



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 19-C-9000

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REGARDING
DOCUMENT AND ELECTRONICALLY STORED
INFORMATION PRODUCTION PROTOCOL**

1. PURPOSE

This Order will govern production of Documents and ESI (as defined below) by Plaintiffs and Defendants (the “Parties”) as described in West Virginia Rules of Civil Procedure 26, 33, and 34. This Order shall apply to the production of hard-copy and electronic documents by the Parties in this litigation.

The production of Documents and ESI by the Parties also shall be subject to the provisions of orders concerning confidentiality, privilege, and/or protected health information as agreed to among the Parties and/or entered by the Court.

The Parties reserve all objections under the West Virginia Rules of Civil Procedure and applicable decision authority other than concerning matters that are addressed in this Order.

Nothing in this Order 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 discoverability, admissibility, or confidentiality of documents or ESI. Nothing in this Order shall be interpreted to supersede the provisions of any orders governing confidentiality, privilege, and/or protected health information entered by the Court in this litigation, unless expressly provided for in such an order.

2. DEFINITIONS

a. **“Confidentiality Designation”** means the legend affixed to Documents or ESI for confidential or highly confidential information as defined by, and subject to, the terms of the order concerning confidentiality agreed to and/or entered by the Court in this litigation.

b. **“Document”** is defined to be synonymous in meaning and equal in scope to the usage of this term in Rules 26 and 34 of the West Virginia Rules of Civil Procedure. The term “document” shall include hard-copy documents, electronic documents, and ESI as defined herein.

c. **“Electronic Document or Data”** means documents or data existing in electronic form at the time of collection, including but not limited to: e-mail or other means of electronic communications, word processing files (e.g., Microsoft Word), computer slide presentations (e.g., PowerPoint or Keynote slides), spreadsheets (e.g., Excel), and image files (e.g., PDF).

d. **“Electronically stored information”** or **“ESI,”** as used herein, has the same meaning as in Rules 26 and 34 of the West Virginia Rules of Civil Procedure and includes Electronic Documents or Data, and computer-generated information or data, stored in or on any storage media located on computers, file servers, disks, tape, USB drives, or other real or virtualized devices or media in the Parties’ possession, custody or control.

e. **“Extracted Full Text”** means the full text that is extracted electronically from native electronic files, and includes all header, footer, and document body information.

f. **“Hard-Copy Document”** means documents existing in paper form at the time of collection.

g. **“Hash Value”** is a unique numerical identifier that can be assigned to a file, a group of files, or a portion of a file, based on a standard mathematical algorithm applied to the characteristics of the data set. The most commonly used algorithms, known as MD5 and SHA,

will generate numerical values so distinctive that the chance that any two data sets will have the same Hash Value, no matter how similar they appear, is less than one in one billion.

h. “**Load files**” means an electronic file containing information identifying a set of paper-scanned images, processed ESI, or native format files, as well as the corresponding Extracted Full Text or OCR text files, containing agreed-upon extracted or user-created metadata, and information indicating unitization (i.e., document breaks and document relationships such as those between an email and its attachments) used to load that production set into the document review platform of the Party receiving a production (“Receiving Party”), that indicates where individual pages or files belong together as documents, including attachments, and where each document begins and ends. A load file is used to import all image, native, and text files and their corresponding production information into a document database. The Producing Party shall produce a load file for all produced documents with each particular production in accordance with specifications provided herein.

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

j. “**Metadata**” means: (i) information embedded in or associated with a native file that describes the characteristics, origins, usage, and/or validity of the electronic file; (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, sent, received, or otherwise manipulated by a user of such system, (iii) information, such as Bates numbers, redaction status, privilege status, or confidentiality status created during the course of processing documents or ESI for production, and (iv) information collected during the course of collecting documents or ESI, such as the name of the media device on which it was stored, or the custodian

or non-custodial data source from which it was collected. Nothing in this order shall require any party to manually populate the value for any metadata field.

k. **“Native Format”** or “native file” means the format of ESI in which it was generated and/or used by the Party Producing ESI or documents (the “Producing Party”) in the usual course of its business and in its regularly conducted activities. For example, the native format of an Excel workbook is an .xls or .xlsx file.

l. **“Optical Character Recognition”** or **“OCR”** means the optical character recognition technology used to read the text within electronic images of paper Documents and create a file containing a visible, searchable text format of such Documents.

m. **“Searchable Text”** means the native text extracted from an electronic document and any Optical Character Recognition text (“OCR text”) generated from the electronic image of a paper Document.

