

1 THE O'MARA LAW FIRM, P.C.
DAVID C. O'MARA
2 NEVADA BAR NO. 8599
311 East Liberty St.
3 Reno, Nevada 89501
4 (775) 323-1321
(775) 323-4082 (fax)

5 JOSHUA L. SEIFERT PLLC
Joshua L. Seifert, Esq. (*Pro Hac Vice*)
6 jseifert@seifertpllc.com
7 175 Varick Street
New York, NY 10014
8 (646) 470-2647

9 SLARSKEY LLC
David Slarskey, Esq. (*Pro Hac Vice*)
10 dslarskey@slarskey.com
11 800 Third Avenue, 18th Floor
New York, NY 10022
12 (212) 658-0661

13 *Counsel for Plaintiffs*

14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 ADDISON HEMPEL, CASSIDY
17 HEMPEL, CHRISTINE HEMPEL, HUGH
HEMPEL, and SOLUTION
THERAPEUTICS,

18 Plaintiffs,

19 v.

20 CYDAN DEVELOPMENT, INC.,
21 CYDAN II, INC., VTESSE, INC.,
SUCAMPO PHARMACEUTICALS,
22 INC., and DOES I-X and ROE
CORPORATIONS I-V, inclusive,

23 Defendants.
24

FILED RECEIVED
ENTERED SERVED ON
COUNSEL/PARTIES OF RECORD
JUN 22 2018
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

Case No. 3:18-cv-00008-MMD-VPC

**STIPULATION AND ~~PROPOSED~~ ORDER
REGARDING ESI AND TECHNICAL
SPECIFICATIONS GOVERNING
DOCUMENT PRODUCTION**

25 This matter comes before the Court by stipulation of Plaintiffs Addison Hempel, Cassidy
26 Hempel, Christine Hempel, Hugh Hempel, and Solution Therapeutics, and Defendants Cydan De-
27 velopment, Inc., Cydan II, Inc., Vtesse, Inc., and Sucampo Pharmaceuticals, Inc. (collectively, the
28

1 “Parties”), to address production of ESI (as defined below) and technical specifications governing
2 document production. Having found that the Parties, by and between their undersigned counsel,
3 have stipulated and agreed to the terms set forth herein, and good cause having been shown, the
4 following Stipulation shall be entered:

5 **SPECIFICATIONS GOVERNING ESI AND DOCUMENT PRODUCTION**

6 **I. DEFINITIONS**

7 1. “Documents” means any Hard Copy Documents, ESI, or other material produced
8 in this litigation in response to a Party’s document requests, compulsory process, or voluntarily.

9 2. “ESI” means electronically stored information and includes, but is not limited to,
10 e-mails and attachments, instant messaging and other electronic communications, word processing
11 documents, text files, image files, container files, hard drives, external/internal drives, shared
12 drives, thumbdrives, servers, spreadsheets, slide presentations, graphics, audio files (including, but
13 not limited to voicemail and telephone recordings), databases, calendars, telephone logs,
14 transaction logs, internet usage files, offline storage or information stored on clouds or removable
15 media, information contained on laptops or other portable devices and network access information,
16 Native Files and the corresponding Metadata that is ordinarily maintained.

17 3. “Hard Copy Document” means a document that is maintained in hard copy or paper
18 form.

19 4. “Image File” means a representation of ESI produced by (i) converting a Native
20 File into a standard image format capable of being viewed and printed on standard computer sys-
21 tems; or (ii) scanning a Hard Copy Document into a standard image file capable of being viewed
22 and printed on standard computer systems.

23 5. “Load File” means a file containing commands and information necessary to import
24 coded, captured, or extracted data (including Metadata, extracted text, and the links between re-
25 lated records or document images) from ESI into a document management database, such as Rel-
26 ativity.

27

28

1 6. “Metadata” means: (i) information embedded in a Native File that is not ordinarily
2 viewable or printable from the application that generated, edited, or modified such Native File;
3 and (ii) information generated automatically by the operation of a computer or other information
4 technology system when a Native File is created, modified, transmitted, deleted, sent, received or
5 otherwise manipulated by a user of such system. Metadata is a subset of ESI.

6 7. “Native File” means ESI in the electronic format of the application in which such
7 ESI was created, viewed and/or modified. Native Files are a subset of ESI.

