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 VWR INTERNATIONAL, LLC

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

21 150 SPEAR STREET ASSOCIATES, L.P.,

22 Plaintiff,

23 v.

24 VWR INTERNATIONAL, LLC; UNIVAR
 25 USA INC.,

26 Defendants.

CASE NO. 3:17-cv-03246-JST

**STIPULATION AND ~~PROPOSED~~
 ORDER GOVERNING DISCOVERY OF
 ELECTRONICALLY STORED
 INFORMATION**

Judge: Hon. Jon S. Tigar
 Complaint Filed: June 6, 2017

1 Pursuant to Federal Rule of Civil Procedure 26(f)(3)(C), Plaintiff 150 Spear Street
2 Associates, L.P. (“Plaintiff”) and Defendants VWR International, LLC and Univar USA Inc.
3 (collectively, “Defendants”) (Plaintiff and Defendants collectively, the “Parties”), by and through
4 their undersigned counsel, hereby stipulate and agree, subject to Court approval, to the following
5 terms governing discovery of electronically stored information (“ESI”) in this case:

6 1. PURPOSE

7 This Stipulated Order shall govern discovery of ESI in this case as a supplement to the
8 Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of Electronically
9 Stored Information, and any other applicable orders and rules. The Parties desire to control and
10 focus the production of ESI to the needs of the case to promote a “just, speedy, and inexpensive
11 determination” of this action, as required under Federal Rule of Civil Procedure 1.

12 Absent a showing of good cause, general ESI production requests under Federal Rules of
13 Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this Court,
14 shall not include all metadata. However, the metadata fields identified in Section 5(e) below shall
15 generally be included in the production if such fields exist. If during the discovery period,
16 additional metadata fields are identified that would facilitate the identification or organization of
17 relevant information, the Parties shall work in good faith to include those additional metadata
18 fields that exist.

19 2. COOPERATION

20 The Parties are aware of the importance that the Court places on cooperation and commit
21 to cooperate in good faith throughout this case consistent with this Court’s Guidelines for the
22 Discovery of Electronically Stored Information. A party’s meaningful compliance with this
23 Stipulated Order and efforts to promote efficiency and reduce costs will be considered in cost-
24 shifting determinations. For example, a party’s refusal to allow for additional metadata fields, as
25 referenced above, would be evidence of noncompliance.

26 3. PRESERVATION

27 The Parties have discussed their preservation obligations and needs and agree that
28 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs

1 and burdens of preservation and to ensure proper ESI is preserved, the Parties agree that:

2 (a) The Parties shall meet and confer regarding the appropriate types of ESI which
3 they believe should be preserved and the custodians, or general job titles or descriptions of
4 custodians, for whom they believe ESI should be preserved, as necessary. The Parties shall add
5 or remove custodians as reasonably necessary; and

6 (b) The Parties shall meet and confer regarding the appropriate number of custodians
7 per party for whom ESI will be preserved, as necessary.

8 4. SEARCH TERMS

9 The Parties agree that in responding to an initial Federal Rule of Civil Procedure 34
10 request, or earlier if appropriate, they shall meet and confer about appropriate search terms to
11 search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that
12 is not subject to discovery.

13 5. PRODUCTION FORMATS

14 The Parties agree pursuant to Federal Rule of Civil Procedure 34(b)(2)(E)(i), that the
15 presumption is that ESI shall be produced in native format (that is, the same form that it is used or
16 kept in the usual course of business) and agree to use commercially reasonable efforts to produce
17 the information electronically consistent with Federal Rule of Civil Procedure 1. The Parties
18 further agree that emails, spreadsheets, videos, animations, audio files, and presentations that
19 include video, animation, or audio shall be produced where practical in native format. To the
20 extent that documents produced in native format cannot be rendered or viewed without the use of
21 proprietary software, the Parties shall meet and confer to minimize any expense or burden
22 associated with the review of such documents, including issues as may arise with respect to
23 obtaining access to any such software or operating manuals.

