

1 MELANIE L. PROCTOR
 Assistant Chief Counsel (#228971)
 melanie.proctor@dfeh.ca.gov
 2 JENNIFER H. SPERLING (#310551)
 Associate Chief Counsel
 jennifer.sperling@dfeh.ca.gov
 3 MATTHEW TURNBULL
 Staff Counsel (#307271)
 matthew.turnbull@dfeh.ca.gov
 4 DEPARTMENT OF FAIR EMPLOYMENT
 AND HOUSING
 2218 Kausen Drive, Suite 100
 5 Elk Grove, CA 95758
 Telephone: (916) 478-7251
 6 Facsimile: (888) 382-5293

7 Attorneys for Plaintiff,
 Department of Fair Employment and Housing

8
 9 T. Scott Belden, SBN 184387
 scott@bbr.law
 10 Jazmine Flores, SBN 317038
 jazmine@bbr.law
 11 Misty B. Franklin, SBN 337615
 misty@bbr.law

12 BELDEN BLAINE RAYTIS, LLP
 5016 California Avenue, Suite 3
 13 Bakersfield, California 93309
 Telephone: (661) 864-7826
 14 Facsimile: (661) 878-9797

15 Attorneys for Defendant
 GRIMMWAY ENTERPRISES, INC.,
 16 d.b.a. GRIMMWAY FARMS

17
 18
 19 **UNITED STATES DISTRICT COURT**
 20 **EASTERN DISTRICT OF CALIFORNIA**

21 DEPARTMENT OF FAIR EMPLOYMENT
 AND HOUSING, an agency of the State of
 22 California,

23 Plaintiff,

24 vs.

25 GRIMMWAY ENTERPRISES, INC., d.b.a.
 26 GRIMMWAY FARMS,

27 Defendants.
 28

Case No.: 2:21-cv-01552-KJM-AC

**STIPULATED ESI AND DOCUMENT
 PRODUCTION PROTOCOL AND
 [PROPOSED] ORDER**

Assigned to Honorable Kimberly J. Mueller

Complaint Filed: August 30, 2021

Trial Date: None

1 Plaintiff Department of Fair Employment and Housing (“DFEH”) and Defendant Grimmway
2 Enterprises, Inc., d.b.a., Grimmway Farms (“Grimmway”) (each a Party, and together, the “Parties”)
3 jointly submit this stipulated ESI and document production protocol and proposed order in the above-
4 captioned action (the “Litigation”).

5 The procedures and protocols outlined herein govern the production of electronically stored
6 information and paper documents by the Parties during the pendency of this Litigation. The production
7 formats for any other materials, including the materials exchanged between the parties pre-litigation,
8 will be addressed by the parties after a meet and confer regarding the specific item or category of items.

9 **A. Duty of Cooperation**

10 The Parties acknowledge their duty to work together cooperatively throughout the discovery
11 process.

12 **B. Definitions**

13 1. **“Custodian”** means an individual who has possession, custody, or control of documents
14 or information related to this Litigation.

15 2. **“Custodial Data Source”** means any source of Documents, Electronic Documents or
16 Data, or ESI kept by a particular Custodian, including, without limitation, local hard drives, network
17 home or personal file shares, removable storage, email, removable storage media, on-line data storage
18 such as Dropbox or Google Drive, messaging applications, phones, tablets, social media, and physical
19 files.

20 3. **“Confidentiality Designation”** means the legend affixed to Documents for Confidential
21 Discovery Information as defined by, and subject to, the terms of the Parties’ Stipulated Protective
22 Order in this Litigation.

23 4. **“Defendants”** means and refers to the named defendant(s) in the above-captioned matter,
24 as well as any later added defendants.

25 5. **“Document”** is defined to be synonymous in meaning and equal in scope to the usage of
26 this term in Rules 26 and 34 of the Federal Rules of Civil Procedure. The term “Document” shall
27 include Hard-Copy Documents, Electronic Documents, and ESI as defined herein.

28 ///

1 6. **“Electronic Document or Data”** means Documents or Data existing in electronic form
2 at the time of collection, including but not limited to: e-mail or other means of electronic
3 communications, word processing files (e.g., Microsoft Word), computer presentations (e.g., PowerPoint
4 files), spreadsheets (e.g., Excel), and image files (e.g., jpg).

5 7. **“Electronically stored information”** or **“ESI,”** as used herein has the same meaning as
6 in Federal Rules of Civil Procedure 26 and 34.

