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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AIDA CORRAL, On Behalf of Herself
and All Others Similarly Situated,
Plaintiff,

v.

ENERGIZER HOLDINGS INC., a
Missouri Corporation; PLAYTEX
PRODUCTS, LLC, fka PLAYTEX
PRODUCTS, INC., a Delaware
Corporation; SUN
PHARMACEUTICALS, LLC, a
Delaware Limited Liability Company

Defendants.

CASE NO. 1:12-CV-01736-AWI-SKO

**JOINT DOCUMENT COLLECTION
AND PRODUCTION PROTOCOL**

Courtroom 7, (6th Floor)
Magistrate Judge: Hon. Sheila K. Oberto

1 reference to the Federal Rules of Civil Procedure and case law construing same.

2 2. Unless otherwise specifically modified herein capitalized terms shall have
3 the meanings as set forth herein and throughout this stipulation.

4 A. **“Active Data.”** Information residing on the direct access storage media
5 that is readily visible to the operating system and/or application software with which it
6 was created, and that is accessible to end-users without the need for restoration or
7 reconstruction. By way of example only, Active Data shall not include deleted, erased,
8 overwritten, fragmented, or corrupted files; server, system or network logs; data stored
9 in random access memory (“RAM”) or cache memory; temporary or cache files;
10 internet “cookie files;” data stored in printers, copy machines, or fax machines; or data
11 for which legacy software or hardware is required to access or view the data.

12 B. **“Backup Data.”** A copy of ESI that serves as a source for recovery in the
13 event of a system problem or disaster, and that is routinely recycled or overwritten on a
14 set schedule for this purpose and is separately stored from Active Data.

15 C. **“Discoverable Information.”** Electronically Stored Information and
16 Documents that are the subject of the Parties’ respective propounded discovery requests
17 that are within the scope of Fed. R. Civ. P. 26 and 34, and that are not otherwise
18 objectionable, or subject to a claim of privilege, or other protection afforded to the
19 information. It is the Parties’ intent that their resulting collections and productions will
20 represent a reasonable effort on their part to identify and produce Discoverable
21 Information.

22 D. **“Database.”** Any active structured collection of electronically stored
23 information that uses a program, system, or application to store, access, search, process
24 and/or retrieve information to serve a specific operational task or purpose and for which
25 the ability to routinely alter, modify, or otherwise change the information, program,
26 system and/or application is integral to its purpose.

27 E. **“Document.”** Documents as defined in Fed. R. Civ. P. 34 (a) (1) (A).

28 F. **“ESI.”** Electronically Stored Information as used in the Federal Rules of

1 Civil Procedure.

2 G. **“Hash.”** The mathematical algorithm that represents a unique value for a
3 given set of data, similar to a digital fingerprint, including but not limited to MD5 and
4 SHA1 values.

5 H. **“Native Format.”** ESI that has an associated file structure defined by the
6 original creating application, (such as .ppt or .pptx for PowerPoint documents or, .xls or
7 .xlsx for Excel spreadsheets).

8 I. **“OCR (Optical Character Recognition).”** The technological process
9 that translates and converts printed matter on a document into a format that a computer
10 can recognize as letters or numerals for purposes of reading and/or searching the text of
11 the document.

12 J. **“Parent/Child.”** The relationship between a collection of pages or files
13 constituting a logical single communication of information, but consisting of more than
14 a single stand alone document. Examples include an e-mail with an attached Word
15 document – the e-mail being the “Parent” and the Word document being the “Child.”

16 **COLLECTION PROTOCOL**

17 **1. Collection Methodology.** The Parties may use any method or methods or
18 a combination thereof to collect Discoverable Information, provided that the Party
19 believes such method is designed in a manner to result in a reasonable inquiry and
20 efforts to locate Discoverable Information. Such methods include, but are not limited
21 to, the following:

22 A. Identification and/or interviews by the producing Party’s counsel of
23 custodians who are likely to possess Discoverable Information which is in the
24 possession, custody, or control of the Party, and an actual review by the producing
25 Parties’ counsel of the physical and electronic areas to which the custodian has access
26 and uses to save his/her information; or

27 B. The application of search queries designed by the producing Parties’
28 counsel to the electronic file locations identified as ones in which the custodians have

1 access to and store their ESI.

