

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST LITIGATION	Lead Action Case No: 1:25-cv-10734-BEM
This Document Relates To:	<i>Consolidated with Case Nos.:</i>
All Associated Cases	<i>1:25-CV-11092-BEM</i>
	<i>1:25-CV-11167-BEM</i>
	<i>1:25-CV-11537-BEM</i>

JOINT STATEMENT RE DEPOSITION PROTOCOL

Pursuant to the Court's Scheduling Order (Dkt. No. 222), Counsel for the parties submit this Joint Statement Regarding Deposition Protocols. On June 26 and 29, 2026, counsel for the parties met and conferred and discussed draft deposition protocols, which they had also corresponded about over email in the days leading up to those calls.

The Parties reached agreement on nearly the entire deposition protocol, but the limits on the number of depositions remain in dispute. The parties thus submit brief position statements on that issue below and competing Proposed Deposition Protocols, attached as Exhibits A (Plaintiffs) and B (Defendants), which are identical aside from that issue. The Parties reserve their rights to further meet and confer on these issues following any proposed amended pleadings.

PLAINTIFFS' POSITION STATEMENT:

Plaintiffs' position began with a form of protocol based on protocols being used in *In Re Amitiza Antitrust Litig.*, 1:21-cv-11057-MJJ (D.Mass.) (Dkt. 128), UMG Recordings, Inc., et al. v. Suno, Inc., et al., 1:24-cv-11611-FDS (Dkt. 205), *In Re Respimat Pharmaceuticals Antitrust Litig.*, (1:25-md-03154-DJC) (Dkt. 28), *In Re Broiler Chicken Antitrust Litig.*, 1:16-cv-08637 (N.D. Ill.) (ECF 995) ("*Broilers*"), and also, to a lesser extent, *In Re Multiplan Health Insurance Provider Litig.*, 25-cv-6795 (N.D. Ill.) (ECF 663). Plaintiffs emailed those protocols to the Defendants last week. After conferring with Defendants last Friday and yesterday, Plaintiffs have largely agreed with Defendants on the language in the protocol, but for the reasons set forth below and to be discussed at the hearing on July 8, 2026, Plaintiffs respectfully request that their proposed protocol (accompanying this Statement as Exhibit A), be entered by the Court.

Limits on the Number of Depositions

Plaintiffs believe that they should be permitted to take up to sixty (60) depositions of Defendants' current or former employees (represented by counsel for a defendant), including up to ten (10) depositions of any single defendant, who have knowledge of the claims or defenses of the parties in this litigation because:

(1) there are six defendants and, typically in complex, multi-party antitrust matters, plaintiffs (who have the burden of proof) are entitled to depose more than those individuals disclosed in a defendant's initial disclosures and *at least* ten (10) current or former employees of a defendant, particularly a defendant with thousands if not tens of thousands of employees (as is true of defendants here); also, in *Amitiza*, there were three defendants, and there is only one defendant or defendant group in *Respimat* and *USG*, hence why the deposition limits were identical to or not much larger than the local rule's presumptive ten-per-side limit in those cases; and

(2) although every defendant disclosed between two (2) and eight (8) individuals with relevant testimony in their disclosures, several defendants reserved the right to amend their disclosures to identify additional current or former employees with relevant information as discovery continues, and the three (3) defendants who identified only two (2) individuals with relevant information have at least tens of thousands, if not hundreds of thousands, of employees, and so their disclosure of only two (2) employees appears on its face to be based on incomplete information.

As discussed yesterday with Defendants, Plaintiffs cannot agree to less than up to ten (10) depositions of a Defendant, given our experiences in other antitrust cases, the facts that two Defendants identified seven (7) or eight (8) individuals in their initial disclosures, discovery in this case is in its infancy, and several Defendants are likely to amend their disclosures to identify additional individuals with knowledge of the parties' claims or defenses in this litigation.

As Defendants impliedly concede below, the primary purpose of a deposition protocol is to supplement the Federal Rules of Civil Procedure and encourage the attorneys in the case, who have fiduciary obligations, not only to work together to keep expenses and fees as low as reasonably practicable, but also to gather the admissible evidence necessary to prove or defend against the claims efficiently and without burdening the court (and the parties) with motion practice to resolve disputes that inevitably arise. Plaintiffs in complex multi-party antitrust class actions have the burden of proof at trial, must be permitted to obtain the admissible evidence they need in accord with precedent, and have every incentive to depose only the individuals who will provide them with admissible testimony on material issues in dispute to prove their claims before a jury. In words provided by courts cited by Defendants below, Plaintiffs' "counsel [must always] think long and hard about who they want to depose and to depose only those who are really

important . . . [who they] need” to prove their claims. *Yourga v. City of Northampton*, 2018 WL 1053532, at *3 (D. Mass. Feb. 26, 2018) (citation omitted).

Plaintiffs request **up to** sixty (60) depositions of defendants’ current and former employees and **up to** ten (10) depositions of a defendant in the hope that far fewer will be necessary to obtain admissible evidence to prove our case, especially given the deadline for the close of merits discovery in approximately nine months. Plaintiffs agreed to Defendants’ request for up to twenty (20) depositions of Plaintiffs and up to five (5) depositions of each Plaintiff, even though it is prejudicial to Plaintiffs because Plaintiffs only disclosed 15 individuals and only four (4) by one of the Plaintiffs. In antitrust class actions against defendants with tens if not hundreds of thousands of employees (like Defendants here), where discovery has yet to commence in earnest and only initial disclosures have been served, it is common for plaintiffs to believe (on very limited information) they will need up to ten (10) depositions of each corporate family (at least ten if more than ten were disclosed by the defendant family), and courts do not want to be bothered by motions to take witnesses with knowledge when plaintiffs—incentivized to minimize fees and expenses—believe a deposition is needed in good faith. *See Broilers*, Dkt. 995, cited by Defendants below (10 depositions per Defendant family permitted where the court also encouraged “the parties to continue to discuss these issues as they begin to notice and take depositions in real time and learn how many depositions are actually necessary”).

The *Broilers* decision is consistent with numerous other complex antitrust actions and here, because there is one defendant family (Zelis) and five other defendants in this case, and because discovery is in its infancy, Plaintiffs would like permission to take **up to** sixty (60) depositions of Defendants’ current or former employees, and **up to** ten (10) depositions of each Defendant. TO be sure, Plaintiffs’ welcome the Court’s willingness to promptly resolve disputes to keep this case

moving along, in our view, the deposition protocol should discourage motions to either compel a deposition to take place or for a protective order to prevent it from occurring, a right the Parties have preserved regardless of the limits set forth in the protocol.

DEFENDANTS' POSITION STATEMENT:

The Parties dispute how many fact depositions of Defendants should be permitted at this stage of the case. Defendants propose twenty (20), which is realistic and more than reasonable given the case schedule. Should additional, non-cumulative depositions be needed, the Parties will confer and Plaintiffs may seek judicial relief as needed. Moreover, the Parties stipulate that any trial witnesses who were not deposed will be made available for deposition. By contrast, Plaintiffs propose sixty (60) depositions of Defendants. This number of depositions is unreasonable at this stage of the case and far exceeds even the number of disclosed custodians. Plaintiffs are unable to offer a specific need for this amount of testimony (let alone name who they seek to depose), cannot articulate how it will fit within the current case schedule, and base their argument on speculation about what *may* be needed in the case. There is no justification for Plaintiffs' request.

