES, MEET & CONFERRAL

The Parties agree to disclose, and confer regarding, the following: (a) the identity and role of all custodians from which documents and ESI will be obtained for production; (b) the identity, scope, and format of all custodial and non-custodial sources from which documents and ESI will

be obtained for production; and (c) the applicable timeframe(s) for collection and review of documents and ESI.

Documents or ESI known to a custodian to be responsive to a discovery request or relevant to the subject matter of this Action shall be produced without regard to whether it was responsive to any search methodology described herein or developed in accordance with this Protocol, unless Counsel specifically identifies the documents being withheld pursuant to a specific objection.

The Parties agree that cooperation and transparency result in meaningful and cost-effective discovery. The meet and confer process will continue to be utilized as needed. To the extent either Party has questions about custodians, the location of documents, or preservation of documents, the Parties shall meet and confer.

4. **SEARCH**

    a. The Parties shall meet and confer to reach agreement on search methodologies, including negotiation of search terms (if used), custodians, and data sources, and the Producing Party shall allow reasonable input from the Requesting Party through an iterative and cooperative process. Should the Producing Party change or implement additional methodologies to search, cull, or prioritize the production of responsive documents, the Producing Party shall timely disclose any changes or additions to the Requesting Party, and the Parties shall timely meet and confer regarding any disputes related to the same.

    b. If the Producing Party plans to use technology assisted review, including "predictive coding," to identify, prioritize, or cull documents to be reviewed or produced, the Producing Party will notify the Requesting Party in advance to discuss an appropriate procedure for that type of review.

c. Documents that are reasonably believed to be responsive to discovery requests and not subject to objections and for which text-based search technologies are fundamentally ineffective must be reviewed without culling by search terms, predictive coding, or other technologies that rely primarily on text.

d. Those portions of the Parties' documents representing discrete folders or collections of information relevant to the claims and defenses in this proceeding, such as substantially relevant folders of ESI specifically identified or segregated by Defendants, Defendants' employees, or Plaintiffs, before or after the commencement of this litigation (i.e., custodian-created desktop or email folders or sub-folders or shared storage repositories specifically labelled or otherwise identified), shall be reviewed for responsiveness (subject to appropriate claims of privilege) without regard to whether a given document in the collection is responsive to any search methodology described herein or developed in accordance with this Protocol.

e. The Parties reserve the right to seek ESI from additional custodians and, if search terms are utilized, additional search terms, identified through discovery. Nothing herein shall be construed as discharging a Party's duties under Rules 26 and 34 in connection with the search for and production of responsive documents. Nothing herein shall be construed as expanding on the Parties' obligations under the Federal Rules of Civil Procedure,

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including Rules 26 and 34, and the Parties specifically reserve their rights to oppose and object to any discovery demand.

f. Nothing in this Protocol shall be construed or interpreted as precluding a Producing Party from performing a responsiveness or privilege review to determine if documents captured by search terms are in fact relevant to the Requesting Party's request and discoverable.

g. The Parties acknowledge that there may be circumstances where modification to a previously agreed upon search protocol may be warranted. Should such an instance arise, the Parties agree to promptly meet and confer about methods to search ESI if either Party requests such a meet-and-confer.

5. **PRODUCTION FORMATS**

a. In general, the production format for all physical documents and ESI shall be single-page Group IV TIFF files with corresponding text and load files according to Appendix 1. However, spreadsheets, word processing files, digital images, audio/video files, and other file types that do not render to image well should be produced in their Native format. Native Productions shall be produced as they are maintained with all non-privileged formulas, redlines, comments, links, and metadata intact. Native Productions shall include all ESI metadata files as set forth below in the load file.

b. Paper documents shall be scanned and produced according to Appendix 1. The documents should be unitized, not merged into a single record. The load file for paper documents shall contain the following fields (described in greater detail in Appendix 1): BegBates, EndBates, BegAttach,

EndAttach, Custodian, PgCount, ProdVolume, Record Type, Confidential, Redacted, Extracted Text.

c. The Producing Party will not deny reasonable requests from the Receiving Party that produced documents be re-produced in native form or in color but reserves the right to deny such requests on privilege or privacy grounds or based on undue burden or cost to the Producing Party.

d. The Parties agree not to degrade the searchability of documents as part of the document production process.

6. PRIVILEGE LOG AND DOCUMENTS PROTECTED FROM DISCOVERY

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

Except as otherwise ordered by the Court, within 30 days of a production, the Producing Party shall provide its first privilege log in Excel format populated exclusively with the following extracted metadata fields: Custodian/Duplicate Custodian, From, To, CC, BCC, Subject, Author, File Name, File Path, Date Created, Date Last Modified, Last Modified By, and Basis of Withholding/Redaction. The Producing Party shall provide supplemental logs within 30 days of each production on a rolling basis. If the Producing Party needs additional time to prepare a log, the Parties will meet and confer regarding an appropriate extension. Multiple redactions in one document will be addressed in one log entry with enough information to understand the basis of each redaction. The Parties shall meet and confer to reach an agreement on any internal redactions if the Producing Party intends to apply such redactions to otherwise responsive documents. Privileged documents dated on or after October 9, 2023 need not be logged.

