appendix b: sample electronic discovery interrogatories and requests for production

Below are suggested interrogatories and requests for production that are meant to be complementary (i.e., any devices or electronic files that are identified in answer to an interrogatory or interrogatories are usually immediately requested in the follow-up request[s] for production).

For more detailed questions that you might want to include in interrogatories rather than in a deposition, see the sample deposition questions.

Sample Interrogatories and Requests for Production

[Note: The precise format for the following suggested interrogatories and requests for production of documents and things should be in accordance with the applicable civil and local rules of the court where the matter is filed.]

[suggested language for inclusion in preamble:]

I. Definitions

For the purposes of the following interrogatories and requests for production of documents and things, the following definitions apply:

Application Software: A set of electronic instructions, also known as a program, which instructs a computer to perform a specific set of processes.

Archive: A copy of data on a computer drive, or on a portion of a drive, maintained for historical reference.

Backup: A copy of active data, intended for use in restoration of data.

Computer: Includes but is not limited to network servers, desktops, laptops, notebook computers, employees' home computers, mainframes, the PDAs of [party name] and its employees (personal digital assistants, such as PalmPilot, Cassiopeia, HP Jornada and other such handheld computing devices), digital cell phones and pagers.

Data: Any and all information stored on media that may be accessed by a computer.

Digital Camera: A camera that stores still or moving pictures in a digital format (TIFF, GIF, etc.).

Document: Includes but is not limited to any electronically stored data on magnetic or optical storage media as an "active" file or files (readily readable by one or more computer applications or forensics software); any "deleted" but recoverable electronic files on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

Hard Drive: The primary hardware that a computer uses to store information, typically magnetized media on rotating disks.

Help Features/Documentation: Instructions that assist a user on how to set up and use a product including but not limited to software, manuals and instruction files.

Imaged Copy: A "mirror image" bit-by-bit copy of a hard drive (i.e., a complete replication of the physical drive).

Input Device: Any object that allows a user to communicate with a computer by entering information or issuing commands (e.g., keyboard, mouse or joystick).

Magnetic or Optical Storage Media: Include but are not limited to hard drives (also known as "hard disks"), backup tapes, CD-ROMs, DVD-ROMs, JAZ and Zip drives, and floppy disks.

Network: A group of connected computers that allow people to share information and equipment (e.g., local area network [LAN], wide area network [WAN], metropolitan area network [MAN], storage area network [SAN], peer-to-peer network, client-server network).

Operating System: Software that directs the overall activity of a computer (e.g., MS-DOS, Windows, Linux).

Network Operating System: Software that directs the overall activity of networked computers.

Software: Any set of instructions stored on computer-readable media that tells a computer what to do. Includes operating systems and applications.

Storage Devices: Any device that a computer uses to store information.

Storage Media: Storage media are any removable devices that store data.

II. Spoliation: getting information on preservation of information.

S1. Written policies on preservation of records

Interrogatory No._____:

Do you have a written policy for the retention of documents, including but not limited to business records?

Request for Production No._____:

Please produce copies of any and all written policies for the retention of documents, for the time period of _____ to _____ inclusive.

S2. Destruction of documents

Interrogatory No._____:

Do you have a written policy for the destruction of documents, including but not limited to business records?

Request for Production No._____:

Please produce copies of any and all written policies for the destruction of documents, for the time period of _____ to _____ inclusive.

Interrogatory No._____:

Has destruction or overwriting of documents been suspended? If so, on what date did suspension begin?

S3. Persons in charge of maintaining document retention and destruction policies

Interrogatory No._____:

Identified by job title, job description and business address and telephone number, who are all persons in charge of implementing the policies identified in your answer to Interrogatories 1 and 2 above?

Interrogatory No._____ :

If not the same person(s) as identified in your answer to the immediately preceding interrogatory, identify by job title, job description, and business address and telephone number, the person at [party name] who is the most knowledgeable about the retention and destruction of documents at [party name]?