3. E-DISCOVERY LIAISON

The Parties will identify to each other liaisons who are and will be knowledgeable about and responsible for discussing their respective ESI (“E-discovery Liaisons”). Each Party’s designated E-discovery Liaison(s) will be, or will have access to those who are, familiar with their Party’s respective electronic systems and capabilities and knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The Parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

4. IDENTIFICATION OF DOCUMENTS AND ESI

a. The Parties agree to meet and confer to discuss (i) the identification of the custodial and noncustodial data sources containing potentially relevant ESI for potential collection, review, and production; (ii) additional parameters for scoping the review and production efforts (e.g.,

application of date ranges, de-NIST'ing, etc.); (iii) potential use and identification of search terms, tools, or techniques; (iv) the identification and production of documents and ESI from custodial and non-custodial sources that do not require the use of search terms, tools, or techniques; (v) the production format for documents redacted in accordance with this or any other Order; (vi) the method each Party proposes to use to identify and de-duplicate duplicate documents, and any exceptions to such de-duplication the Party proposes to implement; and (vii) the treatment of nonresponsive documents within parent-child families.

b. The Parties further agree to meet and confer to the extent that this Order imposes any undue burden or expense on any Plaintiff or Defendant with respect to its response to any particular discovery request.

c. Technology Assisted Review (“TAR”) and Similar Advanced Analytics: If a producing party elects to use TAR or similar advanced analytics as a means of including or excluding Documents to be reviewed for responsiveness or of culling or otherwise limiting the volume of information to be reviewed for responsiveness, prior to use of such tool the producing party shall disclose (1) the custodial data sources and non-custodial data sources against which TAR will be run; (2) the TAR or advanced analytics vendor and methodology being deployed; and (3) the quality control measures used to validate the results of the TAR methodology or similar advanced analytics.. To the extent a producing party proposes to use search terms to pre-cull ESI prior to applying TAR and/or advanced analytics, prior to doing so, they shall disclose their proposed search terms. If the requesting party wishes to meet and confer regarding the proposed terms, they must so notify the producing party within 10 business days, and the absence of such notice will constitute their agreement to and acceptance of the producing party’s proposed search terms.

d. Nothing in this order shall be deemed to be a waiver of any Party's right to reasonably seek agreement from the other Parties, or a Court ruling, to modify proposed or previously agreed-to search terms, techniques, or tools (including any proposed as supplements).

5. DEDUPLICATION

a. To the extent exact duplicate documents reside within a Party's ESI data set, the Party shall produce only a single, deduplicated copy of a responsive document. "Exact duplicate" shall mean bit-for-bit identity of the document content with exact hash value matches; so-called "near duplicates" will not be included within this definition.

b. To the extent a party de-duplicates its documents, it shall de-duplicate stand-alone documents or entire document families in their ESI sources by the use of MD5, SHA-1, or SHA256 hash values. Where any such documents have attachments, hash values must be identical for both the document plus-attachment (including associated metadata) as well as for any attachment (including associated metadata) standing alone.

c. A Producing Party shall de-duplicate documents across custodians and populate a field of data that identifies each custodian who had a copy of the produced document (the "Custodian" field); such de-duplicated documents shall be deemed produced from the custodial files of each such identified custodian for all purposes in this litigation, including for use at deposition and trial. A Producing Party shall use a uniform description of a particular custodian across productions. Multiple custodians in the "Custodian" field shall be separated by a semicolon. Entity/departmental custodians should be identified with a description of the entity or department to the extent applicable.

d. Email threads are email communications that contain prior or lesser-included email communications. A most inclusive email thread is one that contains all of the prior or lesser-included emails and attachments, including each branch of the email thread. A Producing Party

may not use e-mail thread suppression to exclude email from production unless the Producing Party also produces the metadata associated with the suppressed lesser-included emails; provided, however, that the parties may meet and confer and/or have their ESI vendors meet and confer to reach an agreement with the Requesting Party regarding the methodology used for suppression and means of preserving and producing metadata of any suppressed email.

e. No Party shall identify and/or eliminate duplicates by manual review or some method other than by use of the technical comparison using MD5 or SHA-1 hash values outlined above.

f. Hard-Copy Documents shall not be eliminated as duplicates of ESI.

g. If the Producing Party makes supplemental productions following an initial production, that Party also shall provide with each supplemental production an overlay file to allow the Receiving Party to update the “Duplicate Custodian” field. The overlay file shall include all custodians listed in the “Duplicate Custodian” field in prior productions and any custodians newly identified in the current supplemental production.