8 8. “OCR” means Optical Character Recognition, and is the machine recognition of
9 printed characters from Image Files or other non-searchable text contained in a Document into
10 machine-encoded text so that the text can be indexed and searched for specific characters, words,
11 or phrases.

12 9. “Producing Party” means a Party that produces Hard Copy Documents, ESI, or
13 other material in connection with this litigation in response to document requests, compulsory
14 process, or voluntarily.

15 10. “Receiving Party” means a Party that receives Hard Copy Documents, ESI, or other
16 material from a Producing Party in connection with this action.

17 **II. GENERAL PROVISIONS**

18 11. Scope. This Stipulation and Order Regarding ESI and Technical Specifications
19 Governing Document Production (“this Order”) specifies the form and manner in which the Parties
20 shall be required to produce ESI and Hard Copy Documents for use in the above-captioned matter.
21 The production of ESI and Hard Copy Documents in a manner consistent with the specifications
22 set forth in this Order shall be sufficient to satisfy a Producing Party’s obligation to produce its
23 materials in reasonably useable form and as they are maintained in the ordinary course of business.

24 12. Liaisons and Conferrals. Below each Party identifies its “discovery liaison” who is
25 and will be knowledgeable about and responsible for discussing the production of ESI. Each liaison
26 will be, or will have access to those who are, knowledgeable about the technical aspects of e-
27 discovery, including the location, nature, accessibility, format, collection, and production of ESI

1 discovery of the inability or infeasibility of compliance, such Producing Party shall inform the
2 Receiving Party in writing as to why compliance with this Order is impossible, unreasonable, or
3 disproportionate. Notwithstanding this Order, the Parties may separately agree to deviate from the
4 protocols and specifications set forth herein as to specific Documents or categories of Documents,
5 without leave of the Court, provided that such agreement is memorialized in writing.

6 16. Modification. The requirements of this Order may be modified by agreement of
7 the Parties or upon further order of the Court for good cause shown.

8 17. Third-Party Productions. A Party that issues a non-party subpoena shall include a
9 copy of this Order and the Protective Order in this case with the subpoena and request that the non-
10 party produce Documents in accordance with the specifications set forth therein. The Party issuing
11 the subpoena is responsible for producing to all other Parties any Documents obtained as a result
12 of the subpoena within a reasonable amount of time.

13 III. COLLECTION AND REVIEW

14 18. Custodians. Each Party will collect ESI by identifying a reasonable number of cus-
15 todians and then asking each custodian to identify locations where potentially relevant ESI may
16 be located.

17 19. Deduplication. Each Party is only required to produce a single copy of each
18 responsive Document and so may employ industry-standard deduplication, either within custodian
19 or across all custodians or sources (*e.g.*, “global deduplication”). Deduplication must take place at
20 the “family” level, meaning that two emails may not be deduplicated if they have different attach-
21 ments even if the content of the emails themselves are identical, and that two email attachments
22 may not be deduplicated if they are attached to different emails even if the content of the attach-
23 ments themselves are identical. If a Party exercises its option to globally de-duplicate, that Party
24 must identify each custodian or source where the Document was located in the “custodian”
25 Metadata field. Hard Copy Documents may not be eliminated as duplicates of responsive ESI. A
26 Party may only de-duplicate “exact duplicate” Documents and may not de-duplicate “near
27

1 duplicate” Documents, both of the quoted terms in this sentence being given their ordinary
2 meaning in the electronic discovery field.

3 20. Search Terms. Once each Party has collected its ESI and run any applicable dedu-
4 plication, it will run search terms on that ESI to generate the Documents that will be individually
5 revised for responsiveness. The Parties agree that they will use search terms that are narrowly
6 tailored to identify relevant and discoverable information and that they will select search terms
7 that collectively generate a reasonable number of Documents proportionate to the needs of the
8 case. The Parties agree that it would be unreasonable and disproportionate to the needs of the case
9 for either side to individually review more than 100,000 Documents.

10 21. Predictive Coding. Nothing in this Order shall preclude any Party from employing
11 analytics, including predictive coding, during the course of its review of Documents. However, for
12 the avoidance of doubt, absent mutual agreement or court order, all post-search-term responsive-
13 ness determinations shall be made by an attorney.