7 8. **“Hard-Copy Document”** means Documents existing in paper form at the time of
8 collection.

9 9. **“Native Format”** means and refers to the format of ESI in which it was generated and/or
10 as used by the producing party in the usual course of its business and in its regularly conducted
11 activities. For example, the native format of an Excel workbook is a .xls or .xlsx file.

12 10. **“Metadata”** means: (i) structured, i.e., fielded, information embedded in a native file
13 which describes, *inter alia*, the characteristics, origins, usage, and/or validity of the electronic file; (ii)
14 information generated automatically by the operation of a computer or other information technology
15 system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user
16 of such system, (iii) information, such as Bates numbers, created during the course of processing
17 documents or ESI for production, and (iv) information collected during the course of collecting
18 documents or ESI, such as the name of the media device, or the Custodial or Non-Custodial data source
19 from which it was collected.

20 11. **“Media”** means an object or device, real or virtual, including but not limited to a disc,
21 tape, computer, or other device on which data is or was stored.

22 12. **“Non-Custodial Data”** means any source of Documents, Electronic Documents or Data,
23 or ESI not kept or maintained by any particular Custodian, including without limitation, databases, file
24 servers, SANs, NASs, email servers, web servers, on line data stores such as Dropbox, Box and Google
25 Drive, on line email systems such as Google Mail, communication or coordination platforms such as
26 Slack, document management systems (DMS), record management systems (RMS), content
27 management systems (CMS), departmental/project/collaborative/shared storage spaces, e-rooms,
28 structured data stores, application data, source code repositories, social media, source code repositories,

1 and hard-copy document repositories. Information that serves to identify or locate such material, such as
2 file inventories, file folders, indices, and metadata, are also included in this definition.

3 13. **“Optical Character Recognition”** or **“OCR”** means the process of recognizing, and
4 creating a file containing, visible text within an image.

5 14. **“And”** and **“or”** shall be construed conjunctively or disjunctively as necessary to make
6 their use inclusive rather than exclusive, e.g., **“and”** shall be construed to mean **“and/or”**.

7 15. **“Social Media”** means all means of communicating or posting information or content of
8 any sort on the Internet, including but not limited to Facebook, Twitter, Youtube, or any “blog” or web
9 journal.

10 16. **“Include”** and **“Including”** shall be construed to mean “include but not be limited to”
11 and “including, but not limited to,”.

12 17. Reference to the singular shall also be deemed to refer to the plural, and vice-versa.

13 **C. Preservation**

14 1. The Parties represent that they have issued litigation hold notices to those Custodians
15 with data, and persons or entities responsible for maintenance of Non-Custodial data, which possibly
16 contain discoverable information, and have established procedures to ensure that those notices have been
17 received, understood and appropriately acted upon.

18 2. All backup, disaster recovery or archive media which may contain discoverable ESI that
19 is not otherwise available are being preserved.

20 3. All processes and procedures which would result in the elimination, or transfer to a less
21 accessible medium, of any unpreserved data and associated metadata which would otherwise be required
22 to be preserved or produced have been suspended.

23 4. Within thirty (30) days from entry of this Order, and thereafter as necessary, the Parties
24 will meet and confer about all Documents, Electronic Documents and Data, and ESI preservation
25 systems, including back-up, archive and disaster recovery systems, including those related to the
26 deletion, removal or transfer of data from a system or location, that possibly contain discoverable
27 information and methods to search these Data Sources in order to identify Documents, Electronic
28 Documents and Data, and ESI that is subject to production in discovery and filter out Documents,

1 Electronic Documents and Data, and ESI that is not subject to discovery. Nothing in this section waives
2 either Parties' right to seek this or related information through discovery, including through Federal
3 Rule of Civil Procedure 30(b)(6).

4 **D. Disclosure of Document and Data Sources**

5 18. Within thirty (30) days from entry of this Order, and thereafter as necessary, the Parties
6 will meet and confer about all Custodial and Non-Custodial Data Sources which possibly contain
7 discoverable information and methods to search these Data Sources in order to identify Documents,
8 Electronic Documents and Data, and ESI that is subject to production in discovery and filter out
9 Documents, Electronic Documents and Data, and ESI that are not subject to discovery. Nothing in this
10 section waives either Parties' right to seek this or related information through discovery, including
11 through Federal Rule of Civil Procedure 30(b)(6).

12 **E. Parties' Identification and Classification of Documents and ESI**

13 The Parties shall meet and confer with respect to the methodologies used by the Parties for
14 identification and classification of documents and ESI, including technology assisted review ("TAR")
15 and/or use of search terms.

