

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND MEDICAL  
CENTER, INC.,

Plaintiff,

v.

HARTFORD HEALTHCARE CORPORATION,  
HARTFORD HOSPITAL, HARTFORD  
HEALTHCARE MEDICAL GROUP, INC.,  
INTEGRATED CARE PARTNERS, LLC,

Defendants.

Case No. 22-cv-00050

Judge Alfred Covello

March 11, 2022

**FORM 26(f) REPORT OF PARTIES' PLANNING MEETING**

Date Complaint Filed: January 11, 2022

Date Complaint Served: January 12, 2022

Date of Amended Complaint: February 1, 2022

Date of Defendant's Appearance: January 28, 2022

Pursuant to Fed. R. Civ. P. 16(b), 26(f) and D. Conn. L. Civ. R. 16, a conference was held on February 25, 2022. The participants were:

David Ettinger and William Fish for Plaintiff Saint Francis Hospital and Medical Center, Inc. ("Saint Francis").

Karen Staib, Thomas Dillickrath and Stephen Weissman for Defendants Hartford HealthCare Corporation ("Hartford HealthCare"), Hartford Hospital, Hartford HealthCare Medical Group, Inc. ("HHC Medical Group"), and Integrated Care Partners, LLC ("Integrated Care Partners").

**I. CERTIFICATION**

Undersigned counsel (after consultation with their clients) certify that (a) they have discussed the nature and basis of the parties' claims and defenses and any possibilities for achieving a prompt settlement or other resolution of the case; and (b) they have developed the following proposed case management plan. Counsel further certify that they have forwarded a copy of this report to their clients.

**II. JURISDICTION**

**A. Subject Matter Jurisdiction**

The Complaint alleges federal antitrust claims under Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1-2, brought under 15 U.S.C. § 15 and Section 7 of the Clayton Act, 15 U.S.C. § 18; as well as state law claims under Chapter 624 of the Connecticut Antitrust Act, and the common law, over which the Court may exercise supplemental jurisdiction.

**B. Personal Jurisdiction**

Personal jurisdiction is not contested.

**III. BRIEF DESCRIPTION OF CASE**

**A. Claims of Plaintiff:**

Saint Francis brings this case for damages and injunctive relief arising out of a series of anticompetitive actions by Defendants violating federal and state antitrust laws and related violations of state law. These actions allowed Hartford HealthCare to charge prices at rates substantially higher than other hospitals in the area and to provide inferior care while maintaining its market dominance. The specific anticompetitive actions include the following:

1. Acquisition of numerous physician practices, increasing Hartford HealthCare's dominant share in many relevant hospital and physician markets.

2. Threats to physicians of retaliation if they fail to follow Hartford HealthCare's dictates, as well as, coercion, and payments of penalties and incentives to control referrals.
3. Interference with efforts by health plans and other payors, including the State of Connecticut, to create incentives for patients to utilize low cost, high quality providers, including threats to physicians to keep them from participating in these programs.
4. Demands for exclusive access to certain cutting edge medical equipment, so that it would be unavailable for patient care at other area hospitals.

These actions have also harmed Saint Francis and other hospitals in the relevant markets by diverting cases from them and interfering with their ability to compete for patients on the merits. As a result, these actions have simultaneously increased Defendants' market power, harmed consumers and damaged Saint Francis.

**B. Defenses and Claims (Affirmative Defenses, Counterclaims, Third Party Claims, Cross Claims)(either pled or anticipated) of Defendant/s:**

Hartford HealthCare rejects Plaintiff's contention that it has violated the antitrust laws and/or engaged in any tortious interference. Hartford HealthCare is a non-profit healthcare system that provides high-quality health care to thousands of patients across Connecticut. For more than a decade, Hartford HealthCare has been the leader in a movement away from an inefficient, hard-to-navigate, and inequitable system of care towards a patient-focused model centered on close clinical integration amongst healthcare providers, thereby enhancing access, affordability, equity, and excellence.