14 **IV. PRODUCTION FORMAT**

15 22. General Form of Production. Except as provided in Paragraphs 27–30, all ESI and
16 Hard Copy Documents shall be produced as single-page, black and white, Group IV TIFF image
17 files with the associated text and Metadata specified in this Section II. For each Document, an
18 extracted text file should be provided along with its corresponding TIFF image file(s) and
19 Metadata. Each production should include separate “DATA,” “IMAGES,” “NativeFiles,” and
20 “TEXT” folders.

21 23. Image Requirements. TIFF image files shall be of at least 300 dpi resolution. The
22 page orientation (*i.e.*, portrait or landscape) of a TIFF image file shall be the same as the underlying
23 Document from which the TIFF image is created. The page size of a TIFF image file shall be 8.5
24 x 11 inches unless, in the reasonable judgment of the Producing Party, a particular Document
25 requires a different page size.

26 24. Bates Numbers. Each TIFF image shall be branded with a Bates number that must:
27 (1) be unique across the entire production; (2) maintain a constant length of nine numeric digits

1 (including 0-padding) across the entire production; (3) be sequential within a given Document;
2 and (4) include a three-letter prefix identifying the Producing Party followed by a single-dash.
3 Each TIFF image file shall be named with the same page-level bates number branded on the
4 underlying image. If a Bates number or set of Bates numbers are skipped in a production, the
5 Producing Party will so note in a cover letter accompanying the production.

6 25. Text Requirements. All ESI and Hard Copy Documents shall be produced with a
7 corresponding multipage text file (*i.e.*, one text file per ESI or Hard Copy Document as opposed
8 to one text file per page). The text file for an ESI Document shall be created by extracting text
9 directly from the underlying native file, unless the ESI Document must be redacted prior to
10 production, in which case the text file shall be generated by applying industry standard OCR
11 technology to the redacted version of the ESI document. The text file for Hard Copy Documents
12 shall also be created using industry standard OCR technology. Each text file shall be named with
13 the beginning Bates number of the ESI or Hard Copy Document to which the text file relates.

14 26. Metadata Requirements. ESI shall be produced with the Metadata specified in
15 Exhibit A to this Order to the extent such Metadata exists in the original ESI. The Parties are not
16 obligated to create or manually code Metadata fields that are not automatically generated by the
17 processing of the ESI or that do not exist as part of the original Metadata of the ESI, except that
18 all produced ESI must contain, at a minimum, the following Metadata:

- 19 a. BegBates
- 20 b. EndBates
- 21 c. BegFamily
- 22 d. EndFamily
- 23 f. Custodians

24 The Producing Party is not required to provide any Metadata or specified information in Exhibit
25 A to this Order that contains privileged information.

26 27. When Native Production Required. The following types of ESI shall be produced
27 in native format only, whether they exist as attachments to emails, embedded files, or standalone

1 files: (1) Microsoft Access files and other database; and (2) audio or video files such as .wav or
2 .mpeg files.

3 28. When Native Production May Be Requested. A Party may request that ESI
4 originally produced as TIFF(s) be additionally produced in native format. A Producing Party shall
5 honor such a request where the TIFF version of the ESI omits substantive content included in the
6 native file or where the TIFF version suffers adverse formatting changes as a result of the
7 conversion to TIFF, such as the loss of meaningful color distinctions.

8 29. Redacting Native Files. If redactions of Native Files are necessary, the redacted file
9 may be produced in TIFF in accordance with Paragraphs 21–24, provided that the redacted files
10 are TIFFed in a manner that will yield production of all non-privileged content, including, but not
11 limited to, speaker’s notes, hidden rows and columns, and comments. If the Parties encounter na-
12 tive files containing privileged content that are not easily converted to TIFF images, the Parties
13 shall meet and confer to determine a suitable manner of production.

14 30. Production Specifications for Native Files. When producing ESI in native format,
15 the Producing Party shall:

16 a. Provide a corresponding single-page TIFF placeholder stating “Document
17 Produced in Native.” The placeholder shall be branded with a Bates number
18 meeting the requirements of Paragraph 23.

19 b. Name the native file with the Bates number affixed to the corresponding TIFF
20 placeholder.

21 c. Provide the text and Metadata, including the original file name of the underlying
22 ESI, required under Paragraphs 24 and 25.