16 **F. Documents with Insufficient Text**

17 Documents that are reasonably believed to be responsive and for which text-based search
18 technologies are fundamentally ineffective, such as images, spreadsheets, etc., must be reviewed without
19 culling by search terms, predictive coding, or other technologies that rely primarily on text.

20 **G. Social Media**

21 Recognizing that access to Social Media ESI may be limited by the provider of Social Media
22 platforms, and that such access can change rapidly with no notice to Parties, the Parties shall meet and
23 confer as to the collection and formats of production of responsive Social Media ESI, if any. Social
24 Media does not include a Party's own website such as Grimmway.com.

25 ///

26 ///

27 ///

28 ///

1 **H. Additional or Alternate Methodologies for Documents from Certain Custodians and Non-**
2 **Custodial Data Sources.**

3 Upon request, the Parties will meet and confer to address the need for and implementation of
4 additional or alternate methodologies for identifying possibly responsive documents from Custodial and
5 Non-Custodial Data Sources that may warrant such treatment.

6 **I. Mobile and Handheld Device Documents and Data.**

7 If responsive data that can reasonably be extracted and produced in the formats described herein
8 is identified on a mobile or handheld device, that data shall be produced in accordance with the generic
9 provisions of this protocol. To the extent that responsive data identified on a mobile or handheld device
10 is not susceptible to normal production protocols, the Parties will meet and confer to address the
11 identification, production, and production format of any responsive documents and data contained on
12 any mobile or handheld device.

13 **J. Other Filtering or Culling Technologies.**

14 The Parties will disclose any other proposed or use of technologies not specified herein to reduce
15 the number of documents identified for classification or to be reviewed or produced (*i.e.*, file type
16 culling, e-mail thread suppression, etc.).

17 **K. Production Format and Processing Specifications.**

18 1. All spreadsheet (e.g., Microsoft Excel) files shall be produced as native files.
19 Spreadsheet files requiring redaction, including Microsoft Excel files, will be redacted within the native
20 file, and the redacted native file will be produced as provided herein.

21 2. All word processing (e.g., Microsoft Word), presentation (e.g., Microsoft PowerPoint),
22 and emails shall be produced as native files, unless redactions are required, in which case such files shall
23 be produced as TIFFs or PDF files. A document's status as redacted does not relieve the producing party
24 from providing all of the available metadata as set forth in Paragraph 18 below.

25 3. All image (e.g., .jpg, .gif) and PDF files shall be produced as native files, TIFFs, or PDF
26 files, unless redactions are required, in which case such files shall be produced as TIFFs or PDF files. A
27 document's status as redacted does not relieve the producing party from providing all of the available
28 metadata as set forth in Paragraph 18 below.

1 4. All media files, such as audio and video files and digital photographs, shall be produced
2 as native files.

3 5. The Parties will meet and confer on the production format of less-commonly used file
4 types, such as CAD, GIS data, materials and prototypes testing, etc.

5 6. In advance of depositions, the Parties reserve the right to produce TIFF versions of any
6 previously produced native file at their discretion.

7 7. All ESI shall be produced with all available metadata. Redacted ESI, other than
8 spreadsheet files which will be produced as redacted native files, will be produced as TIFFs with
9 applicable metadata.

10 8. Foreign Language Documents. Hard-copy documents and ESI that contains languages
11 other than English, in whole or in part, shall be produced in the original language(s), along with all
12 existing translations.

13 9. Text Extracted from Emails. Text extracted from emails shall include all header
14 information that would be visible if the email was viewed in Outlook, to the extent reasonably possible
15 without incurring undue expense, including: (1) the individuals to whom the communication was
16 directed (“To”), (2) the author of the email communication (“From”), (3) who was copied and blind
17 copied on such email (“CC” and “BCC”), (4) the subject line of the email (“RE” or “Subject”), (5) the
18 date and time of the email, and (6) the names of any attachments to the extent reasonably possible
19 without incurring undue expense.

20 10. TIFFs of Redacted ESI. TIFFs or PDFs of redacted ESI shall include all non-redacted
21 elements and formatting which are visible in any view of the document in its native application.

