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[The parties and counsel
submitting this document
are listed on the page immediately
following this caption page.]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and
CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

 Plaintiffs,

 v.

STERLING CENTRECORP INC., STEPHEN
P. ELDER, and ELDER DEVELOPMENT,
INC.,

 Defendants.

No. 2:08-cv-02556-MCE-DB

**STIPULATION AND ORDER
GOVERNING RULE 69
DISCOVERY**

Judge: Morrison C. England, Jr.

Judgment Entered: March 20, 2018

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Attorneys for Defendant Sterling Centrecorp Inc. (now known as SC Inc.)

1 Plaintiffs the United States of America, on behalf of the Environmental Protection Agency
2 (“EPA”), and the California Department of Toxic Substances Control (“DTSC”), and Defendant
3 Sterling Centrecorp Inc. (which changed its name to SC Inc. in November 2018 but retains the same
4 Ontario Corporation Number, 1738393), hereby stipulate as follows:

5 WHEREAS, on March 20, 2018, the Court entered a final judgment in this action in favor of
6 Plaintiffs United States and DTSC and against Defendants Sterling Centrecorp Inc. (now known as
7 SC Inc.), Stephen P. Elder, and Elder Development, Inc. (Doc. No. 332);

8 WHEREAS, Plaintiffs issued a written demand to Defendant SC Inc. for payment of the
9 judgment on October 5, 2018, but SC Inc. has not paid the judgment and has not moved for a stay of
10 proceedings to enforce the judgment pursuant to Federal Rule of Civil Procedure 62;

11 WHEREAS, on March 5, 2019, the United States served discovery in aid of judgment or
12 execution on Defendant SC Inc. pursuant to Federal Rule of Civil Procedure 69(a)(2) (“Rule 69”);

13 WHEREAS, Plaintiffs expect to serve additional Rule 69 discovery on Defendant SC Inc.;

14 WHEREAS, Defendant SC Inc. seeks to reduce the time, expense and other burdens of
15 discovery of certain electronically stored information (“ESI”) and privileged materials, as described
16 further below, and to better define the scope of its obligations with respect to preserving such
17 information and materials in the context of Rule 69 discovery in this action;

18 WHEREAS, Counsel for the United States consulted with Defendant Stephen P. Elder on
19 May 16, 2019, and Mr. Elder granted his oral consent to the entry of this Stipulation and Order
20 Governing Rule 69 Discovery;

21 WHEREAS, Plaintiffs and Defendant SC Inc. therefore are entering into this Stipulation with
22 the request that the Court enter it as an Order;

23 It is hereby STIPULATED and ORDERED:

24 **1. Scope.** This Order is limited in scope to discovery conducted by Plaintiffs in this
25 action pursuant to Federal Rule of Civil Procedure 69(a)(2) in aid of collection or execution of the
26 judgment entered on March 20, 2018 against Defendant Sterling Centrecorp Inc. (now known as SC
27 Inc.).

1 **2. Preservation Not Required for Not Reasonably Accessible Electronic**
2 **Information.**

3 a. Except as provided in Paragraph 2.b below, Defendant SC Inc. need not
4 preserve the following categories of electronic information for purposes of this phase of the
5 litigation:

6 i. Data duplicated in any electronic backup system for the purpose of
7 system recovery or information restoration, including but not limited to, system recovery backup
8 tapes, continuity of operations systems, and data or system mirrors or shadows, if such data are
9 routinely purged, overwritten or otherwise made not reasonably accessible in accordance with an
10 established routine system maintenance policy;

11 ii. Electronic mail sent to or from a personal digital assistant (“PDA”) or
12 smartphone (e.g., BlackBerry) provided that a copy of such email is routinely preserved elsewhere;

13 iii. Other electronic data stored on a PDA or smartphone, such as calendar
14 or contract data or notes, provided that a copy of such information is routinely preserved elsewhere;

15 iv. Logs of calls made from cellular phones;

16 v. Deleted computer files, whether fragmented or whole;

17 vi. Data stored in random access memory (“RAM”), cache memory, or in
18 temporary or cache files, including internet history, web browser cache and cookie files, wherever
19 located;

20 vii. Data stored on photocopiers, scanners, and fax machines;

21 viii. Server, system, or network logs; and

22 ix. Electronic data temporarily stored by scientific equipment or attached
23 devices, provided that the data that is ordinarily preserved as part of a laboratory report is, in fact,
24 preserved in its ordinary location and form.

