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 6 **MIZUHO Orthopedic Systems, Inc.**

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 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **(SAN FRANCISCO DIVISION)**

11 <b>MIZUHO ORTHOPEDIC SYSTEMS,</b>	)	Case No. 13 – CV – 01077 – JSW
<b>INC.,</b> a Delaware Corporation	)	
	)	<b>STIPULATED ORDER RE: DISCOVERY</b>
Plaintiff,	)	<b>OF ELECTRONICALLY STORED</b>
	)	<b>INFORMATION</b>
vs.	)	
	)	
<b>STERIS CORPORATION,</b> an Ohio	)	
Corporation,	)	
	)	
Defendant.	)	
	)	
	)	

18  
 19 **I. PURPOSE**

20 This Order will govern discovery of electronically stored information (“ESI”) in this case  
 21 as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the  
 22 Discovery of Electronically Stored Information, and any other applicable orders and rules.

23 **2. COOPERATION**

24 The parties are aware of the importance the Court places on cooperation and commit  
 25 to cooperate in good faith throughout the matter consistent with this Court’s Guidelines for  
 26 the Discovery of ESI.

27 **3. LIAISON**

28 The parties will identify liaisons to each other who are and will be knowledgeable about and

1 responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access  
2 to those who are, knowledgeable about the technical aspects of e-discovery, including the  
3 location, nature, accessibility, format, collection, search methodologies, and production of ESI in  
4 this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help  
5 resolve disputes without court intervention.

#### 6 **4. PRESERVATION**

7 The parties will discuss their preservation obligations and needs and agree that  
8 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the  
9 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

10 a) Only ESI created or received between September 1, 2003 and the present will be  
11 preserved;

12 b) The parties will exchange a list of the types of ESI they believe should be preserved and  
13 the custodians, or general job titles or descriptions of custodians, for whom they believe ESI  
14 should be preserved, e.g. "HR head," "scientist," and "marketing manager." The parties shall  
15 add or remove custodians as reasonably necessary;

16 c) The parties will agree on the number of custodians per party for whom ESI will be  
17 preserved;

18 d) Data sources not reasonably accessible because of undue burden or cost pursuant to  
19 Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but not searched,  
20 reviewed, or produced: backup media of systems no longer in use that cannot be accessed;

21 e) The parties will agree to disclose data sources that are not reasonably accessible. The  
22 parties may mutually agree to exclude certain sources of electronically stored information from  
23 the preservation order, namely: backup media created before a certain date, digital voicemail,  
24 instant messaging, automatically saved versions of documents;

25 f) In addition to the agreements above, the parties agree data from certain sources (1)  
26 could contain relevant information but (2) under the proportionality factors, should not be  
27 preserved.

1 **5. SEARCH**

2 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if  
3 appropriate, they will meet and confer about methods to search ESI in order to identify ESI that  
4 is subject to production in discovery and filter out ESI that is not subject to discovery.

5 **6. PRODUCTION FORMATS**

6 The parties agree to produce documents in TIFF or PDF, native, or a combination  
7 thereof, file formats, bates labeled, with load files. Load files shall include at a minimum  
8 information indicating where individual pages or files belong together as documents, to include  
9 attachments, and where each document begins and ends. Excel documents will be produced in  
10 native format with the filename of each having a separate, single bates number, and the TIFF or  
11 PDF production containing a placeholder indicating the filename produced in native format. If  
12 particular documents otherwise warrant a different format, the parties will cooperate to  
13 arrange for the mutually acceptable production of such documents. The parties agree not to  
14 degrade the searchability of documents as part of the document production process.

15 **7. PHASING**

16 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties  
17 agree to phase the production of ESI and the initial production according to the identity and  
18 priority of custodians disclosed under section 4(b). Following the initial production, the parties  
19 will continue to prioritize the order of subsequent productions.

20 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

21 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-  
22 protected document, whether inadvertent or otherwise, is not a waiver of privilege or  
23 protection from discovery in this case or in any other federal or state proceeding. For example,  
24 the mere production of privileged or work-product-protected documents in this case as part of  
25 a mass production is not itself a waiver in this case or in any other federal or state proceeding.

26 b) Communications involving trial counsel that post-date the filing of the complaint need  
27 not be placed on a privilege log. Communications may be identified on a privilege log by  
28 category, rather than individually, if appropriate.

1 **9. MODIFICATION**

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

4 **IT IS SO STIPULATED**, through Counsel of Record.

5 DATED: June 12, 2013.

Bielen, Lampe & Thoeming, P.A.

6  
7 By /s/ Charles L. Thoeming  
8 Charles L. Thoeming  
9 Attorneys for MIZUHO Orthopedic Systems, Inc.

10 DATED: June 12, 2013.

Winston & Strawn, LLP

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12 By /s/ Floyd R. Nation  
13 Floyd R. Nation  
14 Attorneys for STERIS Corporation

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16 **CONCURRENCE IN FILING**

17 I, Charles L. Thoeming, am the ECF User whose identification and password are being  
18 used to file this Stipulated Order Re Discovery of ESI. In compliance with General Order  
19 45.X.B, I hereby attest that Floyd R. Nation has concurred in this filing.

20  
21 /s/ Charles L. Thoeming  
22 Charles L. Thoeming

23  
24  
25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 DATED: June 12, 2013.

27   
28 Jeffrey S. White  
UNITED STATES DISTRICT JUDGE