22 11. Bates Numbers. All bates numbers will consist of a 3 digit Alpha Prefix, followed
23 immediately by an 8 digit numeric: AAA#####. There must be no spaces in the Bates number.
24 Any numbers with less than 8 digits will be front padded with zeros to reach the required 8 digits. The
25 producing party will brand all images in the lower right-hand corner with its corresponding bates
26 number, using a consistent font type and size. The Bates number must not obscure any part of the
27 underlying image. If the placement in the lower right-hand corner will result in obscuring the
28

1 underlying image, the Bates number should be placed as near to that position as possible while
2 preserving the underlying image.

3 12. Exception Files. The Parties will use reasonable efforts and standard industry practices to
4 address Documents that present imaging or form production problems (including encrypted and/or
5 protected files identified during the processing of ESI) (“Exception Files”). The Parties will meet and
6 confer regarding procedures that will be used to identify, access, and process Exception Files. If the
7 Parties cannot reach agreement on the handling of Exception Files through the meet and confer process,
8 the matter may be submitted to the Court for determination.

9 13. Databases, Structured, Aggregated or Application Data. The Parties will meet and confer
10 to address the production and production format of any responsive data contained in a database or other
11 structured or aggregated data source or otherwise maintained by an application. The Parties will
12 cooperate in the exchange of information concerning such databases and data sources to facilitate
13 discussions on productions and production format. If the Parties cannot reach agreement, the matter will
14 be decided by the Court or its designee.

15 14. De-NISTing. Electronic files will be De-NISTed, removing commercially available
16 operating system and application file information contained on the current NIST file list.

17 15. Lost, Destroyed or Irretrievable ESI. If a Party learns that responsive ESI that once
18 existed was lost, destroyed, or is no longer retrievable as a result of acts or circumstances not occurring
19 in the ordinary course of business, that Party shall comply with its obligations under the Federal Rules of
20 Civil Procedure to explain where and when the responsive ESI was last retrievable in its original format
21 and to disclose the circumstances surrounding the change in status of that responsive ESI, whether that
22 information is available from other sources, and whether any backup or copy of such original responsive
23 ESI exists. Nothing in this paragraph is intended to expand or limit the obligations under the Federal
24 Rules of Civil Procedure.

25 16. Scanning of Hard-Copy Documents. In scanning paper documents, documents are to be
26 produced as they are kept. For documents found in folders or other containers with labels, tabs, or other
27 identifying information, such labels and tabs shall be scanned where practicable. Pages with Post-It
28 notes shall be scanned both with and without the Post-it, with the image of the page with the Post-it

1 preceding the image of the page without the Post-It. The Parties will use best efforts to unitize
2 documents (*i.e.*, distinct documents should not be merged into a single record, and a single document
3 should not be split into multiple records), and maintain document relationships, *i.e.*, attachment status.
4 Original document orientation (*i.e.*, portrait v. landscape) should be maintained.

5 17. Proprietary Software. To the extent that relevant ESI cannot be rendered or reviewed
6 without the use of proprietary software, the Parties shall meet and confer to minimize any expense or
7 burden associated with the production of such documents in an acceptable format, including issues as
8 may arise with respect to obtaining access to any such software and operating manuals.

9 18. Confidentiality Treatment. The Parties have entered into a Stipulated Protective Order in
10 this matter, which specifies various confidentiality treatment levels for use in this matter.

11 a. The producing party will brand any confidentiality endorsements in a corner of any TIFF
12 images representing the produced item. Those endorsements must be in a consistent font
13 type and size and must not obscure any part of the underlying image or Bates number.

14 19. Redactions. No redactions for relevance may be made within a produced document or
15 ESI item. For redacted items which were originally ESI, all metadata fields will be provided and will
16 include all non-redacted data. A document's status as redacted does not relieve the producing party from
17 providing all of the metadata required herein.

18 20. Searchability. The Parties agree not to degrade the searchability of documents as part of
19 the document production process.

20 21. De-duplication. No document may be withheld as a duplicate, although parties may use
21 deduplication for their own internal review and other internal processes.

22 22. Email Threading. No email may be withheld because it is included in whole or in part in
23 a more inclusive email, although parties may use email threading for their own internal review and other
24 internal processes.

25 23. Color. Paper documents or redacted ESI that contain color necessary to decipher the
26 meaning, context, or content of the document or ESI shall be produced as single-page JPG images with a
27 high-quality setting as to not degrade the original image to the extent reasonably possible without
28 incurring undue expense.

1 24. Encrypted or Password-Protected ESI. For any ESI that is produced in encrypted format
2 or is password-protected, the producing party will provide the propounding party a means to gain access
3 to those native files (for example, by supplying passwords.)