Plaintiff's claims fail both factually and legally for a host of reasons, including:

1. Hartford HealthCare does not possess any market—let alone monopoly—power under the antitrust laws in any plausible relevant antitrust market;

2. Hartford HealthCare has not entered into any contract or combination, including any acquisition, whose likely effect is, or has been, to restrain trade or diminish competition in any plausible relevant market;

3. The Amended Complaint contains numerous factual inaccuracies. But regardless, Hartford HealthCare's conduct has constituted competition on the merits, which is permitted—and indeed, encouraged—by the antitrust laws (as well as state tort law);

4. Plaintiff has not been foreclosed from any plausible relevant market;

5. Plaintiff has not suffered any antitrust injury, nor can it meet the other requirements for antitrust standing; and

6. Any harm that Plaintiff alleges has been self-inflicted and based on its failure to compete on the merits.

**C. Defenses and Claims of Third Party Defendant/s:**

N/A

**IV. STATEMENT OF UNDISPUTED FACTS**

Counsel and self-represented parties certify that they have made a good faith attempt to determine whether there are any material facts that are not in dispute. The following material facts are undisputed:

1. Saint Francis is a domestic nonprofit corporation organized under the laws of Connecticut. Its principal office is located in the City of Hartford, County of Hartford, and State of Connecticut. The sole member of Saint Francis is Trinity Health Of New England Corporation, Inc.

2. Hartford HealthCare is a domestic nonprofit corporation organized under the laws of Connecticut. Its principal office location is located in the City of Hartford, County of Hartford, and State of Connecticut.

3. Hartford Hospital is a domestic nonprofit corporation organized under the laws of Connecticut. Its principal office location is located in the City of Hartford, County of Hartford, and State of Connecticut. Hartford HealthCare is the sole member of Hartford Hospital.

4. Defendant Hartford Medical Group is a domestic nonprofit corporation organized under the laws of Connecticut. Its principal office location is located in the City of Hartford, County of Hartford, and State of Connecticut.

5. Integrated Care Partners is a domestic for-profit limited liability corporation organized under the laws of Connecticut. Its principal office location is located in the City of Hartford, County of Hartford, and State of Connecticut. Hartford HealthCare is the sole member of Integrated Care Partners.

6. Southern New England Health Care Organization (“SoNE”) is a clinically integrated provider network. SoNE is owned 50% by Trinity Health Of New England. SoNE contracts with, among others, commercial insurers to provide health care services to their members. SoNE also acts as an accountable care organization for Medicare patients.

**V. CASE MANAGEMENT PLAN:**

**A. Initial Disclosures**

Initial disclosures will be served by April 8, 2022.

**B. Scheduling Conference**

1. The parties do not request to be excused from holding a pretrial conference with the Court before entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b).

2. The parties prefer that a scheduling conference, if held, be conducted by telephone or video conference.

**C. Early Settlement Conference**

1. The parties certify that they have considered the potential benefits of attempting to settle the case before undertaking significant discovery or motion practice.
2. The parties do not request an early settlement conference.
3. The parties prefer a settlement conference, when such a conference is held, with a magistrate judge.
4. The parties do not request a referral for alternative dispute resolution pursuant to D. Conn. L. Civ. R. 16.

**D. Joinder of Parties, Amendment of Pleadings, and Motions Addressed to the Pleadings**

Apart from the issues raised in Defendants' Motion to Dismiss (which Plaintiff disputes), the parties do not believe that there are any perceived technical defects in the pleadings.

1. Motions to join additional parties or to amend the pleadings filed after April 8, 2022, will require, in addition to any other requirements under the applicable rules, a showing of good cause for the delay.

**E. Discovery**

Recognizing that the precise contours of the case, including the amounts of damages at issue, if any, may not be clear at this point in the case, in making the proposals below concerning discovery, the parties have considered the scope of discovery permitted under Fed. R. Civ. P. 26(b)(1). At this time, the parties wish to apprise the Court of the following information regarding the "needs of the case":

This is a complex antitrust case, involving allegations of various types of anticompetitive behavior, and raising multiple issues related to market definition, and requiring both factual explication and economic analyses. Given these issues, and the issues inherent in any antitrust

case, which must assess both the conduct at issue and its purported effects on competition, this case will require significantly more time for discovery than the typical case.

a. The parties anticipate that discovery will be needed on the following subjects:

Plaintiff:

- i. The definition of relevant markets and competition within the relevant markets;
- ii. The allegedly anticompetitive conduct engaged in by Defendants;
- iii. Defendants' market position and monopoly power in the relevant markets;
- iv. The impact of Defendants' practices on hospital rates, commercial insurers, competition and Saint Francis;
- v. Damages; and
- vi. Any alleged procompetitive effects of Defendants' practices.