6. PRODUCTION FORMAT AND PROCESSING SPECIFICATIONS

a. Standard Format. Unless otherwise specified in Section 6(b) or pursuant to Section 6(k) below, the Parties shall produce documents in tagged image file format (“TIFF”). TIFFs of ESI shall convey the same information and image as the original document, including all commenting, versioning, and formatting that is visible in any view of the document in its native application. All hidden text will be expanded, extracted, and rendered in the TIFF file and, to the extent possible, the Producing Party will instruct its vendor to force off Auto Date. Any TIFFs produced shall be single-page, 300 DPI, Group IV TIFF files. After initial production in image file format is complete, a party must demonstrate particularized need for production of ESI in its native format.

b. Native Format. Except as provided by Section 6(k) below, the Parties shall produce all spreadsheets, computer slide presentations, audio files, video files, and other file types that cannot be accurately represented in TIFF format in native format, provided, however, that the Parties will meet and confer regarding appropriate format of production for databases and structured data (e.g., Microsoft Access, Oracle, or other proprietary databases). For each document produced in native format, a responding Party shall also produce a corresponding cover page in TIFF image format, specifying that the document has been “produced in native format” and endorsed with a sequential Bates Number and Confidentiality Designation, if applicable, which will be inserted into the image population in place of the native file. When the native file is produced, the Producing Party shall preserve the integrity of the electronic document’s contents, i.e., its original formatting and metadata.

c. Color. Documents containing color need not be produced in color. The Producing Party will honor reasonable requests for a color image of a document, if production in color is necessary to understand the meaning or content of the document. Documents produced in color will be produced in either TIFF or JPEG format.

d. Embedded Objects. If documents contain embedded files or objects, the Parties shall extract the embedded files or objects as separate documents and treat them like attachments to the document to the extent reasonably possible. Images embedded in emails need not be extracted and produced separately.

e. Load Files. Each production of ESI and Documents shall be accompanied by Concordance-format load file (.dat) and Opticon-format image load file (.opt). The .dat file, using standard Concordance delimiters, should contain a field with the full path and filename to files produced in native format and also contain metadata fields identified in Appendix A, to the extent

the information is available in the original ESI file and can be extracted without unreasonable burden using standard litigation support processing platforms (except for vendor-generated fields related to the litigation production, such as “BEGDOC”, “ENDDOC”, bases for redaction, and Confidentiality Designations).

f. .Txt Files. For all documents containing extracted full text or OCR text, the Producing Party shall provide searchable document level .txt files (named using the Bates start/”BEGDOC”).

g. Compressed Files. Compression file types (e.g., .CAB, .GZ, .RAR, .ZIP), shall be decompressed to ensure that a compressed file within a compressed file are decompressed into the lowest possible compression resulting in individual folders and/or files.

h. Bates Numbering and Other Unique Identifiers. Every item or file of ESI that is produced shall be identified by a unique page identifier (“Bates Number”) and a Production Volume Number for any storage device (e.g., CD, USB, hard drive) containing such files. All Bates numbers will consist of an Alpha Prefix — which shall uniquely identify the specific Party producing the document (*i.e.*, the specific Party from whose possession, custody, or control the document was obtained) — followed by a numeric page index. If a Party produces a document that was not in the possession, custody, or control of any party — such as a publicly-available report — the Party producing the document shall use an Alpha Prefix reflecting the non-party nature of the source and shall indicate the source of the document in the Custodian field of the metadata. There must be no spaces in any Bates number. Any numbers with less than 8 digits will be front padded with zeros to reach the required 8 digits. All ESI produced in TIFF format shall contain a unique Bates Number on each page of the document, electronically “burned” onto the image at a location that does not obliterate, conceal, or interfere with any information from the

source document. If a member of a document family that has otherwise been determined to be responsive cannot be technically processed (e.g., unsupported file format, file corruption, inaccessible password-protected document), those technical problems shall be identified and disclosed to the Receiving Party by production of a Bates-labeled slip sheet that states “Technical issue—file cannot be processed,” and identifying in the production’s accompanying DAT file any document requiring a technical issue slip sheet; the associated metadata for the file with the technical problem shall be produced if technically possible. A Receiving Party thereafter may raise with the Producing Party any questions or concerns, and the Parties shall meet and confer to attempt to resolve any issues.

