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**UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA**

LILIANA CARDENAS, On Behalf of Herself  
 and All Other Similarly Situated California  
 Residents,

Plaintiff,

vs.

NBTY, INC., a Delaware corporation and  
 REXALL SUNDOWN, INC., a Florida  
 corporation,

Defendants.

) Case No. 2:11-cv-01615-LKK-CKD

)  
 ) **STIPULATION AND ORDER ON**  
 ) **PROTOCOL FOR PRODUCTION OF**  
 ) **ELECTRONICALLY STORED**  
 ) **INFORMATION**

1 After conferring on these matters, Plaintiff and Defendants in the above-captioned action  
2 (“the Litigation”) stipulate and agree to this Electronic Discovery Protocol (“EDP” or “Protocol”).  
3

4 **Application**

5 1. The procedures and provisions set forth in this Protocol govern the production of  
6 “documents” and “electronically stored information” (as those terms are used in the Federal Rules of  
7 Civil Procedure) that are stored in electronic format, including paper documents that have been  
8 converted to an electronic format (collectively, “ESI”), in the Litigation. This agreement does not  
9 address, limit, or determine the relevance, discoverability, agreement to produce, or admission into  
10 evidence of electronically stored information (“ESI”). The Parties are not waiving the right to seek  
11 any discovery and are not waiving any objections to any discovery requests, and will meet and  
12 confer separately on the scope of production of ESI in response to any discovery requests. In the  
13 event that a Party has agreed to produce a particular source of responsive documents or  
14 electronically stored information but application of this Protocol would be unduly burdensome or  
15 impractical, the Party identifying the source will promptly notify the other Parties, who will then  
16 meet and confer concerning appropriate modifications of this Protocol with respect to that source.  
17  
18

19 **Definitions**

20 2. “Discovery Materials” is defined as all products of discovery and all information  
21 derived there from, including, but not limited to, documents, objects and things, deposition  
22 testimony, interrogatory/request for admission responses, and any copies, excerpts or summaries  
23 thereof, produced by any Party in the above-captioned matter.

24 3. Plaintiff and Defendants, as well as their officers, directors, employees, agents, and  
25 legal counsel, are referred to as the “Parties” solely for the purposes of this Protocol.  
26

27 4. “Plaintiff” as used herein shall mean Liliana Cardenas, as well as any other  
28 individually named plaintiff in this case or in any case that is consolidated with this matter.

1 **Discovery from Other Proceedings.**

2 5. Within thirty (30) days after the entry of this Protocol, relevant discovery already  
3 produced by Defendants in other actions arising out of the promotion, marketing, distribution and  
4 sale of the Osteo Bi-Flex Products<sup>1</sup> and alleging unfair and deceptive health benefit claims,  
5 including other actions in federal court, state court, or state or governmental proceedings, will be  
6 produced in the same manner in which it was previously produced.  
7

8 6. With such production of documents previously produced, Defendants will also  
9 identify by name and position all custodians that have been previously identified as having  
10 responsive ESI in other litigation, as well as the sources of information that have been searched  
11 during prior ESI collection in other litigation.  
12

13 7. Within thirty (30) days after the production of materials from prior proceedings, the  
14 Requesting Party shall notify the Producing Party of any concerns they have with the form or content  
15 of the production, and the parties will meet and confer on those issues.  
16

17 8. To the extent that Plaintiffs request, and Defendants agree to produce, additional  
18 responsive information, paragraphs 9 through 24 below will govern the processing and production of  
19 that information.  
20

21 **Production of Data, Generally**

22 9. ESI, except for MS-Excel Worksheets, is to be produced in 300 DPI Group IV  
23 Monochrome Tagged Image File Format (.tiff or .tif) files. Tiff files shall be produced in single-page  
24 format along with image load files (.DII file and .OPT file and .LFP file). Except as described below  
25 for redacted documents, all documents are to be provided with extracted searchable text (.txt) files.  
26

27 <sup>1</sup> The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex  
28 Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy  
Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, “Osteo Bi-Flex” or “the  
Products”).