23 31. Load Files. All productions of ESI and Hard Copy Documents shall be
24 accompanied with metadata load files and image load files using standard delimiters. The metadata
25 load file must include a header row with unique field names. Each Producing Party shall provide
26 data and image load files in a format that reasonably allows the Receiving Party to load productions
27 to its document review or case management database.

1 32. **Family Relationships of ESI.** Parent-child relationships between produced ESI
2 (*e.g.*, the association between an attachment and the e-mail to which it is attached, or a spreadsheet
3 embedded within a Word document) must be preserved by assigning sequential Bates numbers to
4 all produced files within a parent-child group, and by providing accurate attachment ranges for
5 those files in the Metadata fields, as required by Exhibit A.

6 33. **Scanning and Unitization of Hard Copy Documents.** The Parties agree to use
7 reasonable efforts to ensure that Hard Copy Documents are logically unitized such that: (1)
8 multiple, distinct Documents are not merged into a single Document; and (2) distinct Documents
9 are not split into multiple Document ranges. The Parties agree to use reasonable efforts to maintain
10 the family relationships of Hard Copy Documents by scanning and Bates numbering those
11 Documents in sequential order. This provision does not obligate any Party to produce Documents
12 in a manner other than in which those Documents were kept in the ordinary course of business.

13 34. **Enterprise Level Databases and Unusual Data Types.** This Order does not govern
14 the production of ESI maintained in enterprise level databases or other unusual or unique formats
15 or structures. The Parties shall meet and confer, as necessary, regarding the production format of
16 such ESI.

17 35. **Password Protected ESI.** The Producing Party will take reasonable steps, prior to
18 production, to unencrypt and/or restore any discoverable ESI that is encrypted or otherwise pass-
19 word protected. This includes attempting to obtain the password from the custodian of the ESI.
20 Relevant, non-privileged Documents that can be reasonably unencrypted or restored will be pro-
21 duced.

22 36. **Preservation of Metadata.** The Parties shall use industry standard technology and
23 processes to ensure the Metadata required to be produced for ESI is preserved during the collection,
24 processing, and production of those Documents. However, the Parties also acknowledge that in
25 some circumstances it may be more efficient to collect ESI informally, such as by making a simple
26 electronic copy of a file discovered during the course of a witness interview. If the original
27 Metadata of these files becomes of material importance during the course of the litigation, the

1 Parties shall meet and confer regarding how to address that issue and will promptly raise any
2 disputes that cannot be resolved with the Court. Nothing in this Order is intended to permit a Party
3 to convert a file that is ordinarily maintained as ESI to a Hard Copy Document for production in
4 this litigation.

5 37. Error Files. If responsive ESI cannot be converted to TIFF without error due to
6 corruption or some other issue, such ESI shall be produced in native form under the requirements
7 of Paragraph 29. If redactions of such files are necessary, however, the Parties shall meet and
8 confer to determine a suitable manner of producing the non-privileged content contained in these
9 files.

10 38. Container Files. The Parties need not produce container files (*e.g.*, .zip) so long as
11 the responsive contents of those files are produced in accordance with the specifications of this
12 Order.

13 **V. METHOD OF PRODUCTION**

14 39. Branding. All Bates Numbers, confidentiality designations, and redactions shall be
15 burned into the TIFF image files so that they appear when the Document is printed.

16 40. Production Media. Each Party shall produce its ESI and/or Hard Copy Documents
17 on electronic storage media such as CDs, DVDs, or USB hard drives, or via FTP or sharefile. Each
18 piece of electronic storage media shall be assigned a sequential volume number that identifies the
19 Producing Party and, if applicable, the non-party who originally produced the ESI and Hard Copy
20 Documents.

21 41. Cover Letter. Each Party shall accompany each production of ESI and/or Hard
22 Copy Documents with a cover letter specifying: (1) the volume or volumes comprising the
23 production; and (2) the Bates range or ranges of the materials being provided on each volume and
24 whether those bates ranges contain any known gaps.

25 42. Encryption. All productions will be made on encrypted media. The Producing
26 Party shall transmit the encryption key or password to the Receiving Party via email contempora-
27 neously with sending the encrypted production.

1 **IV. CONFIDENTIALITY AND PRIVILEGE**

2 43. Confidentiality. The Parties may brand the ESI they produce “confidential” in ac-
3 cordance with the Protective Order. A Party may designate an entire category of Documents “con-
4 fidential” without individually reviewing each Document in the category for confidentiality if the
5 Party has a good faith basis for believing that any Document within the category is likely to be
6 confidential, as defined in the Protective Order.