The Federal Rules of Civil Procedure provide that a party must obtain leave of Court before taking a deposition beyond the 10-deposition default in the Federal Rules. *See* Fed. R. Civ. P. 30(a)(2)(A). Likewise, the Local Rules provide a limit of 10 depositions "per side." *See* L.R. 26.1(c). The purpose of the rule limiting the number of depositions is to "emphasize that counsel have a professional obligation to develop a mutual cost-effective plan for discovery in the case." *See* Fed. R. Civ. P. Advisory Committee's note to 1993 Amendments; *see also Yourga v. City of Northampton*, 2018 WL 1053532, at *3 (D. Mass. Feb. 26, 2018) ("the purpose of the limitation is to force counsel to think long and hard about who they want to depose and to depose only those who are really important, so as to stay within the limit set by the rule.... courts should not freely grant relief from the limits without a showing of need") (citation omitted). Courts in this district consistently hold that the party seeking leave to depose additional witnesses bears the burden of showing the need for the discovery, such as "who is to be deposed and the reasons why their

testimony is necessary.” *San Francisco Health Plan v. McKesson Corp.*, 264 F.R.D. 20, 21 (D. Mass. 2010); *Linhares v. Woods Hole, Martha’s Vineyard, & Nantucket Steamship Auth.*, 2022 WL 17736800, at *7 (D. Mass. Dec. 16, 2022) (party requesting depositions “bears the burden of showing a need”). There is no exception in the Federal or Local Rules for a putative class action or a complex consolidated case. *Cf.* Manual Complex Litig. (Fourth) § 11.45 (recommending “avoid[ing] unnecessary depositions, limit[ing] the number and length of those that are taken, and ensur[ing] that the process of taking depositions is fair and efficient as possible”).

Plaintiffs’ request for sixty (60) depositions of Defendants falls far short of this standard. Defendants’ more reasonable proposal for twenty (20) depositions per side should be granted, for the following reasons, set forth in detail below: (1) Plaintiffs’ proposal is unworkable under the case schedule, which they do not dispute; (2) Defendants’ proposal is proportional to the number of custodians, while Plaintiffs’ is not; (3) Plaintiffs have not demonstrated a need for additional testimony; (4) Defendants’ proposal is consistent with applicable authority, including the cases Plaintiffs cite above; and (5) Plaintiffs will suffer no prejudice under Defendants’ proposal.

1. Defendants’ Proposal Is Workable in the Current Case Schedule; Plaintiffs’ Is Not.

Fact discovery closes on March 8, 2027 and all fact depositions “must be completed by” that date. *See* Dkt. 222. Document requests must be served by December 1, 2026, meaning that the Parties will likely still be producing documents in January.

In light of those constraints, Plaintiffs’ proposed deposition protocol is untenable. Under Plaintiffs’ proposal, there would be up to **110 depositions**: (i) sixty (60) depositions of Defendants, (ii) twenty (20) depositions of Plaintiffs, and (iii) thirty (30) non-party depositions (fifteen per side). To complete these depositions, the Parties would need to schedule two depositions every single court day (excluding holidays and weekends) from December 16, 2026

through the close of fact discovery on March 8, 2027, or one deposition every single court day from September 25, 2026 through the close of fact discovery (i.e., the Parties would need to begin depositions *before* the October 1, 2026 deadline to produce structured data and while substantial document productions are likely ongoing).

When asked how the Parties could complete the amount of depositions Plaintiffs propose within the current case schedule, Plaintiffs' counsel suggested that the fact discovery cutoff would necessarily need to be adjusted. That proves Defendants' point: the Parties should be doing their best to meet the case schedule set by the Court, not creating additional conditions that make it impossible for the Parties to do so.

2. Defendants' Proposal Is Proportional to the Number of Custodians

Plaintiffs argue that the Parties' disclosures should influence the number of depositions permitted in the case. However, that argument favors Defendants' position, not Plaintiffs'.

On May 12, 2026, the Parties exchanged initial disclosures and on June 12, 2026, the Parties exchanged proposed custodians. Defendants collectively disclosed thirty-five (35) custodians and fewer witnesses in their disclosures. That some Defendants disclosed more than others is not surprising given that certain Defendants did not use Zelis extensively and thus have very limited relevant documents to produce. Moreover, it is undisputed that Zelis use is very small in general compared to MultiPlan, a much larger provider of healthcare solutions. *See* Dkt. 97 (Motion to Dismiss) at 19–20 (collecting allegations in Complaint showing that Zelis's OON solutions reprice less than 0.5% of claims annually); *see also Pacific Inpatient Med. Grp., Inc. v. MultiPlan Health Inc.*, No. 1:24-CV-07825 (N.D. Ill. Aug. 28, 2024), Dkt. No. 1, Compl. ¶ 334, (“MultiPlan’s main competitor, Zelis, along with other claims repricing services, are small-time

players compared to MultiPlan. In 2022, Zelis processed approximately 2 million claims for repricing ... Multiplan processed 546 million claims.”).

Plaintiffs nonetheless demand sixty (60) depositions, meaning they would depose every single custodian plus twenty-five (25) additional witnesses. *First*, it is not the case that a party is entitled to depose every single custodian. Indeed, the disclosure or identification of a witness or custodian does not establish that the individual possesses unique, relevant, and non-cumulative information warranting a deposition. Parties rarely depose every opposing party custodian or witness on initial disclosures in complex antitrust cases for that reason. Rather, a party must make reasoned, strategic choices about whom to depose and whether that deposition is proportional to the needs of the case. And Rule 30(b)(6) depositions also obviate the need to depose every possible witness. *Second*, even if Plaintiffs were to depose every custodian, that would get them nowhere near the sixty (60) depositions they seek. *Finally*, Plaintiffs’ per-Defendant demand is untenable. Plaintiffs seek ten (10) depositions of each Defendant, including those with only a few custodians: Aetna and Humana each have two custodians, and UnitedHealth Group has three. Moreover, Plaintiffs’ proposal to depose 60 witnesses across six Defendants is not proportionate to deposing 20 witnesses across five Plaintiffs.

3. Plaintiffs Have Stated No Substantive Basis for their Proposal

Plaintiffs have not shown why they need 60 depositions of Defendants. They have not identified what unique, relevant information any particular witness is expected to provide, nor explained why such testimony would not be cumulative. *See Whittingham v. Amherst College*, 163 F.R.D. 170 (D. Mass. 1995) (denying motion to set aside 10-deposition limit where the plaintiff had not identified the exact number of additional deposition sought, had not named the particular individuals to be deposed, and had not yet commenced the deposition process);

Thykkuttathil v. Keese, 294 F.R.D. 597 (W.D. Wash. 2013) (denying party’s motion to expand depositions because it failed to identify the witnesses to be deposed or offer any rationale for why the presence of multiple defendants justified exceeding the presumptive limit).

4. Defendants’ Proposal Is Consistent with Applicable Case Authority

Defendants’ proposal for reciprocal limit of 20 fact depositions with up to five of any single party, subject to expansion for good cause, is proportionate to the scope of this case and consistent with the limits courts have approved in other antitrust matters, including the five cases cited by Plaintiffs:

- *In Re Amitiza Antitrust Litig.*, 1:21-cv-11057-MJJ (D. Mass.), Dkt. 128 at 1 (12 depositions per side, including party and non-party witnesses);
- *UMG Recordings, Inc., et al. v. Suno, Inc., et al.*, 1:24-cv-11611-FDS (D. Mass.), Dkt. 205 at 2 (100 hours total per side for party depositions, i.e., approximately 14 total depositions per side using the 7-hour deposition limit);
- *In Re Respimat Pharmaceuticals Antitrust Litig.*, 1:25-md-03154-DJC (D. Mass.), Dkt. 28 at 1 (10 depositions per side);
- *In Re Broiler Chicken Antitrust Litig.*, 1:16-cv-08637 (N.D. Ill.), Dkt. 995 (10 depositions per Defendant family where fact discovery lasted over two years, and court encouraged “the parties to continue to discuss these issues as they begin to notice and take depositions in real time and learn how many depositions are actually necessary”); and
- *In Re Multiplan Health Insurance Provider Litig.*, 1:24-cv-06795 (N.D. Ill.), Dkt. 663 (145 fact depositions per side across 18 defendants in active discovery, in case involving over 400 Plaintiffs, hundreds of custodians, and longer fact discovery period).

