

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION
NO. II,

MDL No. 1:22-md-03029-PBS

This document relates to:

All cases

LEAD CASE

CASE MANAGEMENT ORDER NO. 3
(Regarding The Production of Hard Copy Documents
And Electronically Stored Information)

The Parties agree to the following protocol for production of electronically stored information (“ESI”) and paper (“hard copy”) documents. This Order sets forth the protocol governing all production in the above-captioned matter. Nothing in this Order shall limit or waive a Party’s right to seek or object to discovery as set out in the applicable rules or to rely on the protective order entered in this action concerning protection of confidential or otherwise sensitive information

I. GENERAL TERMS

A. Definitions.

1. “Hard Copy Document” means documents existing in paper form at the time of collection.
2. “Electronically Stored Information” or “ESI” means writings, drawings, graphs, charts, photographs, sound recordings, video files, images, databases, structured/aggregated or application data (e.g., Salesforce), and other data or data compilations existing in electronic form at the time of collection, including but not limited to e-mail or other

means of electronic communications (e.g., Channel – Based Platforms such as, Slack, Microsoft Teams, etc.), word processing files (e.g., Microsoft Word, Google Suite), computer presentations (e.g., Microsoft PowerPoint slides), spreadsheets (e.g., Microsoft Excel, Corel Quattro), image files (e.g., PDF, .jpg, .gif).

3. “Document” has the meaning set out in Federal Rule of Civil Procedure 34(a)(1)(A) and includes both Hard Copy Documents and ESI.

4. “Metadata” is defined as (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; and/or (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system.

5. “Native File(s)” means ESI in the electronic format of the application in which such ESI is normally created, viewed, and/or modified.

6. “TIFF-Plus format” means that the TIFF-image format with extracted or OCR text and available metadata as set forth hereinbelow.

B. Application. The procedures set forth in this stipulation shall govern the parties’ production of Documents relevant to this action. Nothing in this stipulation alters the parties’ rights under the Federal Rules of Civil Procedure, the District of Massachusetts Local Rules, or any other applicable orders and rules, nor does anything in this stipulation impose additional burdens beyond those imposed by the Federal Rules of Civil Procedure, the District of Massachusetts Local Rules, or any other applicable orders or rules. In the event that a party identifies a particular source of potentially responsive Documents for which application of this stipulation would be impossible or otherwise unduly burdensome or impractical, that party will

promptly notify the opposing party and the parties may meet and confer concerning the source.

C. Scope of Discovery. This stipulation does not affect the proper subject matter of discovery in this action. Nor does this stipulation imply that Documents produced under its terms are relevant or admissible in this action or in any other litigation.

D. Collecting, Searching, and Reviewing Documents. The parties will continue to meet and confer regarding the scope of Document collections, the methods for searching Documents, and whether Documents will be reviewed for responsiveness to written discovery requests. Accordingly, nothing in this stipulation affects the scope of any Document collection (other than Section III.L, *infra*, regarding the accessibility of data), the manner in which Documents will be searched, or whether Documents will be reviewed for responsiveness to written discovery requests before production.

E. Preservation of Data. This stipulation does not alter or expand the preservation obligations of any party beyond what is required under applicable law.

F. Privileges. Nothing in this stipulation shall be interpreted to affect a party's right to assert that a Document or any portion of a Document is protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable legal privilege and may be withheld or redacted as appropriate.

G. Foreign Data Protection. Nothing in this stipulation shall affect whether Documents are deemed subject to foreign data protection laws, affect the process for discovery of such any such Documents (including whether to use Hague Convention procedures or apply redactions), or affect a party's ability to challenge the assertion of any such protection.

H. Reservation of Rights. The parties reserve all rights under the Federal Rules of Civil Procedure.

I. Use of Productions in Similar Litigation. To the extent a producing party has produced responsive Documents in other similar hernia mesh litigation that may be demanded in this action, a party is not obligated to re-validate that production set and is not obligated to re-collect the Documents that formed the basis for that production. The producing party may produce that production set as-is in this action, with rebranding of Bates labeling and the agreed upon formats and metadata fields in this action. Further, the producing party will continue to supplement productions as required by Federal Rule of Civil Procedure 26(e).