25 b. Notwithstanding Paragraph 2.a above, if on the date of this agreement
26 Defendant SC Inc. has a policy established by management that results in the routine preservation of
27 any of the categories of information identified in that paragraph, it shall continue to preserve such
28 information in accordance with its policy.

1 3. **Obligations Related to “Draft” Documents and “Non-Identical” Documents.** For
2 the purposes of preserving potentially discoverable material in this litigation, and for purposes of
3 discovery in this action, a “draft” document, regardless of whether it is in an electronic or hard copy
4 form, shall mean, “a preliminary version of a document that has been shared by the author with
5 another person (by email, print, or otherwise) or that the author no longer intends to finalize or to
6 share with another person.” In addition, a “non-identical” document is one that shows at least one
7 facial change such as the inclusion of highlights, underlining, marginalia, total pages, attachments,
8 markings, revisions, or the inclusion of tracked changes. Defendant SC Inc. need not preserve for
9 discovery a document before and after every change made to it, so long as “draft” documents, as
10 defined by this paragraph, are preserved. A document that is identical on its face to another
11 document, but has small detectable differences in the metadata, shall be considered an identical
12 copy.

13 4. **No Discovery of Material Not Required To Be Preserved.** Plaintiffs will not seek
14 discovery from Defendant SC Inc. of items that need not be preserved pursuant to Paragraphs 2 and
15 3 above. If any discovery request is susceptible of a construction which calls for the production of
16 items that need not be preserved pursuant to Paragraphs 2 and 3 above, such items need not be
17 searched for, produced, or identified on a privilege log pursuant to Fed. R. Civ. P. 26(b)(5).

18 5. **Preservation Does Not Affect Discoverability or Claims of Privilege.** By
19 preserving information for the purpose of this litigation, Defendant SC Inc. is not conceding that
20 such material is discoverable, nor is it waiving any claim of privilege. Except as otherwise provided
21 in Paragraph 10, nothing in this Stipulation shall alter the obligations of Defendant SC Inc. to
22 provide a privilege log for material withheld under a claim of privilege.

23 6. **Format for Production.** Plaintiffs and Defendant SC Inc. stipulate, and the Court
24 orders, the following methods of production:

25 a. Paper documents: At Defendant SC Inc.’s discretion, documents on paper may
26 be produced on paper or may be scanned and produced on CD-ROM, DVD-ROM, or external hard
27 drive.

1 b. Paper documents that are produced on disc shall be scanned as 300 dpi single-
2 page TIFF files, using CCITT Group IV compression. Each page shall be branded with a unique
3 Bates number, which shall not be an overlay of the image. The images shall be accompanied by: (1)
4 an Opticon™ or IPRO® “cross reference file” which associates each Bates number with its
5 corresponding single-page TIFF image file; and (2) a “text load file” containing comma delimited,
6 double-quotation qualified ASCII text which will populate fields in a searchable flat database
7 environment, containing one line for each document and each of the applicable fields as described in
8 Appendix A;

9 c. Word, WordPerfect, and PDF documents will be converted to single-page
10 TIFF images and produced consistent with the specifications in Paragraph 6.b above, except that the
11 text load file shall contain the extracted text from each document in place of OCR text, unless the
12 document contains redactions, in which case OCR text may be provided. If the document contains
13 comments or tracked changes, the TIFF images shall be generated based on how the document
14 appears when first opened using view settings contained in the file, and Plaintiffs shall have the
15 option, after reviewing the produced TIFF image, to request the native file;