5. There Is No Prejudice to Either Party Under Defendants' Proposal

Defendants' proposal will not prejudice Plaintiffs. *First*, to the extent additional depositions are needed, the Parties can meet-and-confer and agree where appropriate or, failing that, seek judicial relief. *Second*, the Parties agree that to the extent a trial witness is identified who has not already been deposed, the Parties will make reasonable efforts to make that witness available for deposition by the opposing Party reasonably in advance of trial. This approach minimizes any surprise at trial, and makes it unnecessary to boil the oceans and depose every possible witness during fact discovery, as Plaintiffs propose. By contrast, Plaintiffs' proposal would prejudice the Parties and the Court because it would be unworkable under the current case schedule and would lead to inefficient and expensive over-litigation of this case.

Dated: June 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2026, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

/s/ Joseph A. Gorman

Joseph A. Gorman

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	Lead Action Case No.: 1:25-cv-10734-BEM <i>Consolidated with Case Nos.:</i> <i>1:25-CV-11092-BEM</i> <i>1:25-CV-11167-BEM</i> <i>1:25-CV-11537-BEM</i>
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**PLAINTIFFS' [PROPOSED] STIPULATION AND ORDER REGARDING
DEPOSITION PROTOCOL**

IT IS HEREBY STIPULATED AND AGREED by and between counsel for Plaintiffs and Defendants that this Stipulation and Order Regarding Deposition Protocol (“Deposition Protocol”) will govern depositions of parties and non-parties in this case as a supplement to the Federal Rules of Civil Procedure (the “Federal Rules” or “Rule #”) and the Local Rules of the United States District Court for the District of Massachusetts (“Local Rules”) (collectively, “Rules”), and that unless specifically modified herein, nothing in this Order will be construed to abrogate, expand or limit the Rules or the parties’ obligations under them, including the right to seek relief from the Court from any provision in this Deposition Protocol Order for good cause shown. The Parties may stipulate to change any deadline or obligation herein by agreement and do not need to share that stipulation with the Court.

I. NUMBER OF DEPOSITIONS

A. Rule 30(b)(1) Depositions

1. Plaintiffs collectively may depose up to **sixty (60)** current or former employees of Defendants. Plaintiffs may not take more than **ten (10)** depositions of any Defendant. Plaintiffs

may allocate a witness that is or was employed by more than one Defendant to the Defendant of their choice.

2. Defendants collectively may depose up to twenty (20) current or former employees of Plaintiffs. Defendants may not take more than five (5) depositions of any Plaintiff. Defendants may allocate a witness that is or was employed by more than one Plaintiff to the Plaintiff of their choice.

3. Each witness may be deposed only once as a fact witness unless the parties agree or the Court orders otherwise.

B. Rule 30(b)(6) Depositions

4. The parties may notice one 30(b)(6) deposition per party. Each seven hours of 30(b)(6) examination shall count as one deposition by the noticing side towards the deposition limits according to the above section. If the receiving party designates more than one corporate representative to testify regarding the topic(s) in the notice, then the noticing party, in its discretion, may obtain at least one (1) hour of testimony from each such representative up to a total of ten (10) hours of Rule 30(b)(6) testimony. If one representative testifies on all topics, the deposition shall be limited to seven (7) hours of testimony, including 30(b)(1) testimony.

5. Where a witness is deposed both in his or her individual capacity per 30(b)(1) and as a 30(b)(6) witness, the deposition of that witness shall count as one deposition (not two) and the parties shall use their best efforts to complete any such deposition in a single day. The Parties will use their best efforts to notice Rule 30(b)(6) depositions so as to allow the Parties to coordinate the timing of the depositions of a corporate representative designated under Rule 30(b)(6) and the deposition of that individual as a fact witness under Rule 30(b)(1).

6. In cases where a witness is deposed in more than one capacity, the examining party shall attempt in good faith to state on the record when the witness is being examined in their capacity as a 30(b)(6) corporate representative and when they are being examined in their capacity as a 30(b)(1) fact witness solely for purposes of timekeeping against the agreed deposition limits.

7. The party noticing a Rule 30(b)(6) deposition shall serve a comprehensive list of topics for examination on the receiving party thirty (30) days following the receiving party's written representation that it has substantially completed its production of documents, reserving all rights to add additional topics or revise topics as discovery continues. Although a party is not required to notice all Rule 30(b)(6) topics at the same time, if it serves an amended notice with one or more new topics, it must serve the amended notice at least sixty (60) days before the close of fact discovery.

8. A party receiving notice of a Rule 30(b)(6) deposition will have fourteen (14) days from the date of receipt to serve initial objections to the notice and any topics for examination (and both Parties agree to grant reasonable extensions), and will meet and confer in good faith with the noticing party to attempt to resolve any such objections within seven (7) days thereafter.

9. If the Parties agree that they are unable to resolve any objection to the notice or to any topic through the meet-and-confer process, the noticing party must draft a joint letter to the Court with its request for relief as to each unresolved topic in the draft letter and send that letter to the opposing party or parties, who shall insert their position in the letter within five (5) business days. The noticing party has one business day to revise its position in light of the opposing party's position, and the opposing party has one business day to review those revisions and revise its portion accordingly. The noticing party will then file the joint letter for the Court's resolution of the dispute. A party also may request a hearing on the dispute in the letter. No Party shall be

required to designate a witness to testify on, or otherwise proceed with, any disputed topic unless and until the Court orders that the deposition may proceed on that topic.

10. In order to ensure that the 30(b)(6) witness is prepared on the precise topics at issue, following the completion of the meet-and-confer and the resolution of any disputed topics by the Court, the noticing party shall serve a revised 30(b)(6) notice (limited to the topics resolved by the Court, if any) and the party receiving the notice shall respond agreeing in writing to the topics and must propose a date, time, location, and individual(s) for the deposition(s) as soon as reasonably practicable after receipt of the revised notice and not later than ten (10) days following receipt of the notice.

C. Depositions of Non-Parties

11. The numeric limitations on depositions discussed above do not apply to depositions of non-parties, such as the parties' experts, separately represented former employees, or unrepresented witnesses, or to depositions conducted after the close of discovery by agreement or order of the Court for pre-trial purposes, such as depositions of records custodians concerning the authentication and admissibility of documents.

12. Excluding deposition subpoenas of records custodians of non-parties concerning the authentication and admissibility of documents, no side (*i.e.*, Plaintiffs collectively or Defendants collectively) may serve more than fifteen (15) deposition subpoenas of non-parties.

D. Trial Witnesses

13. The parties agree that, for any individual identified by an opposing party as a trial witness who has not already been deposed, the party identifying the witness as a trial witness shall make all reasonable efforts to make the witness available for deposition by the opposing Party reasonably in advance of trial.