24 ESI not produced in native format and amenable to being imaged shall be produced as
25 images on optical disks (that is, CDs or DVDs), external hard drives, or a secure File Transfer
26 Protocol (FTP) site, accompanied by load files. Each image will bear a unique production
27 number and any applicable confidentiality language pursuant to the Stipulated Protective Order
28 governing this case. ESI produced in this manner shall be accompanied by load files with

1 searchable text, including electronically extracted text or, if electronically extracted text is
2 unavailable, OCR text, and shall include:

3 (a) Unitization, including the production number of the first and last page of each
4 document;

5 (b) Attachments, including information sufficient to identify the parent and child
6 relationships of all documents and ESI that are or have attachments;

7 (c) Confidentiality, including any designation pursuant to the Stipulated Protective
8 Order;

9 (d) Source information, including the identity of the custodian, or, if none, a
10 generalized location; and

11 (e) System metadata, namely the following fields: (1) BEGDOC; (2) ENDDOC;
12 (3) BEGATTACH; (4) ENDATTACH; (5) PAGECOUNT; (6) ATTACHCOUNT;
13 (7) CUSTODIAN; (8) FILENAME; (9) FILEEXT; (10) FOLDER, except that this field need not
14 be produced for emails with counsel for the Parties; (11) FILESIZE; (12) AUTHOR; (13) TITLE;
15 (14) CREATEDDATE; (15) CREATEDTIME; (16) LASTMODDATE; (17) LASTMODTIME;
16 (18) EMAIL_FROM; (19) EMAIL_TO; (20) EMAIL_CC; (21) EMAIL_BCC;
17 (22) EMAIL_SUBJECT; (23) EMAIL_DATERCVD; (24) EMAIL_TIMERCVD;
18 (25) EMAIL_DATESENT; (26) EMAIL_TIMESENT; (27) DESIGNATION; and
19 (28) MD5HASH.

20 Paper documents amenable to being imaged shall be produced as images on optical disks
21 (that is, CDs or DVDs), external hard drives, or FTP site, accompanied by load files. Paper
22 documents may be produced in black-and-white or color, but if a party intends to rely in any brief
23 or hearing on an aspect of a document that requires review in color, the party shall produce that
24 document in color. Each image will bear a unique production number and any applicable
25 confidentiality language pursuant to the Stipulated Protective Order governing this case. Paper
26 documents produced in this manner will be accompanied by load files with searchable text. If a
27 party desires additional information about a particular paper document produced in this form, the
28 Parties shall meet and confer regarding the appropriate means to supply the additional

1 information.

2 6. PHASING

3 When a party propounds discovery requests pursuant to Federal Rule of Civil Procedure
4 34, the Parties agree to phase the production of ESI. Following the Court’s entry of an order on
5 this Stipulation, the Parties shall continue to prioritize the order of subsequent productions.

6 7. DOCUMENTS PROTECTED FROM DISCOVERY

7 Pursuant to Federal Rule of Evidence 502(d), the production of a privileged and/or work-
8 product-protected document, whether inadvertent or otherwise, is not a waiver of privilege and/or
9 protection from discovery in this case or in any other federal or state proceeding. For example,
10 the mere production of privileged and/or work-product-protected documents in this case as part of
11 a mass production is not itself a waiver in this case or in any other federal or state proceeding.
12 The Parties agree that privileged and/or work-product-protected communication to or from trial
13 counsel post-dating the filing of the Complaint need not be placed on a privilege log.

14 8. MODIFICATION

15 This Stipulated Order may be modified by a stipulated order of the Parties or by the Court
16 for good cause shown.

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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Dated: February 15, 2018

ROPERS, MAJESKI, KOHN & BENTLEY

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Dated: February 15, 2018

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~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 16, 2018



HONORABLE JON S. TIGAR
UNITED STATES DISTRICT JUDGE