II. PRODUCTION OF HARD COPY DOCUMENTS

A. File Type. The parties shall produce Hard Copy Documents as Group IV black and white, TIFF images at not less than 300 dpi resolution collated as a group of TIFF image for each unique document. To the extent technically available through the use of purely automated methods, and provided that no extra costs be incurred, original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape). In scanning hard copy documents, multiple distinct documents should not be merged into a single record, and single split into multiple records (i.e., hard copy documents should be logically unitized).

B. Metadata Fields. For Hard Copy Documents, at a minimum, the following information shall be produced and provided in the data load file at the same time that the TIFF images are produced. Each metadata field shall be labeled as listed below:

Field Name	Description
BEGPROD	Beginning Production bates number
ENDPROD	Ending Production bates number
BEGPRODATT	Beginning Production attachment number, populate ONLY if document has attachments
ENDPRODATT	Ending Production attachment number, populate ONLY if document has attachments
CUSTODIAN	Name of custodian (lastname, firstname)

PAGES	Number of pages
CONFIDENTIALITY	Confidentiality designation
REDACTION	Redaction designation
REDACTION TYPE	Identifies the reason for the redaction
TEXTPATH	Path to *.txt file containing extracted or OCR text

C. Database Load Files/Cross-Reference Files. Documents shall be produced with associated document-level text files, image load files (.DII, LFP, and OPT) indicating appropriate document and family breaks, as well as metadata load files in delimited text format (DAT) containing the fields required by Section II.B.

D. Color Copies. For future document productions, but not documents produced pursuant to Section I.I, documents (both redacted and un-redacted) shall be produced in color by virtue of their native format production or, if not in native format, then in TIFF Plus format. Redacted PowerPoint documents shall be produced in color format if the original native format contained color text or images. The Receiving Party also may make reasonable requests that specific Documents produced in TIFF-Plus format be produced in color on a document-by-document basis.

E. Family Groups. To the extent reasonably possible, the parties shall maintain family groups together in one production volume and shall not break family groups apart in separate production volumes (attachments shall be produced with family associations intact and in proper order; single documents shall not be split into multiple records).

F. Notes and Attachments. If any original Hard Copy Document has notes or attachments affixed thereto, a party shall produce copies of those Documents with the accompanying notes and attachments. Parent-child relationships (*e.g.*, the associations between emails and their attachments) will be preserved. Email and other ESI attachments will be

produced as independent files immediately following the parent email or ESI record. Parent-child relationships will be identified in the data load file.

G. Foreign Language Documents. Documents that contain languages other than English, in whole or in part, shall be produced in the original language(s), along with any existing translations maintained in the ordinary course of business. A producing party is under no obligation to create a translation if one does not exist already in the ordinary course of business.

H. OCR. For scanned images of hard copy documents, OCR should be performed on a document level and provided in Document-level .txt files named to match the production number of the first page of the Document to which the OCR text corresponds. OCR text should not be delivered in the data load file or any other delimited text file.

III. PRODUCTION OF ESI

A. Preservation of Metadata. The parties shall use best efforts to collect ESI in a manner that does not alter metadata or other file attributes. The collection of ESI in any manner that does not make an identical forensic copy of the ESI – including corresponding file pathway information – shall not serve on its own to relieve either party of their obligation to preserve ESI.