1. Defendants

- vii. The subjects identified by Plaintiff above;
- viii. Plaintiff and its affiliates' patient bases and service areas;
- ix. The hiring or recruitment of physicians or acquisition of physician practice groups or other healthcare providers or their facilities, and their referral practices;
- x. Attempts to acquire other equipment which Plaintiff allegedly could not acquire as a result of an exclusive agreement entered into by Hartford HealthCare;
- xi. Networks, bundling of services, or reimbursement rates;
- xii. Referral practices;
- xiii. Competition for healthcare services in Connecticut;

c. All discovery, including depositions of expert witnesses pursuant to Fed. R. Civ. P. 26(b)(4), will be completed (not propounded) by October 11, 2023.

- d. Discovery will be conducted in phases: fact document discovery, fact deposition discovery and expert discovery.
- e. Document production shall be complete by January 13, 2023.
- f. Plaintiff's Position: Plaintiff believes that the deposition limit should be changed to permit no more than forty (40) depositions for each side (not including expert depositions), taking no more than 140 hours of deposition time. This would allow up to 40 depositions but on average the depositions could be no longer than 3.5 hours. If some depositions take the full 7 hours, fewer depositions would be permitted. This only doubles the total deposition time from a "standard" case with 10 depositions at 7 hours per deposition, which for a case of this magnitude is appropriate. In addition, the parties are only 20 hours apart on total deposition time.

Plaintiff believes that this number of depositions is necessary because of the complexity of this case, involving acquisition of the practices of more than 50 physicians, and at least four different alleged anticompetitive practices. Additionally, this case centrally implicates at least two of Hartford HealthCare's hospitals, its physician group, and its physician network, ICP. Deposition discovery will likely also be necessary of key individuals at all these entities (including potentially individuals with responsibilities for each service line implicated by the 9 different alleged relevant markets) with regard to each of these forms of anticompetitive conduct. Third party deposition discovery will certainly be necessary, involving among others, a number of managed care plans, since the impact on managed care rates (the relevant prices in healthcare) is a critical issue in any healthcare antitrust case. Depositions may also likely be needed of each of the other hospitals in the relevant markets.



Given the magnitude of this case and its great public importance to healthcare in Hartford County, this expenditure of resources is fully justified.

Defendants' Position: Defendants agree that the scope of this case warrants modification of the ten (10) depositions permitted by the F.R.C.P. but not in the dramatic manner requested by Plaintiff. Defendants submit that the modification requested by Plaintiff -- which calls for four times the number of deponents and double the number of hours allowed for by the F.R.C.P. -- is excessive, not commensurate with the needs of the case, and would inflict undue burden on the parties and non-parties alike. Defendants are willing to agree to an hours limit of 120 hours, with a maximum of twenty (20) depositions per side. Defendants' proposal will allow for double the number of depositions allowed by rule, and an additional 50 hours of time, in order to allow the parties to depose an ample number of both party and non-party witnesses. Plaintiff cannot articulate any reason why its proposed departure from the 10-deposition limit in the F.R.C.P. is proportional to the needs of the case and consistent with judicial economy. On the contrary, Plaintiff's proposal, if adopted, would place an inordinate and unnecessary burden on non-parties, ignores the other available methods of discovery, including Rule 30(b)(6) depositions, document discovery, and subpoena *duces tecum*, and could theoretically require 80 depositions within a span of less than three months (i.e., at least 1 deposition every single weekday). . Defendants' proposal is cognizant of the scope of this case, but respectful of the principles of proportionality that lie at the heart of the federal rules.

g. Depositions (other than depositions related to document discovery and expert depositions) will commence on January 16, 2023 and will be completed by April 11, 2023.

h. The parties will not request permission to serve more than 15 interrogatories.