i. Hard-Copy Documents. Generally, all paper documents will be scanned and produced electronically, unless a Party establishes good cause for making such documents available via paper and reasonable access is provided to the opposing Party to review the documents directly. In scanning all Hard-Copy Documents, Hard-Copy Documents should be logically unitized. Accordingly, distinct documents should not be merged into a single record, and single documents should not be split into multiple records. In the case of an organized compilation of separate documents (for example, a binder containing several separate documents behind numbered tabs), each of the Hard-Copy Documents should be separately scanned, but the relationship among the documents in the compilation should be reflected in the proper coding of the beginning and ending documents and attachment fields. The Parties will make their best efforts to unitize the documents correctly. Producing Hard-Copy Documents as provided herein does not change their character from Hard-Copy Documents into ESI. For Hard-Copy Documents, the Parties need only populate the following metadata fields: “BEGDOC,” “ENDDOC,” “PROD

VOLUME,” “CUSTODIAN,” “SOURCE,” “CONFIDENTIAL,” “REDACTION,” and “COMPANY” fields, as well as “BEGATTACH” and “ENDATTACH” fields where applicable.

j. Confidentiality Designation. To the extent any Document or ESI (or portion thereof) produced as a TIFF image in accordance with this Order is designated as confidential or highly confidential under the order concerning confidentiality agreed and/or entered in this litigation, the Producing Party will brand the required Confidentiality Designation in a corner of any TIFF images representing the produced item and in a consistent font type and size that does not obscure any part of the underlying image or Bates number, to the extent possible.

k. Assertion of Privileges. Any party that withholds the production of requested documents or materials on the ground of any privilege or application of the work-product doctrine must provide a privilege log, the contents of which are discussed below. Each party withholding materials shall provide opposing counsel a copy of the privilege log within forty-five (45) days after the production, absent agreement of the parties. If partial productions are made, the party shall, as noted below, produce a privilege log within forty-five (45) days of a production that substantially completes production for a particular custodian or non-custodial source.

The parties agree that West Virginia law governing privileges applies to privilege claims in this Litigation.

l. Specific Privilege Log Protocols.

1. Privilege logs shall be produced in Excel format that allows for text searching, sorting, and organization of data, and shall be produced either: (a) in a cumulative manner, so that each subsequent privilege log includes all privilege claims from prior logs; or (b) in installments using a consistent format so that the installments can be merged into a cumulative Excel spreadsheet by the receiving Parties.

2. The Designating Party shall produce a privilege log within forty-five (45) days of a production that substantially completes production for a particular custodian or non-custodial source. Stated another way, privilege logs shall be produced on a rolling basis so as not to delay production of privilege logs. The privilege log shall identify the documents or information redacted or withheld and the basis for any claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the Receiving Parties to assess the applicability of the privilege or protection. When the deposition of a custodian is scheduled for a date following the substantial completion of production of their custodial file, the parties shall make good faith efforts to provide privilege logs involving documents from the deponent's custodial file no fewer than ten (10) days prior to the deposition, unless otherwise negotiated and agreed to between counsel.

3. The Designating Party shall make a good faith effort to identify (in its privilege log cover letter) the primary production volume(s) and/or custodian(s) to which the privilege log relates.

4. With the exception of communications that fall within paragraph five (5) below, each log entry should include:

- a) a unique identifying number (separate from any Bates numbering), along with a separate column identifying the Bates number(s) of a document claimed to be privileged if produced in a redacted form;
- b) a description of the nature of the document, communication, or tangible thing (over which a privilege is asserted) in a manner that, without revealing information itself privileged or protected, will enable Receiving Parties to assess the claim;

- c) the date of the document or communication to the extent it is reasonably ascertainable;
- d) the authors and recipients of the document or communication, based on the From (or Author), To, CC, and BCC fields from electronically-generated metadata associated with the document, to the extent applicable and reasonably available. For email chains, the parties will provide information gathered from the metadata for the most recent email in the chain. For email chains where only the most recent email is listed on the privilege log, the log entry will identify the email as an email chain, and whether an email in the chain contains an attachment. Further, if the attorney(s) giving rise to the privilege claim is/are not within the metadata of the most recent email, the Designating Party will include the name(s) of any such attorney(s) within the description or comparable field that identifies such legal nexus;
- e) the subject of the document, based on the Subject field (or other similar category) from electronically-generated metadata associated with the document, to the extent applicable and reasonably available, understanding that the Designating Party may eliminate some or all of this information to the extent that it has a good faith belief that it would reveal information which is itself privileged;
- f) indication (e.g., with an asterisk) of which individual(s) (authors and recipients) are attorneys (or paralegals or other legal staff carrying out a legal function for an attorney); and

- g) the name of or other identifying information as to the produced source file in which the document subject to a privilege claim was found (and listing of the primary custodian constitutes sufficient identifying information).