Interrogatory No._____:

With respect to preventing the spoliation of documents and things that may potentially become evidence in litigation, please identify with particularity and in detail:

a. Whether the minutes of the meetings of the Board of Directors, from [date] to [date] contain any references to considerations or discussions of preventing such spoliation of potential evidence.

b. If so, state the dates of the meetings for which minutes were taken.

c. If so, state the name, title, job description, business address and telephone number of the person or persons with custody of those minutes.

Request for Production No._____:

Please produce all documents referenced in the immediately preceding interrogatory.

S4. Preservation of evidence

Interrogatory No._____:

Since [date of opposing party's awareness of client's claim or counterclaim, if not date of complaint, cross-claim or counterclaim], have any documents at [party name] been destroyed? If so, please state which electronic files have been deleted from the magnetic or optical storage media of [party name] or overwritten from that date to the present, and dates of destruction or overwriting.

S5. Storage of documents

Interrogatory No._____:

As to the storage of data generated by the users of your computers (such as word-processed files and e-mail), please state whether:

A. The data are backed up on tape or other media?

1. If so:
   i. How many such media currently exist with backup data on them?
   ii. What is the maximum storage size in megabytes for each such media?
   iii. What is the brand name for each such media?
   iv. When was the last time each such media was backed up with data?
   v. What software, including brand name and version number, was used to back up each such tape?
   vi. What was the computer or other hardware (e.g., individual workstation, server) for each such backup?
   vii. With respect to the immediately foregoing question, state the physical location and current user of each computer or other hardware listed.

Request for Production No._____:

Please produce all backup and/or archive media, for the time period of _____ to _____ inclusive.

III. Data Universe – identifying it

Interrogatory No._____:

Does or did [party name] maintain, or contract with another party to maintain, an overall inventory of data resources such as a Year 2000 Plan or Disaster Recovery Plan? If so, please provide the name, address, phone number and other contact information for the individuals primarily responsible for maintenance of the inventory and/or plan.

Request No._____:

Produce any and all company organizational and policy information in its entirety, including but not limited to organizational charts, corporate policy and procedure manuals, policy memoranda, system schematic, network topology, system restart procedures, e-mail retention policies, Year 2000 Plan, Disaster Recovery Plan, and other related items.

IV. Information personnel

Interrogatory No._____:

Provide a list of all personnel responsible for maintaining computer hardware, data or information systems on computers for [party name]. Include name, position title, contact information, and official job description and list of duties.

Request No._____:

Produce all formal and informal contact lists and duty rosters for personnel in Information Technology (IT) and Information Services (IS), or equivalent divisions within [party name]. Specifically include rosters for groups such as Incident Response Teams, Data Recovery Units, Audit/Investigation Teams, etc.

Request No._____:

Produce all formal job descriptions, assignments and personnel lists for IT and IS personnel, including revisions, for the period _____ to _____.

V. Loose media (including Backup and Archive)

Interrogatory No._____:

Does [party name] maintain a policy regarding use of loose or removable media in its workstations, computers or networks? If so, state the name of the person(s) responsible for creating and enforcing that policy.

Request No._____:

Provide a copy of the policy mentioned in the preceding interrogatory, as well as any revisions, records or logs related to formulation or enforcement of that policy for the period _____ to _____.

Request No._____:

Produce any and all devices used to place information on loose or removable storage media, including but not limited to hard drives, floppy drives, CD-ROM drives, tape drives, recordable DVD-ROM drives, and removable drives (e.g., Jaz, Syjet, Zip, SuperDisk). Include all instructions for use and maintenance of those devices.

Request No._____:

Produce any and all loose or removable media used to store data, including but not limited to floppy disks, CD-ROM discs and tape drive cartridges, that have been used by personnel or contractors of [party name] to perform work for [party name].

Request No._____:

Produce any and all backup and/or archived data [describe scope of data].

Request No._____:

All slack, wherever located, even if media contains nonproduced data.

