Form 3.2 Motion to Shift Costs for Reconstructive Electronic Data Discovery

UNITED STATES DISTRICT COURT

FOR A SAMPLE DISTRICT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

                                                                        )                                   Case [Form] No.: **3.2**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,                                         )

            Plaintiff,                                                )

                                                                        )

                 v.                                                    )

                                                                        )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,                                         )

            Defendant                                             )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_        )

Moving Party: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Respondent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Address of Respondent] \_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**MOTION TO SHIFT COSTS**

**FOR**

**RECONSTRUCTIVE ELECTRONIC DATA DISCOVERY**

The Movant, by and through his [or her] attorneys, hereby moves that this honorable court issue its order requiring the Responding Party to incur and pay the costs required to restore and copy electronic data from the computer(s) of the Respondent for the following reasons:

1. The Respondent submitted a Notice For Production to the Movant on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, requesting that certain documents be produced at the offices of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. The requested documents were described by the Respondent as follows: \_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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3. The Movant did fully comply with the Respondent demand in a timely manner; the Respondent, however, by way of an additional request, on \_\_\_\_\_\_\_\_\_, 20\_\_, required other documents and information that are no longer available and accessible to the Movant.

4. More particularly, the Respondent requested information that the Movant had deleted from its computer hard drive prior to \_\_\_\_\_\_\_\_\_, 20\_\_. It is therefore not within the Movant ability, skill or expertise to obtain the requested information.

5. The Movant affirmatively states that the subject information, which consists of the following files, was deleted in the ordinary course of its business and without any knowledge or reasonable indication that such information might be requested or needed at a future date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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6. The Respondent, dissatisfied with the preceding explanation, filed with this court a motion to require your movant to reconstruct the deleted information; this court granted that motion, notwithstanding the lack of expertise on the part of the Movant. Since the entry of the court order on \_\_\_\_\_\_\_\_\_, 20\_\_, your Movant has determined that the cost to comply with that order is approximately: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

7. The Respondent, not the Movant, should, pursuant to Rule 26(b)(2) of the Federal Rules of Civil Procedure, bear the entire cost of reconstruction for the following reasons:

[a] The Respondent request is extremely broad and is not specifically tailored to discover relevant information; in particular:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[b] The information requested by Respondent is available from other sources, and is far less expensive to obtain; those sources include but are not limited to the following:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[c] The total cost of reconstruction and production is, as previously indicated, \_\_\_\_\_\_\_\_\_\_\_\_\_, while the actual total amount in controversy is only \_\_\_\_\_\_\_\_\_, thereby rendering the Respondent request unreasonable under the circumstances.

[d] The Movant has limited resources and cannot afford to expend the sums required to comply with the Respondent request. The Respondent, on the other hand, has relatively unlimited resources.

[e] As the party that has initiated the subject Notice To Produce, the Respondent has the power to determine and control the costs required for its document demands. That respondent would, however, have no incentive whatsoever to control costs that are imposed upon an opposing party to this litigation.

[f] The alleged issues to be resolved by the Respondent request are not important for the following reasons:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[g] The information requested by the Respondent will be of no use to the Movant; on the other hand, assuming that the information were relevant, which it is not, the Respondent would be the only party to benefit from its reconstruction for the following reasons:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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8. For the foregoing reasons, requiring the Movant to bear the costs of complying with the Respondent demands would be burdensome, oppressive and unreasonable.

WHEREFORE, the Movant respectfully requests that this court issue its order requiring the Respondent to incur and pay the costs of reconstructing the information that it has requested or, in the alternative, apportioning those costs.

Date: \_\_\_\_\_\_\_\_\_\_, 20\_\_

                                                                                    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

                                                                                    Attorney For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Certification

Your undersigned counsel did, in good faith compliance with the applicable rules, contact opposing counsel to obtain concurrence in the relief requested in this motion; concurrence was refused.

Date: \_\_\_\_\_\_\_\_\_\_, 20\_\_

                                                                                    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

                                                                                    Attorney For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_