5. As an exception to the requirements of paragraph four (4) above, a Designating Party need not log attorney-client communications or attorney work product regarding any actual or potential opioid litigation.

6. The Designating Party shall provide—either in the log entries or as a list in a separate Excel spreadsheet appendix to the log—the names that appear on the log along with corresponding email addresses or employer information to the extent such information is reasonably available and electronically generated from the metadata. To the extent that Listserv or group email addresses are provided (as a From (or Author), To, CC, or BCC), the Designating Party shall work in good faith to identify, upon request, individuals and/or groups of individuals which make up such Listservs or group emails.

7. To the extent that a party redacts any document it produces on the basis of attorney-client privilege, work product protection, or any other privilege, it shall be listed on the party's privilege log and produced within forty-five (45) days of production of said document as set forth in paragraphs one (1) through six (6) of this section, Section 6(k). To the extent that a party redacts any document for any non-privilege related reason (e.g., non-responsive and confidential, personal identifying information), that party shall either specify the basis of the redaction on the production image itself or produce a separate log of any such redactions within forty-five (45) days of production of said document. If the redacted document is placed on a log, the log shall follow the same format and include the same type of metadata and information as

outlined in paragraph four (4) of this section, Section 6(k). Any redactions (whether based upon any privilege or for any non-privilege related reason) applied to a document shall be made so that they are easily identified by the Receiving Party (e.g., in black blocks, not white blocks).

8. Although the parties shall make good faith efforts to meet the deadlines outlined in paragraph two (2) of this section, Section 6(k), this paragraph addresses the procedure to implement when certain privilege claims were not made 10 days prior to depositions. Within seven (7) days after a deposition notice is served, the party defending the deposition will notify the requesting party if there are any privileged or redacted documents from the witness's custodial file that have not yet been placed on a privilege or redaction log (which has been served). In addition to the written notice, within ten (10) days after a deposition notice is served, the parties shall meet and confer regarding the timing of providing a complete privilege log for the documents from the witness's custodial file, and shall promptly present any disputes regarding the privilege log (e.g., contents of or timing of production of the log) to the Discovery Commissioner.

9. Notwithstanding the provisions of this section, Section 6(k), for privilege logs that were first produced in the MDL or in other related opioid litigation, nothing in Section 6(k) shall require the Producing Party to redo or reproduce previously produced privilege logs to conform with Section 6(k). Privilege logs first produced in other related litigation may be reproduced in the same format that they were produced in the other related litigation.

m. Privilege Challenge Protocols.

1. The parties shall meet and confer in good faith, and endeavor to resolve any disputes (regarding privilege-related claims or challenges) before submitting such disputes to the Court or Discovery Commissioner for determination. The following procedure shall constitute

satisfaction of the good faith meet-and-confer requirement prior to submitting privilege-related disputes to the Court or Discovery Commissioner:

- a) A party challenging a Designating Party's claims of privilege, privilege redaction, other redaction, or work production protection, shall provide written notification of those challenges, including the bases for the challenges and/or requests for additional clarifying information, to the Designating Party, and offer to meet and confer with the Designating Party regarding same. The offer to meet and confer shall, except in emergent circumstances or as agreed to by the Challenging and Designating Parties or as ordered by the Discovery Commissioner or the Court, provide the Designating Party with multiple alternatives (dates and times) to meet and confer during the seven (7) day period following the date of the written challenge notification.
- b) Failure of the Challenging Party to provide written notification of its challenges or failure of the Challenging Party to offer to meet and confer as outlined above, shall prevent the Challenging Party from submitting its privilege-related challenge to the Court or Discovery Commissioner.
- c) If the Challenging Party provides written notification and an opportunity to meet and confer as outlined in paragraph 1(a) of this section, Section 6(1), the Designating Party shall meet and confer with the Challenging Party within the seven (7) day period following

the date of the written challenge notification, and shall provide the Challenging Party with a written response (providing further information supporting its claims and/or indicating which privilege claims, redactions, etc., the Designating Party maintains and which it withdraws, downgrades or modifies) within ten (10) days following the date of the written challenge notification. These time periods may be modified in emergent circumstances, as agreed to by the Challenging and Designating Parties, or as ordered by the Discovery Commissioner or the Court.