VI. Computer hardware

Interrogatory No._____:

List all computer equipment provided by [party name] or used by employees of [party name] to perform work for [party name], including but not limited to hardware and/or peripherals attached to a computer such as computer cases [desktop, tower, portable/batteries, all-in-one], monitors, modems [internal, external], printers, keyboards, printers, scanners, mice [cord and cordless], pointing devices [joystick, touchpad, trackball] and speakers. Include description of equipment, serial number, all users for the period _____ to _____ and dates used, and all locations where the equipment was located for the period _____ to _____.

Interrogatory No._____:

Will [party name] permit, without an order therefore, inspection of the equipment mentioned in the preceding interrogatory?

Request No. [follow-up, if response to preceding interrogatory is negative] _____:

Please produce the following computers, including their magnetic or optical storage media, for inspection and copying, on or before [date], at the offices of [law firm] at [address]:

[list of computers you want image-copied, previously identified in discovery; alternatively, if you know the computer population is relatively small]:

Please produce your computers, including their magnetic or optical storage media, for inspection and copying, on or before [date], at the offices of [law firm] at [address]:

Interrogatory No._____:

List all hardware components (e.g., motherboard, modem, NIC, etc.) installed internally or externally to the PC(s) used by _____ during the period _____ to _____.

Request No._____:

Provide any and all documentation of software and hardware modifications to the PC(s) used by _____ during the period _____ to _____, including but not limited to modification dates, software/hardware titles and version numbers, names of persons performing modifications, location of any backup of the data on the computer performed prior to modification, and disposition of replaced software and hardware.

Request No._____:

Produce any and all documentation instructing in setup and use of the PC(s) used by _____ during the period _____ to _____, and hardware and software installed on that/those PC(s). Include any and all documentation reflecting communication with a computer professional or help desk for help in setting up and using the PC(s).

Interrogatory No._____:

List discarded or replaced hardware and software for the PC(s) (including entire PCs) used by _____ during the period _____ to _____. If the hardware or software is no longer in your control, then include the name and contact information of last known custodian.

VII. Computer Software

Request No._____:

Produce any and all software installed or used on the PC(s) used by _____ during the period ____ to _____. Include all titles and version numbers. Include authors and contact information for authors of custom or customized software. Include operating system(s) software.

VIII. Operating Systems

Interrogatory No._____:

List all operating systems (including but not limited to UNIX, Windows, DOS, Linux and PDA operating systems) installed on all computers used by [party name], the specific equipment the OS was installed on and the period during which it was installed on the specific equipment.

Request No._____:

Provide copies of all operating system software listed in the preceding interrogatory, and all supporting documentation provided with the software, and

any manuals and tutorials acquired by [party name] to support use of the software.

IX. Telephony

Interrogatory No._____:

Do you have any graphic representation of the components of your telephone and voice messaging system, and the relationship of those components to each other, including but not limited to flow charts, videos or photos, and diagrams?

Interrogatory No._____:

If so, where are the documents located? Include logical paths for electronic documents.

Request No._____:

Produce copies of any and all graphic representations of your telephone and voice messaging network, and the relationship of those components to each other, including any revisions, for the period of _____ to _____ inclusive. If the documents are electronic, please produce them in their native form, as they existed at the time they were drafted, based on archive or back-up data.

Interrogatory No._____:

List all telephone equipment provided by [party name] or used by employees of [party name] to perform work for [party name], including but not limited to desktop telephones, cell phones, pagers, PDA and laptop modems, calling cards, telephony software and contact management software. Include description of equipment and software, serial number, all users for the period of _____ to _____ inclusive and dates used, and all locations where the equipment was located for the period of _____ to _____ inclusive.

Interrogatory No._____:

Will [party name] permit, without an order therefore, inspection of the equipment mentioned in the preceding interrogatory?

Request No._____:

Produce any and all voice messaging records including but not limited to caller message recordings, digital voice recordings, interactive voice response unit (IVR/VRV) recordings, unified messaging files, and computer-based voice mail files to or from [specified parties] for the period _____ to _____.

Request No._____:

Produce all phone use records for [party name] including but not limited to logs of incoming and outgoing calls, invoices and contact management records, manually or automatically created or generated for the period from _____ to _____ inclusive.

X. Other sources of electronic evidence

Interrogatory No._____:

List all log files (files with suffixes) found on computers in [party name]'s network, and the equipment and logical path where the log files may be found.