II. DEPOSITION GUIDELINES AND PROCEDURES

A. Duration of Depositions and Allocation of Time

14. All counsel seeking to examine a witness shall confer in good faith before the deposition to allocate examination time among any counsel intending to participate and ask questions at the deposition. In addition, for each deposition of a Defendant or non-party, the Parties shall cooperate to identify among themselves up to two examining attorneys. Those examining attorneys shall cooperate among themselves to divide the time used for the examination of the witness and to avoid repeating questions on matters previously covered.

15. Unless otherwise agreed by the parties or ordered by the Court, the duration of depositions for all Rule 30(b)(1) witnesses will be limited to seven (7) hours on the record, excluding breaks and recesses off the record, and conducted in a single day. The court reporter or videographer will maintain a total running time for actual deposition testimony on the record to record how much time is taken in each deposition by each party.

16. If Plaintiffs or Defendants notice a non-party for deposition, any other party may by written notice to the other parties and without separately serving a subpoena on the non-party participate in the questioning of the non-party witness. A party that wishes to conduct its own examination of the non-party witness must provide that written notice within ten (10) calendar days of service of the original notice or subpoena. The deposing parties will meet and confer with the non-party witness or their counsel to attempt to reach agreement on the length of the deposition and an allocation of time among the parties.

B. Scheduling and Notice

17. Counsel for the parties will consult with one another to coordinate all scheduling and taking of depositions.

18. Witnesses who are former employees of a party may be requested to appear at depositions by notice of deposition served on counsel for their former employer and shall not initially be served with a deposition subpoena. Counsel will undertake to facilitate the scheduling of depositions for witnesses currently or formerly employed by their clients, regardless of whether or not they will represent the witness at the deposition. In the event that counsel is unable to represent a witness, they are to promptly notify the other parties, and provide the other parties with the witness's last known contact information and identity of their counsel, if known. A former employee retains the right to request issuance of a deposition subpoena for any reason within twenty-one (21) days of service of the notice on counsel for the witness's former employer. In the event a former employee requests issuance of a subpoena, or the former employer of the witness is unable to timely produce a former employee without a subpoena, the party requesting the deposition of the former employee may issue a subpoena.

19. Depositions will be taken in-person at a location convenient for the witness and their counsel, unless the party noticing the deposition designates the deposition to be taken remotely under the terms of this Protocol in the notice of deposition. If a deposition is in-person, all questioning attorneys must be present in-person. Unless otherwise agreed, all party, former-employee, and non-party depositions will be taken within the greater metropolitan area of the witness's primary residence or place of business. Depositions of expert witnesses will occur in the location selected by counsel defending the deposition of the expert. The parties agree, however, to make reasonable accommodations for remote questioning by an attorney in the event of travel difficulties, illness, or similar exigencies. Attorneys may observe in-person depositions remotely and object on the record, but they may not question the witness absent agreement of the parties.

20. Multitracking of depositions is expected where appropriate. However, the parties shall use their reasonable best efforts to ensure that no more than two employees of a single Plaintiff or a single Defendant may be scheduled for a deposition on the same day.

21. Absent good cause, a non-party will be served with the deposition subpoena or notice at least twenty-eight (28) calendar days before the scheduled deposition. The party originally noticing the deposition of a non-party will coordinate with the non-party and its counsel (if any) and with all parties intending to question the non-party witness to set a mutually amenable date, time, and location for the deposition, to be conducted as soon as reasonably practicable in light of the schedule of the witness and their counsel (if any). The original noticing party of the non-party deposition will serve a copy of this Deposition Protocol and also the operative protective order along with any subpoena of the non-party. If a non-party subpoenaed to produce documents does not produce them at least ten (10) days before the scheduled deposition, the noticing party may reschedule the deposition to allow time to inspect the documents before the deposition.

22. Notices of depositions and service of subpoenas will be served on counsel for all parties electronically and notices are deemed served when they are emailed.

C. Recording Technology

23. Vendors. Each party may retain its own vendor(s) to host in-person or remote depositions. It is the responsibility of the party originally noticing a deposition to arrange for the vendor(s) for any deposition. In selecting its vendor, each party will ensure that the vendor can provide (a) a reliable audio-visual platform to conduct the deposition remotely and confidentially, and permits the use of breakout rooms for consultation during the remote deposition; and (b) real-time transcription technology. The vendor must also be able to display electronic versions of any exhibits on the screen during the deposition as directed by counsel conducting the questioning.

Use of one or more vendors for the roles of platform host, videographer, or court reporter does not preclude or prohibit any party from retaining such vendor(s) to perform other tasks in connection with this case.

24. Stenographic Recording. Pursuant to Rule 30(b)(5), all depositions (in-person and remote) will be conducted before a certified court reporter, and the certified court reporter will simultaneously stenographically record all deposition proceedings and testimony. During a remote deposition, the time zone of the witness's location will be the relevant time zone for the deposition. The court reporter will administer the oath or affirmation to the witness. If the deposition is remote, the court reporter need not be authorized to administer oaths where the witness is sitting, and such oath or affirmation is deemed as valid and effective as if the oath or affirmation had been delivered in the physical presence of the witness. The written transcript by the court reporter will constitute the official record of the deposition.

25. Videoconference. A videoconferencing platform with industry standard security features enabled (*e.g.*, Zoom technology with a passcode-protected meeting room) will be used to conduct depositions remotely while also preventing the public disclosure of confidential information. All private chat features on the remote deposition and exhibit platforms will be disabled. The parties will ensure that their respective court reporting vendors and their representatives present at any deposition agree to be bound by the operative protective order. The parties also agree that the vendors will not share any confidential information or work product of Plaintiffs with Defendants, or vice versa. Depositions transmitted via videoconferencing will include both live video and audio of the witness and may include live presentation of a rough draft transcript in real time during the deposition. With the exception of the court reporter and videographer, who may record the video stream of a deposition to ensure the accuracy of

transcription or to avoid audiovisual loss, video streams will not be recorded, shared, or otherwise transmitted to any person who is not authorized to attend the deposition. The recording by the videographer of the video of a deposition is the official video recording of the deposition and, pursuant to Rule 29(a), may be used as if it were a recording prepared by a certified videographer, and all parties waive any objections based on the authenticity of such digital files.

26. Technical Issues: If any technical issues arise during a deposition, the parties will act in good faith to extend depositions beyond seven (7) hours of recorded proceedings if warranted by those issues. Any time spent resolving technical issues will be “off the record” and will not count against the examining counsel’s deposition time. The court reporter and videographer will keep track of time spent on the record.

D. In-The-Room Logistics

27. The witness is permitted to have a defending attorney physically present, and may receive technical assistance from a non-attorney. If the witness is an expert, the witness is additionally permitted to have his or her staff physically present, but the presence of any such person must comply with any applicable local law and will be stated on the record.

28. The party originally noticing an in-person deposition is responsible for making available a physical location that can accommodate the presence of all participants and will endeavor to confirm the identities of all individuals (including the identity of any defending attorney) intending to be present as soon as practicable before the deposition.

29. If the parties agree that a deposition will be conducted remotely, because every participant in or attendee of the remote deposition (including the court reporter and witness) may be in separate physical locations, the parties stipulate under Rule 29(a) that the video recorded remotely by the videographer is presumptively authentic and the video may be used at trial or

hearing to the same extent an in-person deposition video recording may be used. Nothing in this paragraph is intended to limit or waive any party's rights with respect to the use or admissibility of any testimonial or other evidence at trial and the parties reserve all of their rights concerning the recordings of depositions. No person attending a remote deposition will permit anyone who is not subject to the protective order in this case to hear or view the remote deposition while it is being conducted.

30. The witness must be the only person in the room during the time the witness is testifying on the record during a remote deposition with the exception of any attorney(s) representing the witness. While on the record, any attorney physically present in the same room as the witness will log into the remote deposition platform separately and have their respective cameras on and be audible at all times through individual or shared audio feeds (*e.g.*, all individuals in a room may share one telephone dial-in for audio). The witness may be asked on the record to identify any and all attorney(s) physically present in the same room as the witness. If another person enters the room during the time the witness is testifying on the record, the witness (or the witness's counsel) must disclose that a person has entered and disclose the identity of such person. If any of the participants object to the person's presence, the person will be directed to leave the room. From the beginning of the time that another person is in the room with the witness, the time on the record will be stopped and the questioning attorney will pause questioning until the witness confirms that he or she is the only person in the room with the exception of any attorney(s) representing the witness.. Counsel for Parties may attend and participate in remote depositions in person with the deponent if the deponent's counsel is present with the deponent. The witness, questioning attorney(s), and defending attorney(s) shall be visible through the remote deposition video platform while on the record throughout the remote deposition. Before any remote

deposition, witnesses will be instructed by their counsel, or if unrepresented, by the first questioning attorney, that they may not use or consult any means of communication while on the record during the deposition (other than audio and video communications used to conduct the deposition itself), including without limitation electronic communications (*e.g.*, email, text, social media) and other communications (*e.g.*, telephone).

31. Counsel attending the deposition and any individual(s) working with them will not communicate with the witness regarding the substance of their testimony while the deposition is on the record other than in the presence (including virtual presence) of the court reporter and videographer. Nothing in this paragraph prohibits counsel for the witness from conferring with the witness during a break in the deposition to the extent permitted by the Rules.

E. Exhibits

32. Electronic Exhibits: The preferred method of marking and using exhibits for a remote deposition is through the platform enabled for remote depositions, which will enable examining counsel to share exhibits with the witness, court reporter, defending counsel, and attending counsel through the platform electronically before examining counsel begins to question the witness about an exhibit. If electronic exhibits are used by the witness during the remote deposition, the witness must be able to manipulate their view of the exhibit (scrolling, magnifying, *etc.*) to facilitate their review.

33. Hard-Copy Exhibits: The parties will work together cooperatively and use reasonable efforts to ensure that a sufficient number of hard-copy exhibits are available for distribution to in-person attendees of depositions. If a party is hosting an in-person deposition, it will notify the noticing and any cross-noticing parties of the identities of a deposition's anticipated in-person attendees at least five (5) days in advance of the deposition. Examining counsel,

defending counsel, and all other counsel attending the deposition will cooperate in good faith so that counsel for each party attending the deposition will have adequate access during the deposition to an exhibit shown to a witness by examining counsel during the deposition.

34. Marking of Exhibits: The parties will endeavor to number all exhibits sequentially, *i.e.*, Plaintiffs' Exhibit PX 1 through [x], and Defendants' Exhibit DX 1 through [y]. For example, if the last exhibit used by plaintiffs in a deposition were PX 31, the first exhibit used by plaintiffs in the next deposition would be PX 32. In the event multiple depositions occur on the same day, a range of exhibit numbers for each deposition will be reserved by examining counsel to avoid overlapping exhibit numbers. If a deposition is noticed to be remote, the vendor supplying the deposition hosting platform must have available on request a means for questioning counsel, as well as the witness, to mark or annotate exhibits electronically.

35. Witness Notes: Any notes made or documents reviewed by a witness while their deposition is on the record that were not marked as an exhibit during the deposition must be disclosed on the record by defending counsel and either made an exhibit by examining counsel or made available to counsel in attendance at the deposition.

36. Circulation of Marked Exhibits: As soon as reasonably practicable after a deposition concludes, the vendor responsible for handling the exhibits marked at the deposition will circulate the marked exhibits electronically to counsel who attended the deposition.

F. Objections

37. All objections must be stated on the record concisely in a nonargumentative and nonsuggestive manner in accord with Rule 30(c)(2). As soon as an attorney for one side (*i.e.*, an attorney for Plaintiffs or an attorney for Defendants) objects to the form of a question, then all parties on that same side have preserved all possible objections to the form of the question (*i.e.*, if counsel for a Defendant objects, then all Defendants are deemed to have preserved that objection).

38. Instructions to the witness not to answer are improper except on the basis of privilege, Court order, or for any other basis allowable under the law.

39. Counsel for each side at a deposition are deemed to have joined objections interposed by their side and need not repeat the objection or state that they join in it. Counsel will not make repetitive objections if another attorney has already stated an objection. If a technology issue prevents counsel representing the witness at a remote deposition from hearing a question or making a timely objection on the record, that counsel shall notify the other deposition attendees as soon as possible. Defending counsel's objection will be deemed preserved if the objection is made on the record promptly following the resolution of the technical issue. Similarly, if the examining attorney objects or moves to strike following the answer, then all parties' objections to the responsiveness of the answer are preserved without repetition by other counsel.

G. Disputes

40. If a dispute arises during a deposition, before contacting the Court, the primary examining and primary defending attorneys at the deposition must first meet and confer to attempt to resolve the issue. If the dispute remains, the parties may then jointly contact the Court. The parties will alert the court reporter to be prepared to read the deposition question and answer at issue to the Court. If the Court is not available, and to the extent the parties are still unable to resolve the dispute, the deposition shall continue as to matters not in dispute with full reservation of rights.

41. As soon as reasonably practicable after a deposition in which a still-unresolved dispute arose, the party moving to compel or for a protective order shall email a draft joint letter to the opposing party or parties containing its request for relief and position of the disputed issue(s). The opposing party has five (5) business days thereafter to insert their position in the joint letter.

The noticing party has one business day to revise its position in light of the opposing party's position, and the opposing party has one business day to review those revisions and revise its portion accordingly. The noticing party will then file the joint letter for the Court's resolution of the dispute. A party also may request a hearing on the dispute in the letter. Excluding address and signature blocks, each side has up to three (3) pages to explain their position and may cite the rough deposition transcript in the joint letter brief.

42. Nothing in this Deposition Protocol denies counsel the right to suspend a deposition under Rule 30(d)(3) or file a motion relating to a deposition with the Court as soon as practicable after the deposition. The motion must be accompanied by a declaration explaining why the dispute resolution procedure above was impractical or futile.

43. If counsel for a witness reasonably believes that a witness will invoke his or her Fifth Amendment rights in response to all or nearly all substantive questions, counsel for the witness shall inform the parties of that fact as soon as reasonably possible after the deposition is noticed, but in no case later than ten (10) business days prior to the deposition. The Parties shall cooperate on the efficient questioning of witnesses who intend to invoke their Fifth Amendment rights in response to all or nearly all substantive questions.

H. Confidentiality

44. No person will attend a deposition who does not agree to be bound by and comply with the terms of the protective order.

45. The confidentiality designations of deposition transcripts, including exhibits, will be governed by the protective order.

46. Although a party may attend a deposition in person or remotely by videoconference, a party's representative (other than the witness's outside counsel) will not

participate in any portion of a deposition when a witness is questioned about documents that have been marked “**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**.”

III. OTHER STIPULATIONS

A. Cost Allocation

47. The party issuing the deposition notice shall be fully responsible for the court reporter and videographer costs. The Parties shall each bear their own costs for obtaining copies of written transcripts and video recordings. If a party cross-notices the deposition, then the parties will share the costs of the cross-noticed deposition.

B. Correction of Official Transcript

48. The court reporter will provide the original transcript to the first examining attorney. If for any reason, the original transcript is lost, misplaced, not returned, not signed, or unavailable, a certified copy may be used in its place for all purposes.

49. Notwithstanding the time periods set forth in Rule 30 and Local Rule 26.1(a)(2), the parties agree to the following deadlines: (i) the transcript of a deposition shall be provided to the witness for correction and signature within thirty (30) days after the end of the deposition; (ii) the deposition may be signed by the witness, and any errata to the deposition may be provided within sixty (60) days after the transcript is submitted to the witness. If no corrections are made during this time, the transcript will be final and presumed accurate.

C. Modification

50. Counsel reserve the right to seek modification of any procedure in this Deposition Protocol, but if modification cannot be made by agreement, counsel must meet and confer with opposing counsel before seeking relief from the Court per the Disputes procedure set forth above regarding depositions.

IT IS SO ORDERED.

Dated: _____

Hon. Brian E. Murphy
Judge of the United States District Court

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	Lead Action Case No.: 1:25-cv-10734-BEM <i>Consolidated with Case Nos.:</i> <i>1:25-CV-11092-BEM</i> <i>1:25-CV-11167-BEM</i> <i>1:25-CV-11537-BEM</i>
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**DEFENDANTS' [PROPOSED] STIPULATION AND ORDER REGARDING
DEPOSITION PROTOCOL**

IT IS HEREBY STIPULATED AND AGREED by and between counsel for Plaintiffs and Defendants that this Stipulation and Order Regarding Deposition Protocol (“Deposition Protocol”) will govern depositions of parties and non-parties in this case as a supplement to the Federal Rules of Civil Procedure (the “Federal Rules” or “Rule #”) and the Local Rules of the United States District Court for the District of Massachusetts (“Local Rules”) (collectively, “Rules”), and that unless specifically modified herein, nothing in this Order will be construed to abrogate, expand or limit the Rules or the parties’ obligations under them, including the right to seek relief from the Court from any provision in this Deposition Protocol Order for good cause shown. The Parties may stipulate to change any deadline or obligation herein by agreement and do not need to share that stipulation with the Court.

I. NUMBER OF DEPOSITIONS

A. Rule 30(b)(1) Depositions

1. Plaintiffs collectively may depose up to **twenty (20)** current or former employees of Defendants. Plaintiffs may not take more than **five (5)** depositions of any Defendant. Plaintiffs

may allocate a witness that is or was employed by more than one Defendant to the Defendant of their choice.

2. Defendants collectively may depose up to twenty (20) current or former employees of Plaintiffs. Defendants may not take more than five (5) depositions of any Plaintiff. Defendants may allocate a witness that is or was employed by more than one Plaintiff to the Plaintiff of their choice.

3. Each witness may be deposed only once as a fact witness unless the parties agree or the Court orders otherwise.

B. Rule 30(b)(6) Depositions

4. The parties may notice one 30(b)(6) deposition per party. Each seven hours of 30(b)(6) examination shall count as one deposition by the noticing side towards the deposition limits according to the above section. If the receiving party designates more than one corporate representative to testify regarding the topic(s) in the notice, then the noticing party, in its discretion, may obtain at least one (1) hour of testimony from each such representative up to a total of ten (10) hours of Rule 30(b)(6) testimony. If one representative testifies on all topics, the deposition shall be limited to seven (7) hours of testimony, including 30(b)(1) testimony.

5. Where a witness is deposed both in his or her individual capacity per 30(b)(1) and as a 30(b)(6) witness, the deposition of that witness shall count as one deposition (not two) and the parties shall use their best efforts to complete any such deposition in a single day. The Parties will use their best efforts to notice Rule 30(b)(6) depositions so as to allow the Parties to coordinate the timing of the depositions of a corporate representative designated under Rule 30(b)(6) and the deposition of that individual as a fact witness under Rule 30(b)(1).

6. In cases where a witness is deposed in more than one capacity, the examining party shall attempt in good faith to state on the record when the witness is being examined in their capacity as a 30(b)(6) corporate representative and when they are being examined in their capacity as a 30(b)(1) fact witness solely for purposes of timekeeping against the agreed deposition limits.

7. The party noticing a Rule 30(b)(6) deposition shall serve a comprehensive list of topics for examination on the receiving party thirty (30) days following the receiving party's written representation that it has substantially completed its production of documents, reserving all rights to add additional topics or revise topics as discovery continues. Although a party is not required to notice all Rule 30(b)(6) topics at the same time, if it serves an amended notice with one or more new topics, it must serve the amended notice at least sixty (60) days before the close of fact discovery.

8. A party receiving notice of a Rule 30(b)(6) deposition will have fourteen (14) days from the date of receipt to serve initial objections to the notice and any topics for examination (and both Parties agree to grant reasonable extensions), and will meet and confer in good faith with the noticing party to attempt to resolve any such objections within seven (7) days thereafter.

9. If the Parties agree that they are unable to resolve any objection to the notice or to any topic through the meet-and-confer process, the noticing party must draft a joint letter to the Court with its request for relief as to each unresolved topic in the draft letter and send that letter to the opposing party or parties, who shall insert their position in the letter within five (5) business days. The noticing party has one business day to revise its position in light of the opposing party's position, and the opposing party has one business day to review those revisions and revise its portion accordingly. The noticing party will then file the joint letter for the Court's resolution of the dispute. A party also may request a hearing on the dispute in the letter. No Party shall be

required to designate a witness to testify on, or otherwise proceed with, any disputed topic unless and until the Court orders that the deposition may proceed on that topic.

10. In order to ensure that the 30(b)(6) witness is prepared on the precise topics at issue, following the completion of the meet-and-confer and the resolution of any disputed topics by the Court, the noticing party shall serve a revised 30(b)(6) notice (limited to the topics resolved by the Court, if any) and the party receiving the notice shall respond agreeing in writing to the topics and must propose a date, time, location, and individual(s) for the deposition(s) as soon as reasonably practicable after receipt of the revised notice and not later than ten (10) days following receipt of the notice.

C. Depositions of Non-Parties

11. The numeric limitations on depositions discussed above do not apply to depositions of non-parties, such as the parties' experts, separately represented former employees, or unrepresented witnesses, or to depositions conducted after the close of discovery by agreement or order of the Court for pre-trial purposes, such as depositions of records custodians concerning the authentication and admissibility of documents.

12. Excluding deposition subpoenas of records custodians of non-parties concerning the authentication and admissibility of documents, no side (*i.e.*, Plaintiffs collectively or Defendants collectively) may serve more than fifteen (15) deposition subpoenas of non-parties.

D. Trial Witnesses

13. The parties agree that, for any individual identified by an opposing party as a trial witness who has not already been deposed, the party identifying the witness as a trial witness shall make all reasonable efforts to make the witness available for deposition by the opposing Party reasonably in advance of trial.

II. DEPOSITION GUIDELINES AND PROCEDURES

A. Duration of Depositions and Allocation of Time

14. All counsel seeking to examine a witness shall confer in good faith before the deposition to allocate examination time among any counsel intending to participate and ask questions at the deposition. In addition, for each deposition of a Defendant or non-party, the Parties shall cooperate to identify among themselves up to two examining attorneys. Those examining attorneys shall cooperate among themselves to divide the time used for the examination of the witness and to avoid repeating questions on matters previously covered.