2 C. Nothing herein shall require the application of search queries to search
3 locations other than those locations that the custodians have identified or to which they
4 have access. Correspondingly search queries may be used but are not required to be
5 used in conducting the interviews of the custodians in the identifying their information
6 that is likely to contain Discoverable Information.

7 D. To the extent search queries are used, the queries will be conducted in a
8 manner so as to ensure that hyphenation of terms will not affect the search results (e.g.,
9 a query for “all inclusive index” will return documents containing either “all inclusive
10 index” or “all-inclusive index.”

11 E. To the extent search queries are used to identify documents (including e-
12 mail) containing attachments, they shall be run against both the parent document and
13 any child attachment. Documents and any related attachments returned as a result of the
14 search queries will be used to identify responsive Discoverable Information. Both the
15 parent document and any child-related attachment shall be collected, irrespective of
16 whether the search term hit appears in the parent document, the child attachment, or
17 both.

18 F. All queries, to the extent used, will be run in a non-case sensitive manner.

19 2. **Password Protected Information.** The Parties shall make reasonable
20 efforts to identify any potentially relevant ESI that is password protected or encrypted
21 and undertake to evaluate or remove those passwords or encryptions for purposes of
22 determining the document’s responsiveness to the discovery. In the event the Parties’
23 efforts to remove such passwords are unsuccessful, the producing Party shall provide an
24 “Exceptions Log” to the other Parties that identify those files (by filename and date).
25 The Parties shall not be required to provide information on passwords obtained or the
26 manner with which the password protected or encrypted files were made accessible.

27 3. **Reasonableness.** The Parties’ obligation to conduct a reasonable inquiry
28 for documents in response to propounded discovery shall be deemed to be satisfied by

1 their review and production of documents that are collected by utilizing the foregoing
2 protocols. The Parties shall have no obligation to search for or produce any further
3 documents that are not collected pursuant to the foregoing protocols, except as
4 otherwise agreed to in writing by the Parties. The Parties shall be required to search for
5 Active Data and/or only ESI residing on active systems and shall not be required to
6 restore or otherwise search Backups or any other inaccessible data, provided however
7 that to the extent a custodian's e-mail is saved, in whole or in part, in a .pst or similar
8 archived format on an active system, such archived e-mail shall be deemed to be Active
9 Data. Data which is not reasonably accessible shall be governed by Federal Rule of
10 Civil Procedure 26(b)(2)(B) and case law construing same.

11 4. **Responsiveness.** With respect to ESI, the fact that a document is returned
12 by application of the search queries and the protocols used herein from a custodian does
13 not mean that such document is responsive to any propounded discovery request or is
14 otherwise relevant to this litigation.

15 **PRIVILEGE**

16 1. **Scope of Log.** The Parties will not be required to create a privilege log
17 for any privileged information that came into existence on or after October 24, 2012.
18 Nor shall the Parties be required to prepare a privilege log for any and all documents or
19 information that may be protected by a Joint Prosecution or Joint Defense Privilege, if
20 any.

21 2. **Clawback of Privileged Documents.** Notwithstanding any other
22 provision of this Order, the production of documents by any Party will not operate as a
23 waiver of any common law or statutory privilege, protection, or immunity applicable to
24 those documents, including, but not limited to any attorney-client privilege, work
25 product protection, joint or common interest doctrine, information that is subject to
26 protection as trial preparation material, or that is protected from discovery by any other
27 applicable privilege, protection, immunity, law, or rules (collectively "Privileges"). If a
28 Party discloses, produces, or makes available for inspection and copying information

1 subject to any Privilege (“Disclosed Privileged Information”) such disclosure shall not
2 constitute or be deemed a waiver or forfeiture of any claim of such Privilege applicable
3 to such Disclosed Privileged Information or any related subject matter, in this litigation
4 or in any other court, administrative action, investigation, or legal proceeding.

