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[Counsel for Stipulating Parties Listed on Signature Pages]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re Resistors Antitrust Litigation

Case No. 3:15-cv-03820-JD

This Document Relates To:
ALL ACTIONS

**STIPULATION AND [~~PROPOSED~~]
ORDER CONCERNING EXPERT
DISCOVERY**

1 The parties through their respective counsel of record stipulate to the following regarding the
2 scope of expert discovery in the above-captioned matters and all other matters subsequently
3 consolidated with them (collectively, the “Actions”), subject to approval by the Court as required by
4 the Standing Order for Discovery in Civil Cases before Judge Donato.

5 1. This Stipulation and Order Concerning Expert Discovery (“Stipulation”) does not set
6 or alter the time for any disclosure required by Federal Rule of Civil Procedure 26(a)(2)(B) or the
7 timing of any deposition of any testifying expert. The parties contemplate that they will later submit
8 a stipulation addressing these matters for approval by the Court or the Court will establish a
9 timetable for disclosures and depositions.

10 2. To the extent that this Stipulation imposes limitations on discovery that would
11 otherwise be available under the Federal Rules of Civil Procedure or this Court’s standing orders, the
12 parties have agreed to those limitations to increase the efficiency of their dealings with testifying
13 experts and to minimize discovery disputes regarding testifying experts. Neither the terms of this
14 Stipulation nor the parties’ agreement to them shall be considered an admission by any person that
15 any of the information restricted from discovery by this Stipulation would otherwise be discoverable
16 or admissible.

17 3. For purposes of the Actions, Rule 26(a)(2)(B)(ii) is modified to read: “the facts, data
18 and other information relied on by the witness in forming them.”

19 4. Except as provided in paragraphs 6 and 7 below, the following types of information
20 shall not be the subject of any form of discovery and the parties shall not be obligated to preserve
21 such information in any form or include such information on any privilege log:

22 a. The content of communications among and between:

- 23 i. counsel and the expert and/or the expert’s staff and/or supporting
24 firms;
- 25 ii. counsel and any non-testifying expert consultant and/or the
26 consultant’s staff;
- 27 iii. the expert and other experts and/or other non-testifying expert
28 consultants;

- 1 iv. experts and their staff and/or supporting firms;
- 2 v. non-testifying expert consultants and their staffs;
- 3 vi. the respective staffs and/or supporting firms of experts or non-
- 4 testifying expert consultants and the staffs and/or supporting firms of
- 5 other experts or non-testifying expert consultants.

6 b. Notes, drafts, written communications, preliminary or intermediate
7 calculations, computations or other data runs, or other types of preliminary work created by, for, or
8 at the direction of a testifying expert.

9 5. No party or their experts are obligated to preserve or produce budgets, invoices, bills,
10 receipts or time records concerning testifying or non-testifying expert witnesses or consultants, their
11 staff, assistants, colleagues, or associates, or their companies or organizations.

12 6. The limitations contained in paragraphs 4 and 5 above shall not apply to any
13 communications, documents, data sets, data runs, calculations, computations or other forms of
14 information or work upon which a testifying expert relies as a basis for any of his or her opinions or
15 reports.

16 7. Notwithstanding the limitations contained in paragraphs 4 and 5 above, an expert may
17 be asked: (a) to identify and generally describe investigations or modeling (including any regression
18 analyses) that the expert attempted but rejected, (b) to describe the reasons for rejecting any such
19 investigations or modeling, (c) to respond to reasonable questions regarding the hourly rates of the
20 expert and his or her staff, the amount of time an expert or that expert's staff has spent on the
21 expert's report and associated work, and the amount of money billed for the report and associated
22 work.

23 8. Within three business days of any party serving any expert report and/or expert
24 declaration pursuant to Fed. R. Civ. P. 26(a)(2)(B) or otherwise, the party or parties proffering the
25 expert witness shall produce: the data or other information relied upon by the expert witness in
26 forming the expert witness's opinions; any exhibits that will be used to summarize or support the
27 expert witness's opinions; any work product (including but not limited to, analyses, spreadsheets,
28 graphs, and charts) relied upon by the expert witness that is based on the output from any computer

1 programs that are produced; the expert witness's qualifications, including a list of all publications
2 authored in the previous 10 years; a list of all other cases in which, during the previous four years,
3 the expert witness has testified as an expert at trial or by deposition; and a statement of the hourly
4 rate to be paid for the expert witness's time in the case. "Data or other information relied upon"
5 shall be deemed to include, but will not be limited to, underlying data, spreadsheets, computerized
6 regression analysis and/or other underlying reports and schedules sufficient to reconstruct the work,
7 calculations, and/or analyses upon which the expert witness is relying for his or her opinions.

8 9. The information required by paragraph 8 above to be produced shall be produced
9 electronically (via email, disc or FTP site) where feasible. Data, statistical analyses, or other
10 information (including any calculation or exhibit) upon which an expert relies for any of his or her
11 opinion(s) in this matter shall be provided in machine readable format, including any data that has
12 been cleaned, reformatted, or modified in any way from the form in which it may have been
13 provided to the expert. All other documents, data, and other information relied upon shall be
14 provided in a format as agreed to by the parties, along with any software and instructions required to
15 read them, but no party need produce computer software that is reasonably and commercially
16 available (e.g., Microsoft Word, Excel). Documents that are publicly available need not be produced
17 absent specific request if they are identified with sufficient specificity to allow the opposing side to
18 locate and obtain the document. Documents that have previously been produced during discovery
19 need not be produced if they are identified by Bates number.

20 10. Paragraph 8 above is not intended to limit the ability of any party to prepare and use
21 demonstrative exhibits, including demonstrative exhibits that may relate to an expert's testimony,
22 during the course of any hearing or trial. The admissibility of any such demonstrative exhibits shall
23 be subject to the Federal Rules of Evidence, the Rules of Civil Procedure, and this Court's Local
24 Rules, unless otherwise provided by order of the Court.

25 11. No subpoenas (for depositions or documents) need be served on any testifying expert
26 from whom a report or declaration is provided. Instead, the party proffering such expert will (a) be
27 responsible for producing all materials and information relied on by the expert, and (b) make the
28 expert available for deposition at a time mutually agreed to by the parties and consistent with the

1 Court's scheduling orders. Nothing in this Stipulation shall permit a party or a testifying expert to
2 withhold any proposition, fact, belief or other data, information or material on which the expert
3 relies in support of her or his opinion(s) in this matter.

4 12. The parties agree to comply with this Stipulation pending the Court's approval.

5 DATED: September 19, 2016

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16 **E-FILING ATTESTATION**

17
18 I, Jeff D. Friedman, am the ECF User whose ID and password are being used to file this
19 document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories
20 identified above has concurred in this filing.

21 /s/ Jeff D. Friedman
JEFF D. FRIEDMAN

22 * * *

23 PURSUANT TO STIPULATION, IT IS SO ORDERED

24 DATED: September 19, 2016

25 HONORABLE JAMES DONATO
26 United States District Court Judge