- i. Plaintiff intends to call expert witnesses at trial. Defendants intend to call expert witnesses at trial.
- j. Plaintiff will designate all trial experts and provide Defendants' counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) by May 11, 2023.
- k. Defendants will designate all trial experts and provide Plaintiff's counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) by July 18, 2023.
- l. Plaintiff's Reply expert reports (limited to addressing materials in Defendants' reports) shall be provided to Defendants' counsel by September 11, 2023.
- m. Depositions of all experts shall be completed not later than October 11, 2023. Each expert may be deposed once, unless otherwise agreed to by the Parties, or for good cause shown.
- n. A damages analysis will be provided by any party who has a claim or counterclaim for damages by the date of its expert report.
- o. The parties agree to the attached proposed order for the preservation, disclosure and management of electronically stored information. The parties will rely on this Court's Standing Order to minimize the risk of waiver of privilege or work-product protection.

**F. Summary Judgment Motions:**

Summary judgment motions, which must comply with D. Conn. L. Cir. R. 56, will be filed on or before November 13, 2023.

**G. Joint Trial Memorandum**

The joint trial memorandum required by the Standing Order on Trial Memoranda in Civil Cases will be filed within 60 days of decision on any motion for summary judgment.

**VI. TRIAL READINESS**

The case will be ready for trial by 60 days after filing of the joint trial memorandum.

As officers of the Court, undersigned counsel agree to cooperate with each other and the Court to promote the just, speedy and inexpensive determination of this action.

**PLAINTIFF**

By:           / William S. Fish, Jr. /          

Date:           March 11, 2022          

**DEFENDANT**

By:           / Karen T. Staib /          

Date:           March 11, 2022

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Judge Alfred Covello

**STIPULATION AND [PROPOSED] ORDER REGARDING PROTOCOL FOR  
DISCOVERY**

The parties (“Parties”) in the above-captioned action (“Litigation”) have agreed to the terms of this Stipulation and [Proposed] Order Regarding Protocol for Discovery (“Discovery Protocol”) to govern the form of productions made by the Parties in this Litigation. Accordingly, it is ORDERED:

**1. SCOPE**

A. Absent special circumstances, the provisions set forth in this ESI Protocol shall govern the production of all paper documents and electronically stored information (collectively “ESI”) by the Parties during discovery.

B. The Parties shall meet and confer in good faith in an effort to agree upon: (a) sources from which and custodians from whom ESI will be collected for review and production; (b) search methods and terms or other filtering or categorization to be applied; and (c) timeframes for collection and review of ESI.

C. Except as noted herein, the Parties agree that the following instructions (“Instructions”) apply to the production of all ESI, including “paper” documents and files stored in electronic format (including, but not limited to, email, messages (e.g. SMS text messages, iMessage, or messaging applications such as WhatsApp, Signal, or Telegraph), note files (both paper notes and electronic notes created using electronic note applications such as Microsoft OneNote), Word documents, PowerPoint documents, Excel documents, Access databases, documents and messages created or saved in collaboration tools such as Microsoft Teams, Microsoft SharePoint, Microsoft Yammer, and Slack, or any other cloud-based software platform, including Google Workspace applications. Nothing in this Discovery Protocol is intended to be an exhaustive list of discovery obligations or rights of a Party producing discoverable information (“Producing Party”) or a Party requesting discoverable information (“Requesting Party”), or any other Party or nonparty.

D. Notwithstanding anything in this Discovery Protocol, the Parties may mutually agree to deviate from the provisions set forth herein as to specific documents or categories of documents. In the event that any Party identifies a circumstance where application of this Discovery Protocol is not technologically possible or practicable, the Producing Party will disclose to the Requesting Party the reason(s) for, and circumstances surrounding, the need to vary from this Discovery Protocol, and the Parties will meet and confer in an effort to reach agreement on an appropriate deviation from this Discovery Protocol.