B. File Type. Each image shall have a unique file name, which is the Bates number of the first page of the document. As indicated below, Native Files shall be produced in lieu of TIFF files for spreadsheets, presentation files, and media files, and shall be produced in their complete original condition and may not be altered in any way for litigation purposes, except to the extent necessary to apply appropriate redactions. Documents will be produced with the metadata fields listed below exported into a delimited load file for Relativity, Concordance, and such other

industry-standard electronic discovery platforms as the parties may agree upon. Unless otherwise indicated below, the parties shall produce ESI as single page Group IV TIFF images, 300 dpi quality or better. Image file names shall be identical to the corresponding Bates numbered images, with a “.tif” file extension. To the extent reasonably possible, each document shall be produced intact (attachments shall be produced with family associations intact and in proper order; single documents shall not be split into multiple records). Nothing in this stipulation shall be construed to impose an obligation on any party to add functionality to a document where such functionality does not exist in the Document’s Native File. It shall be the burden of the party claiming that Documents lack functionality or that Documents do not exist in a Native format to establish such facts and related positions shall be conveyed under oath.

C. Metadata. For each item of ESI, if applicable, the parties shall identify the metadata listed in the Appendix. The parties will take reasonable steps to preserve all Metadata associated with ESI even if such Metadata is not specified above for production.

D. Native Files. As noted above, certain categories of ESI are more easily reviewed in Native format and therefore will not be produced in TIFF format, unless the producing party determines that doing so is reasonable and practical for the purposes of applying appropriate redactions. These file types include spreadsheets such as Microsoft Excel (*.xls, *.xlsx, *.csv), database files including Microsoft Access (*.mdb), presentation files including Microsoft PowerPoint files (*.ppt, *.pps, *.pptm), word processing files including Microsoft Word files and multimedia files including audio and video files.

E. Production Format for Databases. To the extent that any party requests information that is stored in an enterprise database or database management system (for example, Oracle, SQL Server, DB2), the parties shall meet and confer about the production of

data from such sources in existing report formats, or report formats that can be developed without undue burden or cost. The parties agree to negotiate separately regarding the production of information contained within structured database files and shared drives.

F. System Files. Common systems and program files need not be processed, reviewed, or produced.

G. Known Software Files. Known software files identified in the National Software Reference Library database maintained by the National Institute of Standards and Technology need not be collected, processed, reviewed, or produced.

H. De-duplication.

1. A party is only required to produce a single copy of a responsive document and may de-duplicate responsive ESI. To the extent a party de-duplicates its ESI, it shall de-duplicate stand-alone documents or entire document families in their ESI sources by use of MD5, SHA-1, or SHA256 hash values. Where any such documents have attachments, hash values must be identical for both the document plus attachment (including associated metadata) as well as for any attachment (including associated metadata) standing alone. No party shall identify and/or eliminate duplicates by manual review or some method other than by use of the technical comparison using MD5, SHA-1 or SHA256 hash values outlined above. Hard Copy Documents shall not be eliminated as duplicates of ESI.

2. Defendants shall de-duplicate documents across custodians and populate a field of data that identifies each custodian who had a copy of the produced document (the “Duplicate Custodian” or “Other Custodian” field) in addition to a separate field of data identifying the custodian whose document is produced. Such de-duplicated documents shall be deemed produced from the custodial files of each such identified custodian for all purposes in

this litigation, including for use at deposition and trial. Defendants shall use a uniform description of a particular custodian across productions. Multiple custodians in the “Duplicate Custodian” / “Other Custodian” field shall be separated by a semicolon. Entity/departmental custodians should be identified with a description of the entity or department to the extent applicable.

3. If a Defendant makes supplemental productions following an initial production, that Party also shall provide with each supplemental production an overlay file to allow the receiving Party to update the “Duplicate Custodian” field. The overlay file shall include all custodians listed in the “Duplicate Custodian” field in prior productions and any custodians newly identified in the current supplemental production.

I. Attachments or Family Members. If any responsive ESI has attachments or family members, the attachments or family members shall also be considered responsive.

J. Embedded Files. Embedded files, except for images embedded in emails, are to be produced as family groups. Embedded files should be assigned Bates numbers that directly follow the Bates numbers on the documents within which they are embedded. Images embedded in emails, however, are not required to be extracted as separate documents.

K. Encryption. The producing party shall encrypt all production data. Encryption should be applied using True Crypt software, Microsoft Bitlocker, or similar product or via hardware encryption using hardware encrypted drives. The producing party shall transmit the encryption key or password to the requesting party, under separate cover, contemporaneously with sending the encrypted media.

