

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: PARAGARD IUD) MDL DOCKET NO. 2974
PRODUCTS LIABILITY)
LITIGATION) (1:20-md-02974-LMM)
) This Document Relates to All Cases

**CASE MANAGEMENT ORDER REGARDING PRODUCTION OF
ELECTRONICALLY STORED INFORMATION AND PAPER
DOCUMENTS (“ESI PROTOCOL”)**

This Order Regarding Production of Electronically Stored Information and Paper Documents (“ESI Protocol”) shall govern the Parties in MDL No. 2974 (the “Litigation”).

Nothing in this ESI Protocol shall be construed to affect the authenticity or admissibility of information produced pursuant to this ESI Protocol. Compliance with this ESI Protocol does not constitute a waiver, by any Party, of any objection to the production of particular ESI as not relevant to any Party’s claims or defenses or not proportional to the needs of the case (as defined in Fed. R. Civ. P. 26(b)(1)); nonresponsive, undiscoverable, or otherwise inadmissible; unduly burdensome or not reasonably accessible; or privileged. A Party’s compliance with this ESI Protocol will not be interpreted to require disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection.

I. GENERAL PROVISIONS

A. **Applicability:** This ESI Protocol will govern the production of ESI and paper documents. To the extent that a Party produced documents prior to the entry of this ESI Protocol, such production will not be governed by the terms of this Order and such production need not be reproduced.

B. **ESI Liaison Counsel:**

1. Each Party agrees to designate an ESI Liaison, who is an attorney admitted as counsel in the Litigation, within 14 days

after entry of this ESI Protocol. Any Party is free to change its designated ESI Liaison by providing written notice to the other Parties.

2. Each ESI Liaison will be prepared to participate in the resolution of any e-discovery disputes or ESI issues that may arise (or designate another person as primarily responsible).

C. **Deadlines:** References to schedules and deadlines in this ESI Protocol Order shall comply with Fed. R. Civ. P. 6 with respect to computing deadlines.

D. **Definitions:**

1. “Discovery Material” is defined as all information produced, given, or exchanged by and among all Parties, or received from non-Parties in the Litigation, including all deposition testimony, testimony given at hearings or other proceedings, interrogatory answers, documents and all other discovery materials, whether produced informally or in response to requests for discovery.
2. “Party” means Plaintiffs and Defendants in this Litigation.
3. “Plaintiffs” as used herein shall mean all individuals who now have or who will have lawsuits in MDL No. 2974.
4. “Defendants” as used herein shall mean Defendants.
5. “Requesting Party” means the Party requesting production of documents.
6. “Producing Party” means the Party that may be producing documents in response to the request of Requesting Party.
7. Any undefined terms contained herein shall be construed consistently with the most current edition of The Sedona Conference Glossary.

- E. **Confidential Information:** Nothing herein shall contradict the Parties' rights and obligations with respect to any information designated as confidential under the Agreed Protective Order [[Doc. No. 36](#)].
- F. **Encryption:** To maximize the security of information in transit, any media on which documents are produced may be encrypted by the Producing Party. In such cases, the Producing Party shall transmit the encryption key or password to the Requesting Party, under separate cover, contemporaneously with sending the encrypted media.

II. SCOPE OF ESI

- A. **Scope in General:** The Parties incorporate in full herein [Fed. R. Civ. P. 26\(b\)\(1\)](#), which states: "*Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable." The Parties further incorporate [Fed. R. Civ. P. 26\(b\)\(2\)](#), which states in pertinent part as follows: "(B) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost."
- B. **Presumptively Not Reasonably Accessible:** The Parties agree that ESI created for or retained solely for disaster recovery purposes is not reasonably accessible as defined in [Federal Rule of Civil Procedure 26\(b\)\(2\)](#) and is presumptively not discoverable. A Producing Party is not required to search ESI created for or solely retained for disaster recovery purposes in responding to discovery.

A Producing Party who possesses potentially responsive materials only available on legacy hardware or software that is no longer usable or

readily available to the Producing Party will disclose to the Requesting Party the nature of such materials, and if known, what potentially responsive information may be on the materials. The Parties then will meet and confer to discuss the technical and/or financial burdens of accessing the materials and whether a good faith resolution for discovery of such materials can be reached. If the Parties cannot agree, the issue may be presented to the Court.

The Parties need not preserve the following categories of ESI for this Litigation: (a) voice-mail messages in general, excepting voice-mail messages saved by an individual custodian where the individual custodian has actual knowledge that the saved message has responsive content; (b) text messages, in general, and ephemeral data such as instant messages in general, excepting such messages and data retained by an individual custodian where the individual custodian has actual knowledge that the retained material has responsive content; (c) server, system, or network logs; (d) electronic data stored on scientific equipment or attached devices, except to the extent such data is otherwise routinely maintained; and (e) data stored on photocopiers, scanners, and fax machines.