4 25. Parent-Child Relationships. Parent-child relationships (the association between an
5 attachment and its parent document or between embedded documents or linked internal or non-public
6 documents and their parents) shall be preserved.

7 26. Family Groups. If any member of a family group is produced, all members of that group
8 must be also be produced or else logged as privileged, and no such member shall be withheld from
9 production as a duplicate.

10 27. Production Media. The producing party will use the appropriate electronic media (CD,
11 DVD or hard drive) or secure electronic transfer (such as Drop Box) for its ESI production, and, if
12 physical media is being provided, the Producing Party will cooperate in good faith to use the highest-
13 capacity available media to minimize associated overhead. The producing party will label the physical
14 media with the producing party, production date, media volume name, and document number range.
15 Any replacement Production Media will cross-reference the original Production Media, clearly identify
16 that it is a replacement and cross-reference the Bates Number range that is being replaced.

17 28. Write Protection and Preservation. All computer media that is capable of write protection
18 should be write-protected before production.

19 **L. Alternate Formats**

20 Notwithstanding the Parties' stipulations herein, upon reasonable request made by the Receiving
21 Party, if particular documents warrant different formats to be legible or accessible, the Parties shall
22 confer regarding the mutually acceptable production of such documents, which may be in an alternate
23 format of a document previously produced in accordance with this order.

24 **M. ESI Liaisons**

25 To promote transparency, communications, and cooperation between the Parties, the Parties shall
26 designate e-discovery liaisons for purposes of meeting and conferring on ESI topics. As proposed by the
27 Parties, the ESI liaison for Plaintiffs shall be Jennifer Sperling (contact information in caption), Matthew
28 Turnbull (contact information in caption), and Doug Forrest with ILS (contact information available

1 through DFEH) and the ESI liaison for Defendants shall be Scott Belden and Jazmine Flores, Esq., of
2 Belden Blaine Raytis, LLP (contact information in caption) and a representative of Grimmway who may
3 be contacted through counsel for Grimmway (contact information in caption). All productions of ESI by
4 any Party or non-party shall be sent to the Parties' respective ESI liaison and lead counsel, and any
5 identified designees.

6 **N. Privilege Log.**

7 Simultaneously with each production, Defendants shall provide Plaintiffs with a log of the
8 documents withheld or redacted for privilege, or on any other basis. The producing party or withholding
9 party shall comply with the provisions of the Federal Rules of Civil Procedure, Rule 26(b)(5).

10 **O. Limitations and Non-Waiver.**

11 This protocol provides a general framework for the production of ESI and paper documents on a
12 going forward basis. The Parties and their attorneys do not intend by this protocol to waive their rights
13 to the attorney-client or work-product privileges or other applicable privileges.

14 Pursuant to the Federal Rules of Evidence, Rule 502(d), the production of a privileged or work-
15 product-protected document, whether inadvertent or otherwise, is not by itself a waiver of privilege or
16 protection from discovery in this case or in any other federal or state proceeding. For example, the mere
17 production of privileged or work-product-protected documents in this case as part of a mass production
18 is not itself a waiver in this case or in any other federal or state proceeding.

19 **P. General Provisions.**

20 1. Any practice or procedure set forth herein may be varied by agreement of the Parties, and
21 first will be confirmed in writing, where such variance is deemed appropriate to facilitate the timely and
22 economical exchange of electronic data or other covered discovery materials.

23 ///

24 2. Should any Party subsequently determine in good faith that it cannot proceed as required
25 by this order or that the order requires modification, the Parties will meet and confer to resolve any
26 dispute before seeking Court intervention.

27 3. The Parties agree that e-discovery may be conducted in phases and the Parties will meet
28 and confer regarding the mechanics of phased discovery, including timing.

1 4. Nothing in this agreement relieves any Party claiming undue expense, of the evidentiary
2 burden under Federal Rule of Civil Procedure 26(b)(2)(B), on motion to compel.

3 SO STIPULATED.

4 Dated: May 30, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

6 By: /s/ Jennifer H. Sperling (as auth. 3/30/22)
7 Jennifer H. Sperling
8 Attorney for Plaintiff, Department of Fair Employment
and Housing


9 Dated: May 31, 2022

BELDEN BLAINE RAYTIS, LLP

11 By: /s/ Jazmine Flores
12 Jazmine Flores
13 Attorney for Defendant, Grimmway Enterprises, Inc., d.b.a.
Grimmway Farms

14 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

16 Dated: March 31, 2022

17 
18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE