

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
IN RE: NEW ENGLAND COMPOUNDING)	Master Docket No.
PHARMACY CASES)	12-12052-FDS
_____)	
<i><u>This Document Relates To:</u></i>)	
)	
All Actions)	
_____)	

**ORDER AS TO THE PRESERVATION OF POTENTIAL
EVIDENCE BY NEW ENGLAND COMPOUNDING PHARMACY, INC.**

SAYLOR, J.

This order shall govern the preservation of documents, electronically stored information, and tangible things within the possession, custody, and/or control of New England Compounding Pharmacy, Inc., d/b/a New England Compounding Center, that are, or are reasonably likely to be, relevant and/or subject to discovery in this litigation.

1. The following definitions shall apply in this order:
 - a. The term “NECC” shall mean New England Compounding Pharmacy, Inc., d/b/a New England Compounding Center.
 - b. The term “Evidence” shall mean documents, electronically stored information (“ESI”), and tangible things that are, or are reasonably likely to be, relevant and/or subject to discovery in this litigation. The term shall be interpreted broadly, and shall include such things as drafts and handwritten notes. It shall also include any information that serves to identify, locate, or link other Evidence, such as file inventories, file folders, indices, and metadata.

- c. The term “preserve” shall mean to maintain, and preserve the integrity of, a document, ESI, or tangible thing. It shall include taking reasonable steps to prevent the partial or full destruction, alteration, shredding, wiping, migration, or deletion of such materials, as well as negligent or intentional handling that would make material incomplete or inaccessible.
2. NECC shall take reasonable steps to preserve all Evidence.
3. NECC’s obligation to preserve Evidence shall extend to items in its possession, custody, or control, as well as to items under the control of NECC that are in the custody or possession of third parties. NECC shall make reasonable efforts to identify and notify such third parties in order to ensure that such items are preserved.
4. Documents and ESI subject to this order may exist, without limitation, on servers, personal computers, external hard drives, cell phones, smart phones, PDAs, tablets, and backup media, and in e-mail accounts. Documents and ESI subject to this order shall be maintained and preserved in their native format.
5. Documents not in electronic form may be maintained in original form or by an accurate photocopy or scanned image.
6. NECC shall not modify, disassemble, remove, relocate, or destroy its clean rooms, anterooms, preparation rooms, and mechanical spaces (including the doors to such rooms and spaces); clean-room equipment; hoods; appurtenances; fixtures; HVAC systems; heating or cooling systems; or other laboratory and compounding equipment used in its business, except at the direction of this Court or an appropriate governmental authority having jurisdiction over the

matter.

7. If NECC's business practices involve the routine destruction, recycling, relocation, or alteration of documents, ESI, or tangible things (including, but not limited to, the overwriting or reuse of computer backup media), it shall either (1) cease that practice or (2) make reasonable arrangements for the preservation of any Evidence that would otherwise likely be lost.

8. The Court acknowledges (1) that the parties do not concede that any item subject to this order is discoverable, relevant, or admissible; (2) that the parties expressly reserve the right to challenge any specific discovery request; (3) that the parties reserve the right to challenge the competency, relevance, materiality, privilege and/or admissibility into evidence of any item in any subsequent proceeding; and (4) that all parties reserve the right to challenge the destruction of any item that occurred prior to entry of this order.

9. This order may be modified as appropriate during the course of this litigation.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: December 13, 2012