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THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASE NO.: C16-1069 RSM

**STIPULATION REGARDING
DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION AND ORDER**

In re JUNO THERAPEUTICS, INC.

STIPULATION RE ESI AND ORDER
No. C16-1069 RSM

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1 The parties hereby stipulate to the following provisions regarding the discovery of
2 electronically stored information (“ESI”) in this matter:

3 **A. General Principles**

4 1. An attorney’s zealous representation of a client is not compromised by conducting
5 discovery in a cooperative manner. The failure of counsel or the parties to cooperate in facilitating
6 and reasonably limiting discovery requests and responses raises litigation costs and contributes to
7 the risk of sanctions.

8 2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied
9 in each case when formulating a discovery plan. To further the application of the proportionality
10 standard in discovery, requests for production of ESI and related responses should be reasonably
11 targeted, clear, and as specific as possible.

12 **B. ESI Disclosures**

13 By August 14, 2017, each party shall disclose:

14 1. Custodians. The custodians most likely to have discoverable ESI in their
15 possession, custody or control. The custodians shall be identified by name, title, connection to the
16 instant litigation, and the type of the information under his/her control.

17 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared
18 drives, servers, etc.), if any, likely to contain discoverable ESI.

19 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
20 contain discoverable ESI (e.g. third-party email and/or mobile device providers, “cloud” storage,
21 etc.) and, for each such source, the extent to which a party is (or is not) able to preserve
22 information stored in the third-party data source.

23 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable
24 ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify
25 the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

26 **C. Preservation of ESI**

1 The parties acknowledge that they have a common law obligation to take reasonable and
2 proportional steps to preserve discoverable information in the party's possession, custody or
3 control. With respect to preservation of ESI, the parties agree as follows:

4 1. Absent a showing of good cause by the requesting party, the parties shall not be
5 required to modify the procedures used by them in the ordinary course of business to back-up
6 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their
7 possession, custody or control.

8 2. All parties shall supplement their disclosures in accordance with Rule 26(e) if
9 additional discoverable ESI responsive to a particular discovery request or mandatory disclosure
10 is identified after the disclosure or response is made (unless excluded under (C)(3) or (D)(1)-(2)
11 below).

12 3. Absent a showing of good cause by the requesting party, the following
13 categories of ESI need not be preserved:

- 14 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 15 b. Random access memory (RAM), temporary files, or other ephemeral data that are
16 difficult to preserve without disabling the operating system.
- 17 c. On-line access data such as temporary internet files, history, cache, cookies, and
18 the like.
- 19 d. Data in metadata fields that are frequently updated automatically, such as last-
20 opened dates (see also Section (E)(5)).
- 21 e. Back-up data that are substantially duplicative of data that are more
22 accessible elsewhere.
- 23 f. Server, system or network logs.
- 24 g. Data remaining from systems no longer in use that is unintelligible on the systems
25 in use.
- 26 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from
mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided
that a copy of all such electronic data is routinely saved elsewhere (such as on a
server, laptop, desktop computer, or "cloud" storage).

D. Privilege

1 1. The parties are not required to log attorney-client privileged communications with
2 their counsel in this litigation, or privileged work-product information generated by their counsel
3 in this litigation.

4 2. Activities undertaken in compliance with the duty to preserve information are
5 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

6 3. Information produced in discovery that is protected as privileged or work product
7 shall be immediately returned to the producing party, and its production shall not constitute a
8 waiver of such protection, if: (i) such information appears on its face to have been inadvertently
9 produced or (ii) the producing party provides notice within 15 days of discovery by the producing
10 party of the inadvertent production.

11 4. Privilege Log Based on Metadata. The parties agree that privilege logs shall be
12 provided 30 days after the production of documents is substantially complete, and within 30 days
13 of the date of any supplemental production(s). The privilege log shall include a unique
14 identification number for each document and the basis for the claim (attorney-client privileged or
15 work-product protection). For ESI, the privilege log may be generated using available metadata,
16 including author/recipient or to/from/cc/bcc names; the subject matter or title and date created.
17 Should the available metadata provide insufficient information for the purpose of evaluating the
18 privilege claim asserted, the producing party shall include such additional information as required
19 by the Federal Rules of Civil Procedure.

20 **E. ESI Discovery Procedures**

21 1. On-site inspection of electronic media. Such an inspection shall not be permitted
22 absent a demonstration by the requesting party of specific need and good cause or by agreement
23 of the parties.

24 2. Search methodology. The parties shall timely attempt to reach agreement on
25 appropriate search terms, or an appropriate computer- or technology-aided methodology, before
26 any such effort is undertaken. The parties shall continue to cooperate in revising the

1 appropriateness of the search terms or computer- or technology-aided methodology.