5 **3. Procedures for Disclosed Privileged Information.** Any Party who
6 realizes that it, he, or she has produced or received Disclosed Privileged Information, as
7 soon as practicable, shall (i) notify, in writing, all other Parties and/or other persons
8 producing or receiving such information that disclosure was made, (ii) identify the
9 document(s) disclosed, (iii) make reasonable efforts to retrieve all copies of and prevent
10 further disclosure of the Disclosed Privileged Information, and (iv) refrain from using or
11 further disclosing the Disclosed Privileged Information (including, but not limited to,
12 using the information in depositions or at trial). Any person or entity receiving notice
13 that Disclosed Privileged Information has been produced shall, within five (5) business
14 days, return, destroy, sequester or delete all copies of the Disclosed Privileged
15 Information, as well as any abstracts, charts, memoranda, notes, summaries,
16 compilations, or indices of same, and provide a representation of counsel that all such
17 information has been returned, destroyed, sequestered or deleted. To the extent the
18 claim of Privilege is disputed, the Parties shall meet and confer to resolve any such
19 dispute, and in the event such dispute cannot be resolved, the Party receiving such
20 information may promptly present the information to the Court, under seal, pursuant to
21 the Local Rules of this Court, and seek such further relief from the Court regarding the
22 claim of Privilege. The Party claiming the Privilege shall preserve the Disclosed
23 Privileged Information until the claim of Privilege is resolved either by agreement of the
24 Parties or by the Court.

25 **4. Reasonableness of Privilege Procedure.** The Parties contemplate that
26 the documents that may be requested or produced in this case may be voluminous and
27 may be produced in this action without a full and complete privilege review. For the
28 sake of efficiency and mitigation of costs related to the production of documents, the

1 duplicate of the contents of the TIFF image, and the producing Party shall provide the
2 OCR in its “as is” condition. Once the producing Party provides the OCR in its “as is”
3 condition, its obligation under this stipulation with respect to OCR shall be deemed
4 complete. Paper documents shall be unitized in a manner so as to maintain the
5 document(s) and any attachments, as they are maintained in the usual course of
6 business.

7 ii. Paper documents that contain the equivalent of Post It Notes shall be
8 scanned with the notes affixed, if it can be done so in a manner so as not to obstruct
9 other content on the document. If the content of the document is obscured by the
10 affixed note, the document and note shall be scanned separately, and treated as a
11 parent/child relationship.

12 **B. Electronically Stored Information.** Subject to the provisions of
13 paragraphs “C” and “D” below, document images shall be generated from electronically
14 stored information in Group 4 compression single-page “TIFF” image that reflects the
15 full and complete information contained on the original document, together with an
16 accompanying Concordance (“.dat”) and Opticon (“.opt”) load file, containing extracted
17 searchable full text and the following fields of information, as applicable or their
18 functional equivalent:

19 BEGBATES | ENDBATES | PGCOUNT | SUBJECT | FILENAME|
20 FROM | TO| CC | BCC | SENTDATE | RECEIVEDDATE | MODDATE |
21 MD5HASH | BEGATTACH | ENDATTACH | CUSTODIAN |
CONFIDENTIALITY DESIGNATION | REDACTION PRESENT

22 **C. Spreadsheets and Presentations (e.g. PowerPoint).** Spreadsheets and
23 presentations such as PowerPoint or similar presentations shall be produced in their
24 native format with extracted searchable full text and the applicable fields of information
25 identified in the previous paragraph together with a placeholder image in TIFF format,
26 which shall be the native documents’ index page. The index page shall contain, a single
27 Bates number to be used for the native document and shall also display any
28 confidentiality designation for the native file.

D. Audio/Video and other Multi-Media Formats. These files shall be

1 produced in their native format, together with a placeholder image in TIFF format,
2 which shall be the native file index page. The index page shall contain a single Bates
3 number to be used for the native document and also display any confidentiality
4 designation for the native file.

5 **E. Databases, Intranets, Web Content and Social Media.** To the extent a
6 response to a Party's discovery requests requires production of electronically stored
7 information contained in a database, Website, Intranets, or Social Media site, in lieu of
8 producing the entire database, Website, Intranet, or Social Media site, the responding
9 Party shall provide: with respect to database(s) (i) the name of the program and database
10 in which the responsive information is contained, additional information to explain the
11 database scheme, codes, abbreviations, and the available report formats reflecting the
12 available fields of information, and generated reports responding to the requests. With
13 respect to web content, intranets, or social media sites, the responding Party shall
14 provide the name and address of the site which contains or did contain the responsive
15 information. Additionally, to the extent such site requires entry of a password and login
16 to access such site, counsel shall meet and confer, to discuss appropriate measures to
17 permit production of responsive information from such sites, as well as what database
18 reports can or should be generated to respond to the requests. No producing Party shall
19 be required to design reports not currently used in the ordinary course of its business
20 solely for this litigation.