E. The Parties and their attorneys do not intend by agreeing to this Discovery Protocol to waive their rights to any protection or privilege, including the attorney-client privilege and work product doctrine, or their rights to object to any discovery requests. This

Discovery Protocol does not address or resolve any objections to the scope of the Parties' respective discovery requests.

F. Nothing in this document establishes any agreement as to either the temporal or subject matter scope of discovery in the Litigation. Nothing in this document creates an obligation by any party to produce ESI on back-up tapes or other long-term storage media that were created strictly for use as a data back-up or disaster recovery medium.

G. The Parties shall not be obligated under this document to produce any ESI that is no longer within their possession, custody or control (*i.e.*, lost or deleted) as a result of the routine, good-faith operation of an electronic information system, unless the Party requesting such ESI establishes that there is good cause to believe that the Party from whom such ESI is being requested intentionally failed to preserve, deleted or destroyed the ESI while under an obligation to retain it.

H. Notwithstanding anything to the contrary herein, the following document types are not discoverable in the Litigation except upon a showing of good cause, to include that the information sought is likely material, that it is unavailable from other sources, and that its production will not impose undue burden or expense on the producing party:

- (i) Back-up tapes or other long-term storage media that were created strictly for use as a data back-up or disaster recovery medium.
- (ii) Deleted, erased, or overwritten computer files, whether fragmented or whole, which were deleted in the regular course of business;
- (iii) Data stored in Random Access Memory ("RAM"), cache memory, or in temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;

- (iv) Data stored on photocopiers, scanners, and fax machines; and
- (v) Data stored as server, system, or network logs.

I. Nothing in this Protocol prevents any Party from asserting, in accordance with the Federal Rules of Civil Procedure, that other categories of ESI are not reasonably accessible within the meaning of Rule 26(b)(2)(B).

J. The Parties shall meet and confer to resolve any disputes that arise under this protocol. In the event the Parties cannot reach agreement on a disputed matter, the Parties shall submit the matter to the court.

## **2. PRODUCTION FORMAT**

A. ESI Production Format: ESI shall be produced primarily as single page, uniquely and sequentially numbered CCITT Group IV TIFF image files not less than 300 dpi. The images shall be accompanied by searchable full text files containing the extracted text on a document basis, or if extracted text is unavailable, e.g., image-only PDF files, then searchable text generated using Optical Character Recognition (“OCR”) will be provided. The text files shall be named to match the endorsed number assigned to the image of the first page of the document. The images and text files shall also be accompanied by image cross-reference load files in the format requested by each party (such as Opticon) providing the beginning and ending endorsed number of each document and the number of pages it comprises. The producing Party shall also provide a litigation support database load file (“Data Load File”) corresponding to the TIFF image files and the full text files, that shall contain the requested metadata, as reasonably available, associated with each field specified in Schedule A. For the avoidance of any doubt, there is no obligation on a Party to create metadata where none exists or is not reasonably available. Data Load Files will be provided in both Concordance (DAT) and Summation (DII and Summary.TXT) file formats.

B. **Paper Production Format:** Paper discovery shall be converted to electronic form and produced as single page, uniquely and sequentially numbered CCITT Group IV TIFF image files not less than 300 dpi resolution to enable the generation of searchable text using OCR. The images shall be accompanied by text files containing the OCR-generated searchable full text. The text files shall be named to match the endorsed number assigned to the image of the first page of the document. The images shall also be accompanied by an image cross-reference load file (such as Opticon) providing the beginning and ending endorsed number of each document and the number of pages it comprises. The producing Party shall also provide a Data Load File corresponding to the CCITT Group IV TIFF image files, that shall contain a coded “Custodian” field, as defined in the Production Fields set forth in Schedule A.

C. **Appearance, Content, and Redaction:** Subject to any necessary redaction, each document’s TIFF image file shall contain the same information and same physical representation as the document did in its original format, whether paper or electronic, consistent with the processing specifications set forth in **Section 3. Processing Specifications**. If redaction takes place, it will be logged on a privilege log. Redaction of ESI will be performed on a TIFF imaged version of the document only, and native format files and extracted text will **not** be provided. Unredacted text in a redacted document must be made searchable using OCR. Any redactions must be clearly visible on the face of the produced document (*e.g.*, the Parties should not use white boxes to make redactions on documents with a white background) and OCR searchable (*e.g.*, labeled “Redacted”).