1           10.     During the process of converting ESI from the electronic format of the application in  
2 which the ESI is normally created, viewed, and/or modified to .tiff, metadata values should be  
3 extracted and produced in a load file (“metadata load file”). All electronic format documents will be  
4 produced with extracted searchable text files (.txt). The parties agree to meet and confer about (a)  
5 scanning the documents with optical character recognition (“OCR”) and (b) sharing in the cost of  
6 such OCR.  
7

8           11.     To the extent they are available, the metadata values that are to be extracted and  
9 produced in the metadata load files (.DAT file using concordance standard delimiters) are:

10 Metadata from Emails:

11 Email Subject  
12 Email Author  
13 Email Recipient  
14 Email cc  
15 Email bcc  
16 Email Received Date  
17 Email Received Time  
18 Email Sent Date  
19 Email Sent Time

Metadata from Electronic Files:

File Name  
File Author  
File Created Date  
File Created Time  
File Extension

Data for both Emails and Electronic Files:

Custodian  
Source  
Original Path  
MD5 Hash

20           12.     To the extent reasonably available, the “Custodian,” “Source” or “Original Path” field  
21 with respect to ESI gathered from an individual’s hard drive will produce metadata sufficient to  
22 identify the individual custodian from whose hard drive such ESI has been gathered.

23           13.     For all documents (for example, email) that contain an attachment, to the extent  
24 available, the following fields should be produced as part of the metadata load file to provide the  
25 parent/child or parent/sibling relationship:  
26  
27  
28

1 Production Number Begin  
 2 Production Number End  
 3 Production Attachment Range Number Begin  
 4 Production Attachment Range Number End  
 5 Attachment Name

6 **Data to be Processed**

7  
 8 14. Data will be collected from active application files that do not require forensic  
 9 recovery. The following file extensions will be processed. There may be relevant material  
 10 containing file extensions that are not yet known. The parties agree to meet and confer in good faith  
 11 regarding the production of those materials along with any inaccessible data or relational databases.

Excel	PowerPoint	Word	Email
XLS	PPT	DOC	PST
XLSX	PPTX	DOCX	OST
XLSB	PPTM	DOCM	MSG
XLTX	POTX	DOTX	EML
XLTM		DOTM	OFT
CSV		DOT	EDB
		RTF	NSF
Adobe Reader	Text Editors	Archive	
PDF	WPD	ZIP	
	TXT	RAR	

12  
 13  
 14  
 15  
 16  
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 18  
 19  
 20 15. The parties may de-duplicate identical ESI by custodian or across custodians. ESI  
 21 will be considered duplicative if it has the same content excluding metadata. **De-duplication** of  
 22 hard-copy documents may not be set at a threshold lower than 90%.

23 16. Except as described below for redacted documents, MS-Excel spreadsheets shall be  
 24 produced in native format. The metadata load file shall contain a record for each native file  
 25 produced. Each record shall contain a link to the produced MS-Excel spreadsheets via data values  
 26 called "Native Link." Natively produced MS-Excel files will be named after the Production Number  
 27 Begin (e.g., [Production Number Begin].xls). MS-Excel files will be produced with extracted  
 28

1 searchable text files (.txt).

2 17. Natively produced MS-Excel files will be accompanied by a reference file containing  
3 the name of the file and the bates number for each produced file.

4 **Production of Hard Copy Documents**

5 18. Hard copy documents will be scanned and provided in electronic format. The  
6 documents should be logically unitized (*i.e.*, contain correct document breaks: for example, a five-  
7 page fax consisting of a cover page and a four-page memo should be unitized as a five-page  
8 document). The parties agree to meet and confer about (1) scanning the documents with optical  
9 character recognition (“OCR”) and (2) sharing the costs of such OCR.

10 **Bates Numbering**

11 19. Bates numbers and any confidentiality designations should be electronically branded  
12 one each produced .tiff image. Additionally, Bates numbers should:  
13

- 14 a. Be consistent across the entire production;
- 15 b. Maintain a constant length (0-padded) across the entire production;
- 16 c. Contain no special characters or embedded spaces; and,
- 17 d. Be numerically sequential within a given document.