16 d. Microsoft PowerPoint files will be processed and produced in the same
17 manner as Word, WordPerfect, and PDF documents, except that the images shall be generated as full
18 color, full page, JPEG images with one slide per page. Notes and other text that would not appear on
19 the screen in the presentation view need not be shown on the JPEG images. Plaintiffs shall have the
20 option, after reviewing the produced images, to request the native files;

21 e. E-mail and attachments should be converted to single-page TIFF images and
22 produced consistent with the specification in Paragraph 6.b above. If Defendant SC Inc. redacts any
23 part of the e-mail before producing it, OCR text may be provided in place of extracted text.
24 Attachments shall be processed as though they were separate documents, and the text load file shall
25 include a field in which the producing party shall identify, for each e-mail, the bates range of any
26 attachment;

1 f. Microsoft Excel files and other spreadsheets will be produced in native file
2 format in a separate folder on the production media, and the text load file shall contain a field that
3 identifies the file path of the native file corresponding to each document;

4 g. Digital photographs will be produced as image files at their original resolution
5 with bates numbers branded onto them;

6 h. Embedded files shall be treated as though they were separate files, except that
7 the text load file shall include a field in which the producing party shall identify, for each document
8 containing an embedded file, the bates range of any such embedded file. This bates range may be
9 identified in the same field as the Bates range of an e-mail attachment.

10 i. Before any party produces any other kinds of electronic data, including
11 databases, CAD drawings, GIS data, videos, etc., the parties will meet and confer to discuss the
12 format for the production;

13 j. The parties will meet and confer to identify mutually agreeable search terms
14 for email messages and other electronically stored information, however, this agreement to meet and
15 confer does not obligate Defendant SC Inc. to agree to perform an electronic search.

16 7. **Other Preservation Obligations Not Affected.** Nothing in this agreement shall
17 affect any other obligations of the parties to preserve documents or information for other purposes,
18 such as pursuant to court order, administrative order, statute, or in response to other anticipated
19 litigation.

20 8. **Meet and Confer Requirement.** Before filing any motion with the Court regarding
21 electronic discovery or evidence, the parties will meet and confer in a good faith attempt to resolve
22 such disputes.

23 9. **502(d) Order.**

24 a. Plaintiffs and Defendant SC Inc. agree that this Stipulation and Order from the
25 Court invokes the protections afforded by Rule 502(d) of the Federal Rules of Evidence.

26 b. The prosecution and defense of this phase of this action may require
27 Defendant SC Inc. to review and to disclose large quantities of information and documents,
28 including electronically stored information, through the Rule 69 discovery process. As a result,

1 record-by-record preproduction privilege review would likely impose an undue burden on Defendant
2 SC Inc.'s resources.

3 c. Defendant SC Inc. shall examine the files containing documents to be
4 produced and shall screen documents for privilege. Such examination shall be performed with due
5 regard for the likelihood that the files contain privileged documents, but may rely on sampling or
6 electronic searching.

7 d. If a producing party determines that it has produced a document upon which it
8 wishes to make a claim of privilege, it shall within 14 days give all counsel of record notice of the
9 claim of privilege. The notice shall identify the document(s) that is (are) privileged and the date the
10 document(s) was (were) produced. If the producing party claims that only a portion of the document
11 is privileged, it shall provide, along with the notice of the claim of privilege, a new copy of the
12 document with the allegedly privileged portions redacted.

13 e. A receiving party is under a good-faith obligation to notify the producing
14 party upon identification of a document which appears on its face or in light of facts known to the
15 receiving party to be potentially privileged. Such notification shall not waive the receiving party's
16 ability to subsequently challenge any assertion of privilege with respect to the identified document.
17 The producing party shall provide notice under subparagraph 9.d above within five (5) business days
18 of notification of production of a potentially privileged document by the receiving party if the
19 producing party believes the document to be privileged.