L. Accessibility of Data.

1. **Data Sources That Are Reasonably Accessible.** In accordance with the Federal Rules of Civil Procedure, the parties agree that any search for potentially relevant Documents and ESI shall initially involve searching for such Documents in data sources within which such Documents and ESI are reasonably accessible. Documents stored on cloud-based servers and live archive systems (e.g., Barracuda and Mimecast) shall be considered reasonably accessible under this protocol.

2. **Data Sources That Are Not Reasonably Accessible.** To the extent a party claims that a data source is not reasonably accessible, that party shall notify the other party and meet and confer to resolve any disputes.

M. **Foreign Language Documents.** ESI that contain languages other than English, in whole or in part, shall be produced in the original language(s), along with any existing, non-privileged translations obtained during the collection of ESI. A party shall use best efforts to ensure that the entire scope of this stipulation is enforced regardless of the language of the document itself.

N. **Extracted Text.** For ESI, extracted text shall be produced directly from the Native File where technically possible. Except where ESI contains text that has been redacted under assertion of privilege or other protection from disclosure, full extracted text will be provided in the format of a single *.txt file for each file (i.e., not one *.txt file per *.tif image). Extracted text shall include all comments, revisions, tracked changes, and speaker's notes and text from documents with comments or tracked changes. For ESI from which text cannot be extracted or that contains redactions, OCR will be produced instead.

IV. **BATES LABELING/CONFIDENTIALITY DESIGNATIONS**

A. **Labeling.** Each page of all images produced must be clearly labeled with an

indelible, legible, unique Bates number identifier electronically “burned” onto the image. Reasonable steps shall be taken to place the Bates number at a location that does not obscure any information from the source document. In addition, to the extent any image or file is to be marked confidential, each page of the image or file to be marked confidential shall include the appropriate confidentiality designation as determined in the Protective Order separately entered into by the parties. There shall be no other legend or stamp placed on the document image, with the exception of redacted information.

B. Consecutive Numbering. The parties agree that a convention on Bates number ordering and prefixing will help the parties better organize production of Documents in this action. Therefore, to the extent possible, Documents shall be Bates-numbered consecutively using the same prefix, maintaining all parent-child relationships. Bates numbering shall be consistent. Document numbers for documents produced by the parties shall identify the party’s name and shall be in the format “Party Name_Hernia Mesh-00000001.” Bates numbers shall be numerically sequential within a given document. If a Bates number or set of Bates numbers is skipped, the skipped number or set of numbers should be noted with a placeholder. To the extent possible, attachments to documents should be assigned Bates numbers that directly follow the Bates numbers on the documents to which they were attached. The Bates number shall not contain any special characters.

C. File Names. Image file names must be unique and must correspond with the Bates number imprinted on the image. For example, if the Bates number “B0000001” was imprinted, the image would bear the name “B0000001.tif.”

D. Authenticity. No party shall object that Documents or ESI produced pursuant to this stipulation is not authentic based upon the file naming convention described in Section

IV.C, above.

E. Native Files. If Native Files are produced, the Party producing such Native File shall include a single-image placeholder TIFF with a single Bates number on the image itself. A slipsheet for each Native File will include the text “File Produced In Native Format” along with the corresponding Bates number and confidentiality designation. The Native File shall be renamed to match the Bates number assigned thereto and include the confidentiality designation.

F. Dynamic Fields. Documents with dynamic fields for file names, dates, and times will be processed to show the field code (e.g., “[FILENAME]”), rather than the values for such fields existing at the time the file is processed.

V. PRIVILEGE AND REDACTIONS

A. Privilege Log. Any Document withheld for privilege shall be placed on a log that is compliant with Federal Rule of Civil Procedure 26(b)(5)(A). The Parties shall produce rolling privilege logs every 60 days for the productions made during those 60 days.

B. Redactions. If the producing party is redacting information from a page, the producing party shall insert a white box with black text specifying the reason for the redaction onto the page at or reasonably near to the location of the redaction(s). If the producing party redacts a Document, all metadata fields contained in the Appendix shall be included.