18 Attachments to documents will be assigned Bates numbers that directly follow the Bates numbers on  
19 the documents to which they were attached. If a Bates number or set of Bates numbers is skipped,  
20 the skipped number or set of numbers will be noted. In addition, wherever possible, each .tiff image  
21 will have its assigned Bates number electronically “burned” onto the image.  
22

23 **Treatment of Family Members**

24 20. Email families will be produced unless a member of the family is being entirely  
25 withheld on the basis of the attorney-client privilege, work product doctrine, or other applicable  
26 privilege or doctrine, or for purposes of relevance.  
27

28 21. Embedded documents will be extracted as separate documents when possible and

1 treated as attachments to the original document. Compressed file types must be decompressed as  
2 separate documents and treated as attachments to the original document.

3 **Production of Redacted Documents**

4 22. To the extent that any document contains information that is redacted, those  
5 documents shall be produced in the form of a redacted .tiff image.  
6

7 **Color**

8 21. Documents shall be produced in black and white in the first instance. If a produced  
9 document contains color and that color is necessary to decipher the meaning, context, or content of  
10 the document, the Producing Party shall honor reasonable requests for either the production of the  
11 original document for inspection and copying or production of a color image of a document but only  
12 after the Parties have met and conferred and agreed on cost sharing.  
13

14 **Production Media**

15 22. The Producing Party may provide ESI on either (a) readily accessible computer or  
16 electronic media, including without limitation CD\_ROM, DVD, external hard drive with standard  
17 PC-compatible interface, or such other media as the parties may agree (“Production Media”), or  
18 (b) through a secure, password-protected FTP link. If Production Media is provided, the Producing  
19 Party must affix a unique identifying label to each piece of Production Media, which must identify  
20 the date of the production and the corresponding production Bates range. The Producing Party may  
21 password-protect the Production Media so long as the corresponding password is provided to the  
22 Requesting Party at the time the Production Media is shipped. The Producing Party will only supply  
23 one copy of the Production Media to the Requesting Party. If additional copies of the Production  
24 Media are sought from the Producing Party, the Requesting Party must pay for the cost incurred by  
25 the Producing Party to prepare the additional copies of the media, along with the actual cost of the  
26 media used.  
27  
28

1 **Dispute Procedures**

2 23. The Parties agree to meet and confer to resolve any procedures or disputes that arise  
3 under this Protocol.

4 **Privilege Logs**

5 24. The Producing Party will produce privilege logs in Excel, Word or a similar  
6 electronic format that allows text searching and organization of data. A Producing Party will  
7 produce privilege logs within 60 days after production is complete. When there is a chain of  
8 privileged emails, the Producing Party need only include one entry based on the top email in the  
9 chain, and need not log each email contained in the chain separately provided that any additional  
10 recipients appearing earlier in the email chain are clearly identified on the face of the privilege log.  
11 Email attachments must be listed in log entries, separate from their cover emails, but in a manner  
12 that makes clear which attachments accompany each respective email. Redacted documents need  
13 not be logged as long as (a) for emails, the bibliographic information (*i.e.*, to, from, cc: and bcc:  
14 recipients, date, and time) is not redacted, and (b) for non-email documents, the redaction reason is  
15 noted on the face of the document in the redaction box. Documents protected from disclosure by the  
16 attorney-client privilege, the work product doctrine, or any other applicable privilege that are dated  
17 on or after June 14, 2011 (the date of the filing of the initial Complaint in this matter) need not be  
18 logged.  
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1 **STIPULATED AND AGREED:**

2 LILIANA CARDENAS, on behalf of herself  
3 and all others similarly situated,  
4 Plaintiff,

NBTY, INC. and REXALL SUNDOWN,  
INC.,  
Defendants,

4 By her attorneys:

By their attorneys:

5 /s/ Patricia N. Syverson  
6 Elaine A. Ryan, *pro hac vice*  
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15 **IT IS SO ORDERED:**

16 /s/ Carolyn K. Delaney

17 Hon. Carolyn K. Delaney  
18 United States Magistrate Judge

19 9/5/2012

20 Dated