15. Unless otherwise agreed by the parties or ordered by the Court, the duration of depositions for all Rule 30(b)(1) witnesses will be limited to seven (7) hours on the record, excluding breaks and recesses off the record, and conducted in a single day. The court reporter or videographer will maintain a total running time for actual deposition testimony on the record to record how much time is taken in each deposition by each party.

16. If Plaintiffs or Defendants notice a non-party for deposition, any other party may by written notice to the other parties and without separately serving a subpoena on the non-party participate in the questioning of the non-party witness. A party that wishes to conduct its own examination of the non-party witness must provide that written notice within ten (10) calendar days of service of the original notice or subpoena. The deposing parties will meet and confer with the non-party witness or their counsel to attempt to reach agreement on the length of the deposition and an allocation of time among the parties.

B. Scheduling and Notice

17. Counsel for the parties will consult with one another to coordinate all scheduling and taking of depositions.

18. Witnesses who are former employees of a party may be requested to appear at depositions by notice of deposition served on counsel for their former employer and shall not initially be served with a deposition subpoena. Counsel will undertake to facilitate the scheduling of depositions for witnesses currently or formerly employed by their clients, regardless of whether or not they will represent the witness at the deposition. In the event that counsel is unable to represent a witness, they are to promptly notify the other parties, and provide the other parties with the witness's last known contact information and identity of their counsel, if known. A former employee retains the right to request issuance of a deposition subpoena for any reason within twenty-one (21) days of service of the notice on counsel for the witness's former employer. In the event a former employee requests issuance of a subpoena, or the former employer of the witness is unable to timely produce a former employee without a subpoena, the party requesting the deposition of the former employee may issue a subpoena.

19. Depositions will be taken in-person at a location convenient for the witness and their counsel, unless the party noticing the deposition designates the deposition to be taken remotely under the terms of this Protocol in the notice of deposition. If a deposition is in-person, all questioning attorneys must be present in-person. Unless otherwise agreed, all party, former-employee, and non-party depositions will be taken within the greater metropolitan area of the witness's primary residence or place of business. Depositions of expert witnesses will occur in the location selected by counsel defending the deposition of the expert. The parties agree, however, to make reasonable accommodations for remote questioning by an attorney in the event of travel difficulties, illness, or similar exigencies. Attorneys may observe in-person depositions remotely and object on the record, but they may not question the witness absent agreement of the parties.

20. Multitracking of depositions is expected where appropriate. However, the parties shall use their reasonable best efforts to ensure that no more than two employees of a single Plaintiff or a single Defendant may be scheduled for a deposition on the same day.

21. Absent good cause, a non-party will be served with the deposition subpoena or notice at least twenty-eight (28) calendar days before the scheduled deposition. The party originally noticing the deposition of a non-party will coordinate with the non-party and its counsel (if any) and with all parties intending to question the non-party witness to set a mutually amenable date, time, and location for the deposition, to be conducted as soon as reasonably practicable in light of the schedule of the witness and their counsel (if any). The original noticing party of the non-party deposition will serve a copy of this Deposition Protocol and also the operative protective order along with any subpoena of the non-party. If a non-party subpoenaed to produce documents does not produce them at least ten (10) days before the scheduled deposition, the noticing party may reschedule the deposition to allow time to inspect the documents before the deposition.

22. Notices of depositions and service of subpoenas will be served on counsel for all parties electronically and notices are deemed served when they are emailed.

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Use of one or more vendors for the roles of platform host, videographer, or court reporter does not preclude or prohibit any party from retaining such vendor(s) to perform other tasks in connection with this case.

24. Stenographic Recording. Pursuant to Rule 30(b)(5), all depositions (in-person and remote) will be conducted before a certified court reporter, and the certified court reporter will simultaneously stenographically record all deposition proceedings and testimony. During a remote deposition, the time zone of the witness's location will be the relevant time zone for the deposition. The court reporter will administer the oath or affirmation to the witness. If the deposition is remote, the court reporter need not be authorized to administer oaths where the witness is sitting, and such oath or affirmation is deemed as valid and effective as if the oath or affirmation had been delivered in the physical presence of the witness. The written transcript by the court reporter will constitute the official record of the deposition.

25. Videoconference. A videoconferencing platform with industry standard security features enabled (*e.g.*, Zoom technology with a passcode-protected meeting room) will be used to conduct depositions remotely while also preventing the public disclosure of confidential information. All private chat features on the remote deposition and exhibit platforms will be disabled. The parties will ensure that their respective court reporting vendors and their representatives present at any deposition agree to be bound by the operative protective order. The parties also agree that the vendors will not share any confidential information or work product of Plaintiffs with Defendants, or vice versa. Depositions transmitted via videoconferencing will include both live video and audio of the witness and may include live presentation of a rough draft transcript in real time during the deposition. With the exception of the court reporter and videographer, who may record the video stream of a deposition to ensure the accuracy of

transcription or to avoid audiovisual loss, video streams will not be recorded, shared, or otherwise transmitted to any person who is not authorized to attend the deposition. The recording by the videographer of the video of a deposition is the official video recording of the deposition and, pursuant to Rule 29(a), may be used as if it were a recording prepared by a certified videographer, and all parties waive any objections based on the authenticity of such digital files.

26. Technical Issues: If any technical issues arise during a deposition, the parties will act in good faith to extend depositions beyond seven (7) hours of recorded proceedings if warranted by those issues. Any time spent resolving technical issues will be “off the record” and will not count against the examining counsel’s deposition time. The court reporter and videographer will keep track of time spent on the record.

D. In-The-Room Logistics

27. The witness is permitted to have a defending attorney physically present, and may receive technical assistance from a non-attorney. If the witness is an expert, the witness is additionally permitted to have his or her staff physically present, but the presence of any such person must comply with any applicable local law and will be stated on the record.

28. The party originally noticing an in-person deposition is responsible for making available a physical location that can accommodate the presence of all participants and will endeavor to confirm the identities of all individuals (including the identity of any defending attorney) intending to be present as soon as practicable before the deposition.

29. If the parties agree that a deposition will be conducted remotely, because every participant in or attendee of the remote deposition (including the court reporter and witness) may be in separate physical locations, the parties stipulate under Rule 29(a) that the video recorded remotely by the videographer is presumptively authentic and the video may be used at trial or

hearing to the same extent an in-person deposition video recording may be used. Nothing in this paragraph is intended to limit or waive any party's rights with respect to the use or admissibility of any testimonial or other evidence at trial and the parties reserve all of their rights concerning the recordings of depositions. No person attending a remote deposition will permit anyone who is not subject to the protective order in this case to hear or view the remote deposition while it is being conducted.

30. The witness must be the only person in the room during the time the witness is testifying on the record during a remote deposition with the exception of any attorney(s) representing the witness. While on the record, any attorney physically present in the same room as the witness will log into the remote deposition platform separately and have their respective cameras on and be audible at all times through individual or shared audio feeds (*e.g.*, all individuals in a room may share one telephone dial-in for audio). The witness may be asked on the record to identify any and all attorney(s) physically present in the same room as the witness. If another person enters the room during the time the witness is testifying on the record, the witness (or the witness's counsel) must disclose that a person has entered and disclose the identity of such person. If any of the participants object to the person's presence, the person will be directed to leave the room. From the beginning of the time that another person is in the room with the witness, the time on the record will be stopped and the questioning attorney will pause questioning until the witness confirms that he or she is the only person in the room with the exception of any attorney(s) representing the witness.. Counsel for Parties may attend and participate in remote depositions in person with the deponent if the deponent's counsel is present with the deponent. The witness, questioning attorney(s), and defending attorney(s) shall be visible through the remote deposition video platform while on the record throughout the remote deposition. Before any remote

deposition, witnesses will be instructed by their counsel, or if unrepresented, by the first questioning attorney, that they may not use or consult any means of communication while on the record during the deposition (other than audio and video communications used to conduct the deposition itself), including without limitation electronic communications (*e.g.*, email, text, social media) and other communications (*e.g.*, telephone).