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7. MODIFICATION

This ESI Protocol may be modified by written agreement of the Parties or for good cause shown. Should any Party subsequently determine in good faith that it cannot proceed as required by this Protocol or that the Protocol requires modification, the Parties will meet and confer to resolve any dispute before seeking Court intervention. Any such dispute must follow Local Rule 37.1.

IT IS SO ORDERED.

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/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

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Dated: July 22, 2024

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APPENDIX 1

TECHNICAL SPECIFICATIONS FOR DOCUMENT PRODUCTION

GENERAL INSTRUCTIONS

      1.   Imaging: A placeholder image that conforms to the TIFF specifications detailed below should be provided for Native Productions. The placeholder should contain the confidentiality designation (if any), Bates number, and text stating that the document has been produced in native format. Records not provided in native format should be produced as single-page, Group IV, 300 DPI, 1-bit, black-and-white TIFF images.

      2.   Color: Where color is required to fully comprehend or interpret a document, such as photographs and certain charts, the document shall be produced as color PDFs or as single-page, 300 DPI, minimum quality level 75, 24-bit color JPG images. An Images folder on the production deliverable should contain a separate TIFF or JPG file named with the corresponding Bates number. Images should show all information visible using native software. For example, images of email messages should include the BCC and Attachments lines. The Producing Party will reproduce in color documents originally produced in black-and-white upon reasonable request from the Requesting Party. If the Producing Party may rely on a color version of a document it produces, the color version will be provided.

      3.   Document Numbering: Documents must be uniquely and sequentially Bates-numbered across the entire production, with an endorsement burned into each image, to the extent so practicable. Each Bates number shall be of a consistent length, include leading zeros in the number, and unique for each produced page. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted. Under no circumstances should Bates numbers contain embedded spaces, slashes (/), backslashes (\), carats (^), , ampersands (&), hash marks (#), plus signs (+),

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percent signs (%), dollar signs ($), exclamation marks (!), pipes (|), any character used as a delimiter in the metadata load files, or any character not allowed in Windows file-naming convention (,\ / : * ? " < > | ~ @ ^). Bates numbers may contain hyphens (-) or underscores (_).

4.   De-Duplication: The Producing Party will make good faith, commercially reasonable efforts remove exact duplicate documents at the family level to the extent practicable. Attachments should not be eliminated as duplicates for purposes of production, unless the parent e-mail and all attachments are also duplicates. An e-mail that includes content in the BCC or other blind copy field shall not be treated as a duplicate of an e-mail that does not include identical content in those fields, even if all remaining content in the e-mail is identical. Removal of near-duplicate documents is not acceptable. De-duplication should be done across the entire collection (global de-duplication).

5.   Email Thread: Email thread suppression techniques will not be applied in production without written agreement of all parties, although such techniques may be used as a review tool.

LOAD FILES

Load File	Format
Image Load File	Opticon .opt
Database Load File	Delimited .dat with field header information on the first line of the file. Concordance default delimiters should be used.

METADATA FIELDS

Field Name	Description
BegBates	First Bates number
EndBates	Last Bates number
BegBatesAttach	First Bates number of the first document of a family
EndBatesAttach	Last Bates number of the last document of a family

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Custodian[1]	Custodian of a file when collected
PgCount	Number of pages of a document
ProdVolume	Name of an export volume
RecordType	Indicates the type of ESI or "Hard Copy" for paper documents
FileSize	Size in bytes of the native file
MD5HashValue	MD5 hash value assigned to a document
ExtractedText	Relative file path to the produced extracted text or OCR file
Confidential	Populated for all documents with a confidentiality designation
Redacted	"Has Redactions" or "Yes" populated for all documents containing redactions
FileName	Original file name of a document
NativePath	Relative file path to the produced native file
Title	Extracted title of a non-email document
Author	Extracted author of a non-email document
TimeZone	Time zone used for processing data
Date/Time Created	Date and time a document was created
Date/Time Last	Date and time a document was last modified
LastSavedBy	Last saved or modified by property of a document
From	Name (when available) and email address(es) of the sender of an email
To	Name(s) (when available) and email address(es) of the recipient(s) of an email
CC	Name(s) (when available) and email address(es) of person(s) copied on an email
BCC	Name(s) (when available) and email address(es) of person(s) blind copied on an email
EmailSubject	Subject of an email message
Date/TimeReceived	Date and time an email message was received
Date/TimeSent	Date and time an email message was sent
EmailFolder	Folder in which a custodian stored an email
AttachmentList	File names for all attachments to an email message or child email
AttachCount	Number of files attached to an email message or parent email

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[1] **All Custodians**, a field that identifies all custodians of a document, shall be provided when the Producing Party incorporates a deduplication in their production workflow.