C. Native Files. Recognizing that Native Files cannot be redacted, a producing party shall undertake reasonable efforts to produce Documents in redacted form consistent with the principles contained in this stipulation. Regardless of the production format, Defendants shall redact and produce spreadsheet documents with hidden text and notes displayed.

VI. COSTS

Each party will bear its costs related to the production of its own Documents and ESI. However, each party reserves the right to seek costs, including but limited to cost shifting and cost sharing, related to document production and discovery pursuant to the Federal Rules of Civil Procedure and case law. Document production includes, but is not limited to, processing, collection, review, and production.

VII. MODIFICATION

This stipulation may be modified by stipulation of the parties or by the Court for good cause shown.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____ December 21 _____, 2022.

/s/M. Page Kelley

~~Hon. Paul B. Saris~~ M. Page Kelley
 United States District Judge
 United States Magistrate Judge

APPENDIX

<i>Field</i>	<i>Data Type</i>	<i>Paper</i>	<i>Native Files & Email Attachments</i>	<i>Email</i>
ProdBeg	Integer - Text	Starting Bates #	Starting Bates #	Starting Bates #
ProdEnd	Integer - Text	Ending Bates #	Ending Bates #	Ending Bates #
ProdBegAttach	Integer - Text	Starting bates # of document family	Starting bates # of document family	Starting bates # of document family
ProdEndAttach	Integer - Text	Ending bates # of document family	Ending bates # of document family	Ending bates # of document family
PageCount	Integer - Text	Number of pages	Number of pages	Number of pages

Custodian/Source	Text	Name of person(s) and/or database(s) the document was collected from	Name of person(s) and/or database(s) the document was collected from	Name of person(s) and/or database(s) the document was collected from
Folder	Text		File path/folder structure for the original native	File path/folder structure for the original native file
From	Text - paragraph			Sender of message
To	Text - paragraph			Recipients of message
CC	Text - paragraph			Copied recipients
BCC	Text - paragraph			Blind copied recipients
Subject	Text - paragraph			Subject of message
Date Sent	Date			Date message sent
Time Sent	Time			Time message sent
FileName	Text - paragraph		Name of original file	Name of original file
FileExtension	Text		Extension of original file	Extension of original file
FileSize	Integer - Text		Size of the file	Size of the file
Date_Created	Date/Time		Date file was created	
Date_LastMod	Date/Time		Date file was last modified	
LastModifiedBy	Text		Identity of last individual modifying document	
TimeCreated	Date/Time		Date file was created	
TimeLastModified	Date/Time		Time file was last modified.	
Title	Text - paragraph		Title from document metadata	
Author	Text - paragraph		Document author from metadata	
Confidentiality	Text	Any confidentiality designation asserted on the document	Any confidentiality designation asserted on the document	Any confidentiality designation asserted on the document
MD5 Hash	Text		MD5 or SHA-1 Hash Value of document	MD5 or SHA-1 Hash Value of document

NativeLink	Text - paragraph		Path including filename to the associated native file if produced (Relative Path)	Path including filename to the associated native file if produced (Relative Path)
TextLink	Text - paragraph	Path including filename to the associated searchable text file (Relative Path)	Path including filename to the associated searchable text file (Relative Path)	Path including filename to the associated searchable text file (Relative Path)
Importance	text			Exclamation point or other feature on email denoting high priority
Attach	Text	Notification that the document being reviewed is an attachment	Notification that the document being reviewed is an attachment	Notification that the document being reviewed is an attachment to an identified parent document; filenames of all attached records, separated by semi-colon
E-mail Folder	Text			Identification of the path and folder where the email was stored.
Redacted	text	Any redaction made to the document	Any redaction made to the document	Any redaction made to the document
Redacted Reason	Text-paragraph	Explanation for redaction	Explanation for redaction	Explanation for redaction
DupeCustodian	Text		Name of Custodian in possession of duplicate file	Name of Custodian in possession of duplicate file