21 **F. Embedded Documents.** If a document has another file embedded in it
22 (*e.g.* a Word document that has a spreadsheet embedded in it), the embedded documents
23 shall be produced as an attachment to the file in which it is embedded.

24 **G. Deduplication.** Electronically Stored Information may be de-duplicated
25 either by custodian or globally, at the producing Party's option using either the MD5 or
26 SHA1 values. Any de-duplication method used shall not eliminate individual documents
27 from families.

28 **H. Time Zone:** When processing potentially responsive documents for

1 production, all such documents shall be normalize to Coordinated Universal Time
2 (“UTC”).

3 **I. Color Documents.** Color documents, whether paper or ESI, shall be
4 produced in black and white in the first instance. If a produced document contains color
5 and that color is necessary to decipher the meaning, context, or content of the document,
6 the producing Party shall honor reasonable results for either: (i) access to the original
7 document for inspection and copying, or (ii) production of a color image of the
8 document.

9 **J. Production Media.** Responsive information shall be produced on a
10 DVD, external hard drive, or upon request of the producing Party, to the requesting
11 Parties’ designated FTP site, or on any other readily accessible computer or electronic
12 media as the producing Party and requesting Party may agree. Information that shall be
13 identified on the face of the production media shall include: (i) the case number; (ii) the
14 producing Party’s name; (iii) the production date; (iv) any confidentiality notation
15 required by any Protective Order entered in this case; and (v) the Bates number range
16 contained on the production media. If the producing Party encrypts or “locks” the
17 production, the producing Party shall include with the production an explanation of how
18 to decrypt the files.

19 **3. Use of Documents.** When documents produced in accordance with this
20 agreement are used in any proceeding herein, including depositions, hearings, or trial,
21 the TIFF image of the document shall be used, subject to all proper objections.
22 Metadata, OCR and/or extracted text shall not be used in any proceeding as a substitute
23 for an image of any document.

24 **4. Categorization of Production.** The Parties expressly waive the
25 provisions of Fed. R. Civ. P. 34 (b) (2) (E) and the subparts thereunder.

26 **5. Discoverability and Admissibility.** Nothing contained herein shall be
27 construed to affect the discoverability or admissibility of any document. All objections
28 to the discoverability or admissibility of any document is preserved and may be asserted

1 at any time.

2 6. **Identical Copies.** Nothing contained in this stipulation shall require the
3 Parties to produce more than one form of identical copies of a document, irrespective of
4 the original format of the document. The producing Party need only produce a single
5 copy of that document, and shall not be required to produce all forms of the document
6 (*i.e.*, paper and ESI).

7 7. **Meet and Confer.** The parties shall meet and confer regarding a dispute
8 or issues arising out of the implementation of this stipulation. All disputes arising out of
9 this stipulation shall be resolved with reference to the agreements contained herein and
10 the Federal Rules of Civil Procedure as set forth above.

11 8. **Resolution of Production Issues.** The Parties shall meet and confer to
12 the extent reasonably necessary to address issues within the producing Party's control
13 regarding the import and use of the produced materials with commercially available
14 document management or litigation support software. Documents that cannot be read
15 because of imaging or formatting problems shall be promptly identified within an
16 exceptions index by the requesting Party, which lists the document and reason(s) for the
17 exception ("Exceptions Index"). The producing Party and the requesting Party shall
18 meet and confer to attempt to resolve the issues with respect to Documents contained on
19 the Exceptions Index, to the extent the exceptions are within the Parties' control.

20 Dated: November 25, 2013

Respectfully submitted,

21
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Dated: November 25, 2013

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ORDER

The Court hereby approves and orders the document collection and production protocol pursuant to the parties' stipulation set forth above.

IT IS SO ORDERED.

Dated: December 6, 2013

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE