

[Your Name/Law Firm]
[Your Address]
[City, State, Zip Code]
[Phone Number]
[Email Address]

[Date]

[Opposing Counsel Name]
[Opposing Law Firm]
[Address]
[City, State, Zip Code]

Re: [Case Name / Case Number] - Meet and Confer Regarding ESI Protocols and Cost-Shifting

Dear [Opposing Counsel Name],

I am writing to initiate a meet and confer session pursuant to [Applicable Local Rule or Civil Procedure Rule] regarding the Electronically Stored Information (ESI) protocols and the associated costs of production in the above-referenced matter.

Based on our preliminary review of the discovery requests and the potential volume of data, we believe that the production of ESI will involve extraordinary efforts and significant expense. Specifically, we have identified the following issues that necessitate a discussion on cost-shifting:

- **Inaccessible Data:** A portion of the requested information is stored on [backup tapes/legacy systems/archived servers] and is not reasonably accessible because of undue burden or cost.
- **Scope of Searches:** The current search terms and date ranges proposed by [Plaintiff/Defendant] are overbroad and likely to produce a high volume of non-responsive or privileged material.
- **Specialized Processing:** The need for [forensic imaging/specialized data extraction/proprietary software conversion] will require the retention of outside vendors.

Under the principles established in *Zubulake v. UBS Warburg* and [State Specific Case Law], we propose that the costs of restoration, searching, and hosting these materials be shifted to the requesting party, or at a minimum, shared proportionately between the parties.

We would like to discuss potential ways to limit these costs, including:

1. Narrowing the list of key custodians.
2. Refining Boolean search terms and using technology-assisted review (TAR).
3. Implementing a "clawback" agreement under Federal Rule of Evidence 502(d) to reduce privilege review time.

4. Phased discovery starting with the most accessible data sources.

Please let me know your availability for a telephonic conference on [Date] at [Time], or suggest an alternative time this week. We hope to reach a stipulated ESI protocol that avoids the need for motion practice before the Court.

Sincerely,

[Your Signature]

[Your Printed Name]