7 44. Privilege Logs. All responsive Documents that a Producing Party withheld from
8 disclosure based on a claim of any privilege, protection, or immunity must be listed in a privilege
9 log on a document-by-document basis (not by category). The privilege log must be provided to
10 the Receiving Party in a format that is text-searchable and that allows the Receiving Party to sort
11 the entries chronologically and by Bates number (e.g., Excel). Communications with outside coun-
12 sel of record in this matter need not be logged.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 45. Clawback. The inadvertent or unintentional production of ESI or Hard Copy Doc-
2 uments containing information that is subject to a claim of attorney-client privilege or work-
3 product protection shall not be deemed a waiver of such privilege or protection. Such inadvertently
4 produced ESI or Hard Copy Documents is governed by the Protective Order.

5
6 **IT IS SO STIPULATED**, this 21st day of June, 2018.

7 /s/ David C. O'Mara
8 David C. O'Mara
9 Nevada Bar No. 8599
10 THE O'MARA LAW FIRM, P.C.
11 311 E. Liberty St.
12 Reno, NV 89501
13 (775) 323-1321
14 david@omaralaw.net

15 JOSHUA L. SEIFERT PLLC
16 Joshua L. Seifert, Esq.
17 *Pro Hac Vice*
18 175 Varick Street
19 New York, NY 10014
20 (646) 470-2647
21 jseifert@seifertpllc.com

22 SLARSKEY LLC
23 David Slarskey, Esq.
24 *Pro Hac Vice*
25 800 Third Avenue, 18th Floor
26 New York, NY 10022
27 (212) 658-0661
28 dslarskey@slarskey.com

COUNSEL FOR PLAINTIFFS

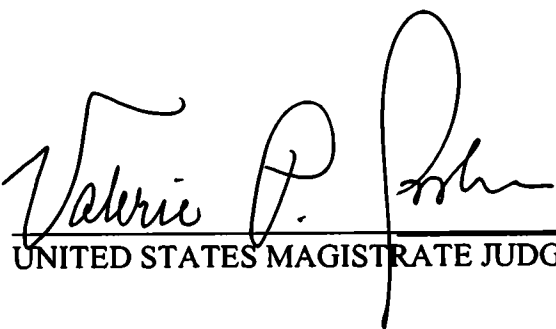
IT IS SO ORDERED.

Dated: June 22, 2018

/s/ E. Leif Reid
E. Leif Reid
Nevada Bar No. 5750
LEWIS ROCA ROTHGERBER CHRISTIE
LLP
One East Liberty Street
Suite 300
Reno, NV 89501-2128
Telephone: (775) 823-2900

Paul B. Gaffney (*pro hac vice*)
Jessica Bodger Rydstrom (*pro hac vice*)
Benjamin M. Stoll (*pro hac vice*)
Amanda J. Cox (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000

COUNSEL FOR DEFENDANTS


UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

All produced ESI and Hard Copy Documents must contain the following Metadata fields:

1. BegBates
2. EndBates
3. BegFamily
4. EndFamily
5. Custodians

To the extent the original ESI contains the following Metadata fields or the Metadata is created automatically during ESI processing, ESI must be produced with the following additional

Metadata fields:

6. FileName
7. NativeLink
8. TextLink
9. FileSize
10. FileAuthor
11. CreatedDate
12. CreatedTime
13. LastModifiedDate
14. LastModifiedTime
15. MD5Hash
16. FileTitle
17. FileExtension
18. FileType
19. Confidentiality
20. Redacted

1 To the extent the original ESI is an email document that contains the following Metadata fields
2 or the Metadata is created automatically during ESI processing, the email ESI must be produced
3 with the following additional Metadata fields:

4 21. From

5 22. To

6 23. CC

7 24. BCC

8 25. Subject

9 26. SentDate

10 27. SentTime

11 28. ReceivedDate

12 29. ReceivedTime

13 30. Messages ID

14 31. Attachment ID

15 32. Conversation ID

16 Date and time fields in the Metadata load file must be formatted as follows:

17 Date: mm/dd/yyyy

18 Time: hh:mm:ss (in military time)

19

20

21

22

23

24

25

26

27

28