Request No._____:

Provide copies of the following log files: [this is a follow-up request to the preceding interrogatory, issued after the list of log files has been reviewed]

Request No._____:

Produce any and all manual and automatic records of equipment use, including but not limited to fax, access, audit, security, e-mail, printing, error and transmission records.

Interrogatory No._____:

Do any employees of [party name] subscribe to or participate in Internet newsgroups or chat groups in the course of their employment? If so, list all users and the services that they subscribe to or participate in.

Request No._____:

Produce any and all information related to newsgroups or chat groups, including but not limited to names and passwords for each and every service, newsgroup messages, text files and programs used to access messages.

Interrogatory No._____:

Do any employees of [party name] use portable devices in the course of their employment that are not connected to [party name]'s network, and that are not backed up or archived? If so, list all users and the devices they use.

Request No._____:

Produce any and all portable devices not backed up or archived, including but

not limited to handheld devices, set-top boxes, notebook devices, CE devices, digital recorders, digital cameras and external storage devices.

Interrogatory No._____:

Does [party name] provide Internet access for any of its employees or has [party name] done so at any time during the period from ____ to _____ inclusive? If so, list the employees who had Internet access, the Internet service provider (ISP) used, and describe the method(s) used to connect to the Internet.

Request No._____:

Produce any and all documentation describing installation and use of hardware and software used by [party name] to provide Internet access for its employees during the period from _____ to _____ inclusive.

Request No._____:

Produce copies of all manuals, policies and other guidelines for employee access and use of Internet resources.

Interrogatory No._____:

Describe any restrictions on, controls over or monitoring of employee use of Internet resources.

Request No._____:

Provide any records generated as a result of restrictions on, controls over and monitoring of employee use of Internet resources.

Interrogatory No._____:

Provide a list of any and all Internet-related data on the PCs used by [specific employees or classes of employees], including but not limited to saved Web pages, lists of Web sites, URL addresses, Web browser software and settings, bookmarks, favorites, history lists, caches, cookies.

XI. Data security measures

Interrogatory No._____:

List any and all user identification numbers and passwords necessary to access computers or programs addressed in interrogatories and requests. Your response to this interrogatory must be updated with responses to future sets of interrogatories and requests and updated responses to any set of interrogatories and requests.

Interrogatory No._____:

Please provide copies of your computer security policies and procedures and the name and contact information for the person responsible for security.

Interrogatory No._____:

Please provide information about the security settings for the [program]. For example, please provide the security settings for the Exchange Server, noting who has administrative rights.

XII. Network questions

Request No._____:

Produce any and all documents and things related to networks or groups of connected computers that allow people to share information and equipment, including but not limited to local area networks (LANs), wide area networks (WANs), metropolitan area networks (MANs), storage area networks (SANs), peer-to-peer networks, client-server networks, integrated services digital networks and VPNs.

Request No._____:

Produce any and all components related to networks, including but not limited to information exchange components (e.g., Ethernet, token-ring, ATM), network work file servers, traffic, hubs, network interface cards, cables, firewalls, user names, passwords and intranet.

N1. System overview

Interrogatory No._____:

Do you have any graphic representation of the components of your computer network, and the relationship of those components to each other, including but not limited to flow charts, videos or photos, and drawings? Include network topology documents and network schemas in your response.

Interrogatory No._____:

If so, where are the documents located? Include logical paths and physical locations for electronic representations.

Request No._____:

Produce copies of any and all graphic representations of your computer network, and the relationship of those components to each other, including any revisions, for the period of _____ to _____ inclusive. If the documents are electronic, produce them in their native form, as they existed at the time they were drafted, based on version or backup data.

XIII. Electronic mail (e-mail)

Request No._____:

Produce any and all information related to e-mail, including but not limited to current, backed-up and archived programs, accounts, unified messaging, server-based e-mail, Web-based e-mail, dial-up e-mail, user names and addresses, domain names and addresses, e-mail messages, attachments, manual and automated mailing lists and mailing list addresses.