20 f. Upon receiving notice of a claim of privilege on a produced document, the
21 receiving party must, in accordance with Fed. R. Civ. P. 26(b)(5)(B), promptly sequester the
22 specified information and any copies it has and may not use or disclose the information, except as
23 provided by Fed. R. Civ. P. 26(b)(5)(B), until the claim is resolved. If the receiving party disclosed
24 the information before being notified, it must take reasonable steps to prevent further use of such
25 information until the claim is resolved. The parties will follow the procedure described in Fed. R.
26 Civ. P. 26(b)(5)(B) for documents produced in this litigation regardless of whether the producing
27 party asserts its claim of privilege during or after this litigation.

28

1 g. Pursuant to Federal Rule of Evidence 502(d), the disclosure of privileged
2 information or documents in discovery conducted in this phase of the litigation consistent with the
3 terms of this order shall not waive the claim of privilege or protection in any other federal or state
4 proceeding.

5 10. **Privileged Materials Located in the Offices of Outside Counsel.** Plaintiffs and
6 Defendant SC Inc. agree that, in response to discovery requests, Defendant SC Inc. need not search
7 for and produce, nor create a privilege log for, any privileged material located in the offices of its
8 outside counsel. Defendant SC Inc. shall not keep discoverable materials in the offices of outside
9 counsel unless a copy or duplicate of the materials is located elsewhere in the possession, custody, or
10 control of Defendant SC Inc. and such copy or duplicate is identical except for marks, notes, or
11 annotation provided by its outside counsel.

12 11. **Costs of Document Production.** A producing party shall bear the costs of producing
13 its own documents.

14
15 Respectfully submitted this 20th day of June, 2019,

16
17 FOR THE UNITED STATES OF AMERICA:

18 /s/ Leslie Coleman

19 LESLIE COLEMAN

20 PATRICIA L. HURST

PETER KRZYWICKI

Environmental Enforcement Section

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/s/ John W. Everett
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Deputy Attorney General

*Attorneys for Plaintiff California Dept. of
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*Attorneys for Defendant Sterling Centrecorp Inc. (now
known as SC Inc.)*

IT IS SO ORDERED.

Dated: June 25, 2019


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

Appendix A:
Fields to Exchange in Databases of Discovery Materials

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets	Digital Photos	Paper
Begin_Bates	Text	Bates number for the TIFF image of the first page	Bates number for the TIFF image of the first page	Bates number for the TIFF image of the first page, or, if spreadsheets are not TIFFed, the Bates number of the placeholder page	Bates number branded onto a TIFF file that has the same resolution as the native image file.	Bates number for the TIFF image of the first page
End_Bates	Text	Bates number for the TIFF image of the last page	Bates number for the TIFF image of the last page	Bates number for the TIFF image of the last page or, if spreadsheets are not TIFFed, the Bates number of the placeholder page	Bates number branded onto the native image file	Bates number for the TIFF image of the last page
Attachment	Text	Bates range of the attachments. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all documents (including e-mails) to which this file was attached or in which it was embedded. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all document that were physically attached by clips, staples, or binding. Only the first page of the first attachment and the last page of the last attachment are indicated.
Author	Paragraph	"From" field	<blank>	<blank>	<blank>	<blank>
To	Paragraph	"To" field	<blank>	<blank>	<blank>	<blank>
CC	Paragraph	"CC" field	<blank>	<blank>	<blank>	<blank>
BCC	Paragraph	"BCC" field	<blank>	<blank>	<blank>	<blank>
Subject	Paragraph	"Subject" field	<blank>	<blank>	<blank>	<blank>
DateSent	Date	The date and time the message was sent	<blank>	<blank>	<blank>	<blank>

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets	Digital Photos	Paper
Message_ID	Text	For e-mails in Microsoft Outlook, the "Message ID" field; For e-mail stored in Lotus Notes, the UNID field	<blank>	<blank>	<blank>	<blank>
Filename	Paragraph	<blank>	The name the file	The name the file	The name the file	<blank>
Native_File	Paragraph	<blank>	The path to the native file on the production media	The path to the native file on the production media	<blank>	<blank>
Text	Paragraph	Text extracted from the message body	Text extracted from the file. However, if the file does not contain text or if redactions were made, then OCR text shall be provided.	Text extracted from the file or if redactions were made, then OCR text shall be provided.	<blank>	OCR Text