D. **Document Unitization:** If a paper document is more than one page, the document should be unitized using physical unitization. For electronic documents, all unitization should be



defined within the data load file; this includes the designation of parent/attachments both for e-mail and attachments and for compressed files (such as ZIP or RAR files) and their contents.

E. **Color:** If an original document contains color that is necessary to understand the meaning or content of the document, the document shall be produced as single-page, color JPG images. Original document orientation should be maintained (*i.e.*, portrait to portrait and landscape to landscape).

F. **Document Numbering for TIFF Images:** Each page of a document produced in TIFF file format shall have a legible, unique numeric identifier (“Document Number” or “Bates Number”) not less than eight (8) digits (with zero-padding) electronically “burned” onto the image at a place on the document that does not obscure, conceal or interfere with any information originally appearing on the document. The Document Number for each document shall be created so as to identify the producing Party and the Document Number (*e.g.*, “ABC-00000000”). Each Party shall have a unique identifying prefix.

G. **Production of ESI in Native Format:** Except as listed below, ESI produced in TIFF format is not required to be produced in native format unless agreed by the Parties or for good cause shown. Privileged documents that have been redacted in accordance with the provisions herein are not required to be produced in native format. A document produced in native format must not be intentionally manipulated to change the appearance or substance of the document prior to its collection or production.

- (i) Spreadsheets. Spreadsheets, CSV, and .txt files shall be produced solely as native files with a placeholder TIFF image showing the document Bates Number and stating “Produced in Native Format.” The database load files will include a link to the NativeFile field, along with extracted text.

- (ii) PowerPoint. PowerPoint documents shall be produced in both native format, and in TIFF format. The database load files will include a link to the NativeFile field, along with extracted text.
- (iii) Word Documents containing Track changes and/or Comments. Word documents containing Track changes and/or Comments shall be produced as TIFF images with Track Changes and Comments turned off, and in native format.
- (iv) Structured Data. To the extent a response to discovery requires production of discoverable electronic information contained in a database (SAP, SQL, MS Access or other), the producing party may comply by querying the database for discoverable information and generating a report in a reasonably usable and exportable electronic file (for example, Excel or CSV format). The first line of the file will, to the extent possible, show the column headers for each field of data included. The Parties shall meet and confer to finalize the appropriate data extraction and production format for specific information contained in a database.
- (v) Media Files. The producing Party shall produce video, animation or audio files in their Native format with a placeholder TIFF image showing the document Bates Number and stating “Produced in Native Format” and a link in the NativeFile field.

H. **De-duplication**: The Parties shall use commercially acceptable methods (e.g., MD5 or SHA-1 hash values) to identify duplicate ESI and globally de-duplicate ESI. Family groups (e.g., an email and its attachments) shall be de-duplicated only against other family

groups as entities, and no document that is not part of a family group shall be de-duplicated against a member of a family group. The Parties will not de-duplicate loose electronic documents or Hard Copy Information against email attachments. The Parties will not treat a document containing handwritten notes, highlighting, or any other markings as a duplicate of a non-marked or annotated version of the same document. A Party may de-duplicate ESI across its custodians or sources, but if that option is exercised, the Party shall identify each custodian who had a copy of the produced document in the ALL CUSTODIANS field in the Metadata load file. A Party may only de-duplicate “exact duplicate” documents and may not de-duplicate “near duplicate” documents, both of the quoted terms in this sentence being given their ordinary meaning in the e-discovery field. Common system files defined by the NIST library (<http://www.nsr.nist.gov/>) need not be produced.

I. **Third-Party Software**: To the extent that documents produced pursuant to this document cannot be rendered or viewed without the use of proprietary third-party software, the Parties shall meet and confer to minimize any expense or burden associated with the production of such documents in an acceptable format, including issues as may arise with respect to obtaining access to any such software and operating manuals which are the property of a third party.