- d) Failure or refusal of the Designating Party to meet and confer with the Challenging Party (as outlined in paragraph 1(c) of this section, Section 6(1)) shall allow the Challenging Party to submit its privilege-related challenge to the Court or Discovery Commissioner. Failure or refusal of the Designating Party to provide a written response (as outlined in paragraph 1(c) of this section, Section 6(1)) shall allow the Challenging Party to submit its privilege-related challenge to the Court or Discovery Commissioner.
- e) The Designating Party bears the burden of demonstrating privilege.

2. The procedure outlined in paragraph one (1) of this section, Section 6(1), may result in the withdrawing or narrowing of privilege claims, privilege redactions, other redactions, or work product claims. To the extent that any such claims or redactions are downgraded, modified, or withdrawn by the Designating Party, as a result of the meet-and-confer

process outlined in paragraph one (1) of this section, Section 6(1), or on its own accord, the Designating Party shall, within fifteen (15) days, or within a time frame as agreed to by the Challenging and Designating Parties, or as ordered by the Discovery Commissioner or the Court, apply any such downgrades, modifications, or withdraws to any other similar claims or redactions, and provide written notice to the Challenging Party regarding which other privilege claims, privilege redactions, other redactions, or work product claims have been downgraded, modified, or withdrawn by the Designating Party.

3. For any challenges remaining following the above procedure outlined in paragraphs one (1) and two (2) of this section, Section 6(1), the Challenging Party can submit its remaining challenges to the Court or Discovery Commissioner according to the guidelines established above for submission of discovery disputes, or as otherwise agreed to by the Challenging Party and Designating Party.

n. Redactions. Consistent with this Order or any other order concerning privilege agreed and/or entered in this litigation, a Party may use redactions to protect attorney-client or work product privileges. Other than as permitted by this Order or the order concerning confidentiality agreed and/or entered in this litigation, no redactions for relevance may be made within a produced document or ESI item. Any redactions shall be clearly indicated on the face of the document, with each redacted portion of the document stating that it has been redacted and the basis for the redaction, and a metadata field shall indicate that the document contains redactions and the basis for redaction (e.g., "A/C Privilege"). Where a responsive document contains both redacted and nonredacted content, the Producing Party shall produce the remainder of the non-redacted portions of the document and the text/OCR corresponding to the non-redacted portions.

Email header information (e.g., date, subject line, etc.) should not be redacted unless it is independently privileged. The production of a document in a redacted form does not affect the Producing Party's obligation to timely assert and substantiate the assertion of privilege over the content in a Privilege Log. Redacted versions of computer slide presentations shall be produced in color in TIFF or JPEG format.¹ The Parties shall honor reasonable requests for the production of particular redacted documents in color and/or in other formats where the TIFF or JPEG image is not reasonably usable.

o. Parent-Child Relationships. The Parties acknowledge and agree that parent-child relationships within a document family (the association between an attachment and its parent document or between embedded documents and their parent) shall be preserved. Responsive non-privileged electronic documents attached to an email or embedded within other electronic documents and hard-copy documents attached or appended to hard-copy documents must be mapped to their parent by the beginning Bates number and immediately follow that parent file in the sequence of the production. For email attachments and embedded files or links, "BEGATTACH" and "ENDATTACH" fields listing the unique beginning Bates number of the parent documents and ending number of the last attachment must be populated for each child and parent document.

p. OCR. OCR software shall be set to the highest quality setting during processing.

q. Deviation from Production Specifications. If a particular document or category of documents warrant a different format, the Parties will cooperate in good faith to arrange for a mutually acceptable production format.

¹ If a Producing Party possesses technology that allows it to natively redact Excels and produce in native form, it may do so, so long as the redaction is clearly shown.

r. Productions from Other Proceedings. The production of documents made by Defendants in other civil investigations, litigations, and/or administrative actions by federal (including Congressional), state, or local government entities shall be made in the format in which they were previously produced, including any previously produced metadata, load files, and accompanying text files. Notwithstanding anything herein, documents and ESI produced in the MDL, and related privilege logs provided in the MDL, may be reproduced in this litigation in the same format as in the MDL. The instant order shall apply to all other documents and ESI produced specifically in this litigation or not otherwise produced in the MDL, including all privilege logs created specific to this litigation.

s. Password Protection. In the event any Document or ESI (or portion thereof) produced is password protected, the Producing Party shall make all reasonable efforts to provide access to the data or the password needed to access the document or ESI.

t. Use at Deposition. Any document produced in native format that a party identifies and/or marks as an exhibit at a deposition must include as part of that identification or exhibit the produced corresponding cover page in TIFF image format, endorsed with document's Bates Number and Confidentiality Designation, as described in Section 6(a), above.