2 In the absence of agreement on appropriate search terms, or an appropriate computer- or
3 technology-aided methodology, the following procedures shall apply:

4 a. A producing party shall disclose the search terms or queries, if any, and
5 methodology that it proposes to use to locate ESI likely to contain discoverable information. The
6 parties shall meet and confer to attempt to reach an agreement on the producing party's search
7 terms and/or other methodology.

8 b. If search terms or queries are used to locate ESI likely to contain
9 discoverable information, a requesting party is entitled to no more than 15 additional terms or
10 queries to be used in connection with further electronic searches absent a showing of good cause
11 or agreement of the parties. The 15 additional terms or queries, if any, must be provided by the
12 requesting party within 14 days of receipt of the producing party's production.

13 c. Focused terms and queries should be employed. Absent a showing of good
14 cause, each search term or query returning more than 500 megabytes of data are presumed to be
15 overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large file
16 types.

17 d. The producing party shall search both non-custodial data sources and ESI
18 maintained by the custodians identified above.

19 3. Upon reasonable request and if appropriate for the particular case, a party shall
20 also disclose information relating to network design, the types of databases, database dictionaries,
21 the access control list and security access logs and rights of individuals to access the system and
22 specific files and applications, the ESI document retention policy, organizational chart for
23 information systems personnel, or the backup and systems recovery routines, including, but not
24 limited to, tape rotation and destruction/overwrite policy.

25 4. Format. The parties agree that ESI will be produced to the requesting party with
26 searchable text, in a format to be decided between the parties. Acceptable formats include, but are

1 not limited to, native files, multi-page TIFFs (with a companion OCR or extracted text file),
2 single-page TIFFs (only with load files for e-discovery software that includes metadata fields
3 identifying natural document breaks and also includes companion OCR and/or extracted text
4 files),and searchable PDF. Unless otherwise agreed to by the parties, files that are not easily
5 converted to image format, such as spreadsheet, database and drawing files, should be produced
6 in native format.

7 a. Each document image file shall be named with a unique Bates Number (e.g.
8 the unique Bates Number of the page of the document in question, followed by its file extension).
9 File names should not be more than twenty characters long or contain spaces. When a text-
10 searchable image file is produced, the producing party must preserve the integrity of the
11 underlying ESI, i.e., the original formatting, the metadata (as noted below) and, where applicable,
12 the revision history. The parties shall produce their information in the following format: single-
13 page images and associated multi-page text files containing extracted text or with appropriate
14 software load files containing all requisite information for use with the document management
15 system (e.g., Concordance® or Summation®), as agreed to by the parties.

16 b. If appropriate to the particular case, the parties shall consider whether or
17 not the full text of each electronic document shall be extracted ("Extracted Text") and produced
18 in a text file. If the parties so agree, the Extracted Text shall be provided in searchable ASCII text
19 format (or Unicode text format if the text is in a foreign language) and shall be named with a
20 unique Bates Number (e.g. the unique Bates Number of the first page of the corresponding
21 production version of the document followed by its file extension).

22 c. If a document is more than one page, the unitization of the document and
23 any attachments and/or affixed notes shall be maintained as they existed in the original
24 document.

25 5. Metadata fields. The parties agree that only the following metadata fields need
26 to be produced: document type; custodian and duplicate custodians; author/from; recipient/to, cc

1 and bcc; title/subject; file name and size; original file path; date and time created, sent, modified
2 and/or received; and hash value. The “source” of ESI shall be the name of the person who was
3 the custodian of the ESI or, if the name of a person is not available, the storage location (e.g.,
4 “Regulatory Shared Drive–Wayne, PA”). Although the parties agree to the above list of metadata
5 fields, the list of metadata fields is intended to be flexible and may be changed by agreement of
6 the parties, particularly in light of advances and changes in technology, vendor and business
7 practices.

8 6. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an
9 electronic format, the production of hard-copy documents shall include a cross-reference file that
10 indicates document breaks and sets forth the Custodian or Source associated with each produced
11 document. Hard-copy documents shall be scanned using Optical Character Recognition
12 technology and searchable ASCII text files shall be produced (or Unicode text format if the text
13 is in a foreign language), unless the producing party can show that the cost would outweigh the
14 usefulness of scanning (for example, when the condition of the paper is not conducive to scanning
15 and will not result in accurate or reasonably useable/searchable ESI). Each page shall be named
16 with a unique Bates Number (e.g. the Unique Bates Number of the first page of the corresponding
17 production version of the document followed by its file extension).

18 7. De-duplication. The parties may de-duplicate their ESI production across
19 custodial and non-custodial data sources after disclosure to the requesting party.

20 Dated: August 4, 2017.

Respectfully submitted,

21 s/ Cliff Cantor

22 By: Cliff Cantor, WSBA # 17893

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6 Bishop, Steven D. Harr, and Mark J. Gilbert*

7 **ORDER**

8 Based on the foregoing, IT IS SO ORDERED.

9 DATED: August 8, 2017.

10 

11 **RICARDO S. MARTINEZ**
12 **CHIEF UNITED STATES DISTRICT JUDGE**