### 3. PROCESSING SPECIFICATIONS

The producing Party shall collect and process documents using sound methods that avoid spoliation of ESI. The producing Party shall use the following specifications when converting ESI from its Native format into TIFF image files prior to its production:

- A. All headers and footers shall be displayed.
- B. OLE embedded email signatures and company logo pictures or images (.gif files) in e-mails shall **not** be extracted. However, other OLE embedded objects (e.g., an Excel

spreadsheet embedded within an MS Word document), will be extracted and produced as an attachment to the source document.

C. For archive files (zip, jar, rar, gzip, etc.), extract from the archive and maintain family relationships; do **not** include the source/container file itself in the production.

D. For MS Excel or other spreadsheet files, hidden columns and rows shall be made visible, to the extent reasonably feasible upon collection and processing. Additionally, where present, hidden sheets, headers, and footers should be made visible.

E. PowerPoint documents should be processed with hidden slides and speaker's notes, and comments unhidden, and should display both the slide, speaker's notes, and comments on the TIFF image. Auto-populated fields, with the exception of auto-populating "page-number" fields, shall be replaced with text indicating the field name. For example, auto-populating "date" fields shall be replaced with the text "DATE" (or other similar text) and auto-populating "filepath" fields shall be replaced with the text "PATH" (or other similar text).

#### **4. PRIVILEGE LOG**

A. Any document or e-mail or redacted portion of document/e-mail that is identified as privileged for any reason and logged on a privilege log is subject to the following:

- (i) Within 30 days after the substantial completion of document production in response to each document request (and in no event later than 90 days after each document request), the producing party shall serve on the requesting party a privilege log containing any documents withheld on the basis of any claim of privilege or other legal protection ("Privileged Material"). The parties shall promptly provide a privilege log for any subsequently withheld documents.

- (ii) The privilege log shall include sufficient information to allow the receiving party to reasonably assess the claim of privilege, including but not limited to the following information: (i) the date of the document (i.e., the date of the last email in the email chain); (ii) the author(s)/sender(s); (iii) recipients (including recipients copied and/or blind copied); (iv) a description of the contents of the document that, without revealing information itself privileged or protected, is sufficient to understand the basis of the claim of privilege; and (v) the type or nature of the privilege asserted (e.g., attorney-client privilege, work-product doctrine).
- (iii) The parties are only required to provide a single privilege log entry for multiple email messages in the same email thread to the extent such messages are included within one individual email thread. The email that will be logged will be the most inclusive thread with any associated attachments.
- (iv) Documents that contain both privileged and non-privileged/work product protected information will be produced with the privileged/protected information redacted and the non-privileged/protected information visible. Documents or portions thereof that contain redactions for information withheld on privilege/work product grounds will be identified in a privilege log in accordance with Rule 26(b)(5)—with the exception that redacted documents need not be logged provided the basis for the redaction is made plain on the face of the redacted document (e.g., the

email to/from is between counsel and is visible in the produced version of the document).

**5. COSTS.**

The costs of production pursuant to this Order shall be borne by the Producing Party. However, in agreeing to this Order, no Party waives or relinquishes any right or interest it may have under the Federal Rules of Civil Procedure to seek cost shifting or apportionment for the costs of electronic discovery.

**6. THIRD-PARTY DISCOVERY.**

A. A Party that issues a non-Party subpoena (the “Issuing Party”) shall include a copy of this Order and the order concerning confidentiality agreed and/or entered in this litigation with the subpoena and state that the Parties in the litigation have requested that third-Parties produce documents in accordance with the specifications set forth herein.

B. The Issuing Party shall produce a copy to all other Parties documents and ESI (including any metadata) obtained under subpoena to a non-Party.

C. If the non-Party production is not Bates-stamped, the Issuing Party will endorse the non-Party production with unique Bates prefixes and numbering scheme prior to reproducing them to all other Parties.

SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Alfred Covello  
United States District Court Judge

STIPULATED AND AGREED TO BY:

/s/ David A. Ettinger

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**SCHEDULE A: PRODUCTION FIELDS**

<b>Field Name</b>	<b>Description (E-Mail)</b>	<b>Description (Non-E-mail Loose File or E-mail Attachment)</b>
AttchIDs	Delimited list of beginning document Bates numbers of each attachment, populated for the PARENT email.	Delimited list of beginning document Bates numbers of each attachment, populated for the PARENT container (zip/rar/etc.).
Author	N/A	The person who originally created the electronic file.
BCC	All information contained in the "BCC" field of the e-mail, as well as all other discernable blind copyees.	N/A
BegAttch	Number endorsed on first page of first document in a family ( <i>i.e.</i> , documents and all attachments thereto).	Number endorsed on first page of first document in a family ( <i>i.e.</i> , documents and all attachments thereto).
BegDoc# (or DocID)	Number endorsed on first page of document.	Number endorsed on first page of document.
CC	All information contained in the "CC" field of the e-mail, as well as all other discernible copyees.	N/A
ConfDes	The confidential designation endorsed on the document, if present.	The confidential designation endorsed on the document, if present.
DateLastMod	N/A	Date the document was last modified. (MM/DD/YYYY).
TimeLastMod		Time the document was last modified in hh:mm:ss format.
Date Created		Date the document was created (MM/DD/YYYY).
Time Created		Time the document was created in hh:mm:ss format
DateSent	Date the E-mail was sent, expressed in MM/DD/YYYY format.	N/A
DateReceived	Date the E-mail was received expressed in MM/DD?YYYY format	N/A
EndAttch	Number endorsed on last page of last document in a family ( <i>i.e.</i> , documents and all attachments thereto).	Number endorsed on last page of last document in a family ( <i>i.e.</i> , documents and all attachments thereto).
EndDoc#	Number endorsed on last page of	Number endorsed on last page of



Field Name	Description (E-Mail)	Description (Non-E-mail Loose File or E-mail Attachment)
	document.	document.
FileExt	Displays the extension of the file (msg, eml).	Displays the extension of the file (doc, xlsx).
FileName	Original file name, including file extension (Example.MSG).	Original file name, including file extension (Example.XLS, or Example.DOC).
From	All information contained in the "From" field of the e-mail.	N/A
NativeFile	If files produced in native path to file (e.g. NATIVE\samplefile.xls), and an active hyperlink should be included in the data load files for use in document review databases.	If files produced in native path to file (e.g. Attachments\ samplefile.xls), and an active hyperlink should be included in the data load files for use in document review databases.
ParentID	Beginning document Bates number of the parent email, populated for each ATTACHMENT	
Extracted Text Path	File path to the extracted text/OCR file, or the extracted/OCR file link (e.g. ABC001\Text\001\ABC0000001.txt)	File path to the extracted text/OCR file, or the extracted/OCR file link (e.g. ABC001\Text\001\ABC0000001.txt)
File Path		Original file path
MessageID	Message ID of email	N/A
Conversation Index	Conversation Index for email	N/A
Redacted	Indication as to whether the document contains redactions	Indication as to whether the document contains redactions
Custodian	Custodial or non-custodial source(s) identified from which the document was collected.	Custodial or non-custodial source(s) identified from which the document was collected.
All Custodians	For documents that have been deduplicated, the identity of other Custodians who also had the identical document. .	For documents that have been deduplicated, the identity of other Custodians who also had the identical document. .
Subject	Verbatim subject or re: line, as extracted from the e-mail.	
Document Title	N/A	Document title as extracted from the metadata of the file if present. It will not be manually coded if absent in the metadata, and will not be manually coded for paper documents.
TimeSent	Time the email message was sent in hh:mm:ss format.	N/A

<b>Field Name</b>	<b>Description (E-Mail)</b>	<b>Description (Non-E-mail Loose File or E-mail Attachment)</b>
ReceivedTime	Time the email message was sent in hh:mm:ss format.	N/A
To	All information contained in the "To" field of the e-mail.	N/A
Production Volume	Production media volume name, e.g. "VOL001"	Production media volume name, e.g. "VOL001"
MD5 Hash	MD5 hash value.	MD5 hash value.