7. PRODUCTION MEDIA

The Producing Party shall produce documents on readily accessible, computer or electronic media, including CD-ROM, DVD, external hard drive (with standard PC compatible interface), via secure FTP site, or such other readily accessible computer or electronic media as the Parties may agree (the "Production Media"). Each piece of Production Media shall be encrypted and assigned a production number or other unique identifying label ("Production Volume Number") corresponding to the date of the production of documents on the Production Media as well as the sequence of the material in that production, and shall include (a) the name of the litigation and the

case number; (b) the identity of the Producing Party; (c) the production date; (d) the Bates Number range of the materials contained on such Production Media item; and (e) the Production Volume Number of the Production Media. The Producing Party shall accompany all document productions with a transmittal cover letter identifying by Bates number the documents produced. If the Producing Party produces documents via secure FTP site, the Producing Party shall specify the date through which the materials will remain available via the secure FTP site and the Producing Party shall, within a reasonable time, accommodate requests from another Party or Parties that documents be reposted to the FTP site.

8. COST SHIFTING

The costs of production pursuant to this Order shall be borne by the Producing Party. However, in agreeing to this Order, no Party waives or relinquishes any right or interest it may have under the Rules of Civil Procedure to seek cost shifting or apportionment for the costs of electronic discovery.

9. THIRD-PARTY ESI

a. A Party that issues a non-Party subpoena (the “Issuing Party”) shall include a copy of this Order and the order concerning confidentiality agreed and/or entered in this litigation with the subpoena and state that the Parties in the litigation have requested that third-Parties produce documents in accordance with the specifications set forth herein.

b. The Issuing Party shall produce a copy to all other Parties of any documents and ESI (including any metadata) obtained under subpoena to a non-Party.

c. If the non-Party production is not Bates-stamped, the Issuing Party will endorse the non-Party production with unique Bates prefixes and numbering scheme prior to reproducing them to all other Parties.

10. BEST EFFORTS COMPLIANCE AND DISPUTES

The Parties agree to use their best efforts to comply with and resolve any differences concerning compliance with any provision/s of this Order. If a Producing Party cannot comply in a particular circumstance with this Order, such Party shall promptly inform the Receiving Party in writing why compliance with the Order is not reasonable or feasible. No Party may seek relief from the Court concerning compliance or non-compliance with the Order until it has met and conferred with the other Party in a good faith effort to resolve or narrow the area of disagreement.

11. MODIFICATION

This Order may be modified by a Stipulated Order of the Parties or by the Court for good cause shown.

It is so **ORDERED**.

ENTERED: July 31, 2020

Christopher C. Wilkes
Discovery Commissioner

Appendix A: ESI Metadata and Coding Fields

Field Name	Field Description	Populated For	Example Values
BegDoc	Bates number of the first page of the document.	All	Prefix-0000000001
EndDoc	Bates number of the last page of the document.	All	Prefix-0000000002
BegAttach	Bates number of the first page of the first document of the document family.	All	Prefix-0000000001
EndAttach	Bates number of the last page of the last document of the document family.	All	Prefix-0000000004
PageCount	Number of printed pages in the document.	All	2
Confidential	Confidentiality designation, if any, of the document	All	Confidential Highly Confidential
Custodian	<p>Names of all custodians, including duplicate custodians², who possessed the document, including deduplicated values, in format: Lastname, Firstname.</p> <p>Where multiple individuals share first and last name, individuals should be distinguished by an initial which is kept constant between productions. For instance: Smith, John A. and Smith, John B.</p> <p>For documents from centralized repositories where custodian name(s) are unavailable, identifying source information should be provided.</p>	All	Doe, John; Smith, John; Smith, Jane
DuplicateCustodian ³	Names of all other custodians who possessed the document.	ESI	

² The “Custodian” field may list a single custodian where the Producing Party’s technology uses the “DuplicateCustodian” to list the names of additional custodians that possessed the document. A party shall be consistent in its approach to using the “Custodian” field and, if applicable, the “DuplicateCustodian” field.