31. Counsel attending the deposition and any individual(s) working with them will not communicate with the witness regarding the substance of their testimony while the deposition is on the record other than in the presence (including virtual presence) of the court reporter and videographer. Nothing in this paragraph prohibits counsel for the witness from conferring with the witness during a break in the deposition to the extent permitted by the Rules.

E. Exhibits

32. Electronic Exhibits: The preferred method of marking and using exhibits for a remote deposition is through the platform enabled for remote depositions, which will enable examining counsel to share exhibits with the witness, court reporter, defending counsel, and attending counsel through the platform electronically before examining counsel begins to question the witness about an exhibit. If electronic exhibits are used by the witness during the remote deposition, the witness must be able to manipulate their view of the exhibit (scrolling, magnifying, *etc.*) to facilitate their review.

33. Hard-Copy Exhibits: The parties will work together cooperatively and use reasonable efforts to ensure that a sufficient number of hard-copy exhibits are available for distribution to in-person attendees of depositions. If a party is hosting an in-person deposition, it will notify the noticing and any cross-noticing parties of the identities of a deposition's anticipated in-person attendees at least five (5) days in advance of the deposition. Examining counsel,

defending counsel, and all other counsel attending the deposition will cooperate in good faith so that counsel for each party attending the deposition will have adequate access during the deposition to an exhibit shown to a witness by examining counsel during the deposition.

34. Marking of Exhibits: The parties will endeavor to number all exhibits sequentially, *i.e.*, Plaintiffs' Exhibit PX 1 through [x], and Defendants' Exhibit DX 1 through [y]. For example, if the last exhibit used by plaintiffs in a deposition were PX 31, the first exhibit used by plaintiffs in the next deposition would be PX 32. In the event multiple depositions occur on the same day, a range of exhibit numbers for each deposition will be reserved by examining counsel to avoid overlapping exhibit numbers. If a deposition is noticed to be remote, the vendor supplying the deposition hosting platform must have available on request a means for questioning counsel, as well as the witness, to mark or annotate exhibits electronically.

35. Witness Notes: Any notes made or documents reviewed by a witness while their deposition is on the record that were not marked as an exhibit during the deposition must be disclosed on the record by defending counsel and either made an exhibit by examining counsel or made available to counsel in attendance at the deposition.

36. Circulation of Marked Exhibits: As soon as reasonably practicable after a deposition concludes, the vendor responsible for handling the exhibits marked at the deposition will circulate the marked exhibits electronically to counsel who attended the deposition.

F. Objections

37. All objections must be stated on the record concisely in a nonargumentative and nonsuggestive manner in accord with Rule 30(c)(2). As soon as an attorney for one side (*i.e.*, an attorney for Plaintiffs or an attorney for Defendants) objects to the form of a question, then all parties on that same side have preserved all possible objections to the form of the question (*i.e.*, if counsel for a Defendant objects, then all Defendants are deemed to have preserved that objection).

38. Instructions to the witness not to answer are improper except on the basis of privilege, Court order, or for any other basis allowable under the law.

39. Counsel for each side at a deposition are deemed to have joined objections interposed by their side and need not repeat the objection or state that they join in it. Counsel will not make repetitive objections if another attorney has already stated an objection. If a technology issue prevents counsel representing the witness at a remote deposition from hearing a question or making a timely objection on the record, that counsel shall notify the other deposition attendees as soon as possible. Defending counsel's objection will be deemed preserved if the objection is made on the record promptly following the resolution of the technical issue. Similarly, if the examining attorney objects or moves to strike following the answer, then all parties' objections to the responsiveness of the answer are preserved without repetition by other counsel.

G. Disputes

40. If a dispute arises during a deposition, before contacting the Court, the primary examining and primary defending attorneys at the deposition must first meet and confer to attempt to resolve the issue. If the dispute remains, the parties may then jointly contact the Court. The parties will alert the court reporter to be prepared to read the deposition question and answer at issue to the Court. If the Court is not available, and to the extent the parties are still unable to resolve the dispute, the deposition shall continue as to matters not in dispute with full reservation of rights.

41. As soon as reasonably practicable after a deposition in which a still-unresolved dispute arose, the party moving to compel or for a protective order shall email a draft joint letter to the opposing party or parties containing its request for relief and position of the disputed issue(s). The opposing party has five (5) business days thereafter to insert their position in the joint letter.

The noticing party has one business day to revise its position in light of the opposing party's position, and the opposing party has one business day to review those revisions and revise its portion accordingly. The noticing party will then file the joint letter for the Court's resolution of the dispute. A party also may request a hearing on the dispute in the letter. Excluding address and signature blocks, each side has up to three (3) pages to explain their position and may cite the rough deposition transcript in the joint letter brief.

42. Nothing in this Deposition Protocol denies counsel the right to suspend a deposition under Rule 30(d)(3) or file a motion relating to a deposition with the Court as soon as practicable after the deposition. The motion must be accompanied by a declaration explaining why the dispute resolution procedure above was impractical or futile.

43. If counsel for a witness reasonably believes that a witness will invoke his or her Fifth Amendment rights in response to all or nearly all substantive questions, counsel for the witness shall inform the parties of that fact as soon as reasonably possible after the deposition is noticed, but in no case later than ten (10) business days prior to the deposition. The Parties shall cooperate on the efficient questioning of witnesses who intend to invoke their Fifth Amendment rights in response to all or nearly all substantive questions.

H. Confidentiality

44. No person will attend a deposition who does not agree to be bound by and comply with the terms of the protective order.

45. The confidentiality designations of deposition transcripts, including exhibits, will be governed by the protective order.

46. Although a party may attend a deposition in person or remotely by videoconference, a party's representative (other than the witness's outside counsel) will not

participate in any portion of a deposition when a witness is questioned about documents that have been marked “**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**.”

III. OTHER STIPULATIONS

A. Cost Allocation

47. The party issuing the deposition notice shall be fully responsible for the court reporter and videographer costs. The Parties shall each bear their own costs for obtaining copies of written transcripts and video recordings. If a party cross-notices the deposition, then the parties will share the costs of the cross-noticed deposition.

B. Correction of Official Transcript

48. The court reporter will provide the original transcript to the first examining attorney. If for any reason, the original transcript is lost, misplaced, not returned, not signed, or unavailable, a certified copy may be used in its place for all purposes.

49. Notwithstanding the time periods set forth in Rule 30 and Local Rule 26.1(a)(2), the parties agree to the following deadlines: (i) the transcript of a deposition shall be provided to the witness for correction and signature within thirty (30) days after the end of the deposition; (ii) the deposition may be signed by the witness, and any errata to the deposition may be provided within sixty (60) days after the transcript is submitted to the witness. If no corrections are made during this time, the transcript will be final and presumed accurate.

C. Modification

50. Counsel reserve the right to seek modification of any procedure in this Deposition Protocol, but if modification cannot be made by agreement, counsel must meet and confer with opposing counsel before seeking relief from the Court per the Disputes procedure set forth above regarding depositions.

IT IS SO ORDERED.

Dated: _____

Hon. Brian E. Murphy
Judge of the United States District Court