³ * For a Producing Party that has technology that contains a “Duplicate Custodian” field.

Field Name	Field Description	Populated For	Example Values
Source	Source shall be used in connection with document obtained from third-Parties and identify the third-Party having provided the particular material. If the third-Party's production of documents included individual custodian information, such information shall also be included in the "CUSTODIAN" field.		
Subject ESubject	Subject line of an e-mail.	E-mails	Text of the subject line
To	All recipients that were included on the "To" line of the e-mail.	E-mails	John.Doe@e-mail.com
From	The name and e-mail address of the sender of the e-mail.	E-mails	Jane.Doe@e-mail.com
CC	All recipients that were included on the "CC" line of the e-mail.	E-mails	Bill.Black@email.com
BCC	All recipients that were included on the "BCC" line of the e-mail.	E-mails	ceo-gs@email.com
DateSent	Date an e-mail was sent.	E-mails	01/01/2015
TimeSent	Time an e-mail was sent.	E-mails	12:30:00
DateModified	Date the document was last modified.	E-attachments; Electronic documents	01/01/2015
TimeModified	Time the document was last modified.	E-attachments; Electronic documents	12:30:00
DateCreated	Date the document was created.	Eattachments; Electronic documents	01/01/2015
TimeCreated	Time the document was created.	Eattachments; Electronic documents	12:30:00
FamilyDate	Date last modified or, for emails, sent date of the parent	Electronic documents; Eattachments	01/01/2015
FamilyTime	Time last modified or, for emails, sent time of the parent	Electronic documents; Eattachments	12:30:00
DateReceived	Date email was received.	E-mails	01/01/2015
TimeReceived	Time email was received.	E-mails	12:30:00

Field Name	Field Description	Populated For	Example Values
DateAccessed	Date document last accessed	Electronic documents; Eattachments	01/01/2015
DateLastPrinted	Date the document was last printed.	E-attachments; Electronic documents	01/01/2015
Time Last Printed	Time the document was last printed.	Eattachments; Electronic documents	12:30:00
Date Last Saved	Date the document was last saved.	Eattachments; Electronic documents	01/01/2015
Importance	Level assigned by creator	E-mails	High
Conversation	E-mail conversation designation	E-mail	Re: Smith Summary
ConversationIndex		E-mail	
Title/E-Title	Title of document	Eattachments; Electronic documents	Smith Summary
Redaction	Basis for redactions in document.	Eattachments; Electronic documents	
FileName	File name of original document	Electronic documents; Eattachments	Microsoft Word 2007/2010
FileType	Application type	Electronic documents; Eattachments	Word
FileSize	Size of file	All	40 gb
FileExtension	The file extension of the document.	Eattachments; Electronic documents	.doc
NativeLink	Relative file path to each native file on the production media.	All documents produced in native format	\\Natives\Document_12345.doc
Author	Document author/creator	Eattachments; Electronic documents	John Doe
Company	Party making the production	All	Company X
Title	Document Title	Eattachments; Electronic documents	Text of the title line

Field Name	Field Description	Populated For	Example Values
HASH	MD5 or SHA-1 Hash value	Electronic documents; Eattachments; E-mails	
ProdVolume	Production Volume	All	Defendant X Volume 1
File Path			
AttachDocID		Electronic documents; Eattachments; E-mails	
ATTACHNAME			
ATTACHRANGE			
FOREIGN LANGUAGE			
TIME ZONE PROCESSED			
E-LAST MODIFIED BY			
MESSAGE TYPE			
CALENDAR MEETING STOP/START			
RECORD TYPE			
HAS HIDDEN DATA			
HIDDEN COLUMNS			
HIDDEN NOTES			
HIDDEN ROWS			
HIDDEN SHEETS			
HIDDEN SHEETS COUNT			
HIDDEN SLIDES			
HIDDEN TEXT			
HIDDEN TRACK CHANGES			
HIDDEN VERY HIDDEN SHEETS			
HIDDEN VERY HIDDEN SHEETS COUNT			
HIDDEN WHITE TEXT			

Field Name	Field Description	Populated For	Example Values
HIDDEN WORKBOOK			
HIDDEN WORKBOOK WRITE PROTECTED			
MESSAGE ID			
NUMBER OF ATTACHMENTS			
ORIGINAL FOLDER PATH			
IS EMBEDDED			
TextPath	Relative file path to each extracted text/OCR text file on the production media.	All	\\Text\Document_12345.txt