Nothing in this Order shall alter ESI preservation duties imposed by the Federal Rules of Civil Procedure or applicable law. Should either Party seek specific relief from a preservation obligation, they shall provide the other Party a specific request. The request shall contain a description of the specific data at issue, the date range the data covers, the basis of the specific request, a description of other sources containing identical or substantially equivalent data, if known. The Party receiving the request shall exercise good faith in reviewing the request. If the Parties cannot agree, the issue may be presented to the Court.

III. GENERAL PRODUCTION FORMAT PROTOCOLS

- A. **TIFFs:** Except for structured data, all production images will be provided as a black-and-white, single-page Group IV TIFF of at least 300 DPI resolution with corresponding multi-page text and necessary load files. Each image will have a file name that is the unique Bates number of that image. Original document orientation should be maintained to the extent reasonably practicable and

technologically possible for a Producing Party's vendor (i.e., portrait to portrait and landscape to landscape). Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured on the produced image file. Documents that are difficult to render in TIFF because of technical issues, or any other documents that are impracticable to render in TIFF format, may be produced in their native format with a slip sheet TIFF image stating, "Document Produced Natively," unless such documents contain redactions, in which case the documents will be produced in TIFF format. A Producing Party retains the option to produce ESI in alternative formats, which may include native format, or a combination of native and TIFF formats.

- B. **Text Files:** Each ESI item produced under this ESI Protocol shall be accompanied by a text file as set out below. All text files shall be provided as a single document level text file for each item, not one text file per page. Each text file shall be named to use the Bates number of the first page of the corresponding production item.
1. **OCR:** A Producing Party may make paper documents available for inspection and copying /scanning in accordance with Fed. R. Civ. P. 34 or, additionally or alternatively, scan and OCR paper documents if it chooses. Where OCR is used, the Parties will endeavor to generate accurate OCR and will utilize quality OCR processes and technology. OCR text files should indicate page breaks where possible. Even if OCR is used by a Producing Party, however, the Parties acknowledge that, due to poor quality of the originals, not all documents lend themselves to the generation of accurate OCR. In such instances, or in the event that a Producing Party does not choose to use OCR at all, the Producing Party will make the paper documents available for inspection and copying in accordance with Fed. R. Civ. P. 34.
 2. **ESI:** Emails and other ESI will be accompanied by extracted text taken from the electronic file itself, where available.
- C. **Production of Native Items:** The Parties agree that ESI shall be produced as TIFFs with an accompanying load file, which will

contain the metadata listed in Appendix 1 hereto, if available without requiring customized processing. Exceptions to production as TIFF include spreadsheet-application files (e.g., MS Excel), personal databases (e.g., MS Access), non-redacted PowerPoints (or their equivalent), non-redacted Word documents that have tracked changes or comments, and multimedia audio/visual files such as voice and video recordings (e.g., .wav, .mpeg, and .avi), which shall be produced in native format. In addition, a Producing Party may produce native file types with viewable content where TIFF image files are blank, incomplete or unviewable. In the case of personal database (e.g., MS Access) files containing irrelevant, confidential or privileged information, the Parties shall meet and confer to determine the appropriate form of production. In addition to producing the above file types in native format, the Producing Party shall produce a single-page TIFF slip sheet indicating that a native item was produced. The corresponding load file shall include a native file link for each native file that is produced. The Parties agree to meet and confer to the extent that there is data to be produced from database application files, such as SQL and SAP, to determine the best reasonable form of production.

- D. **Requests for Other Native Files:** Other than as specifically set forth above, a Producing Party need not produce documents in native format. If a Party would like a particular document produced in native format and this ESI Protocol does not require the production of that document in its native format, the Requesting Party will provide a specific Bates range for documents it wishes to be produced in native format. A Requesting Party may not ask for native format productions of items in bulk, and requests for native versions of items already produced shall not be unreasonable in number or impose a significant additional cost or burden upon a Producing Party. The Parties shall meet and confer regarding any requests for native items that impose a significant additional cost or burden upon Producing Party prior to seeking relief from the Court. The Producing Party reserves the right to seek cost sharing from the Requesting Party for such productions. Any files that are reproduced as native files shall be produced in accordance with III(C) above.

E. Bates Numbering:

1. All images must be assigned a Bates number that must: (1) be unique across the entire document production; (2) maintain a constant prefix and length across the entire production; (3) contain no special characters or embedded spaces, except hyphens or underscores; (4) be sequential within a given document; and (5) use a unique text prefix. To the extent reasonably practicable, the Bates number must also maintain consistent numbering across a family of documents.
2. If a Bates number or set of Bates numbers is skipped in a production, the Producing Party will so note in a cover letter or production log accompanying the production.
3. The Producing Party will brand all TIFF images at a location that does not obliterate or obscure any part of the underlying images.

F. Parent-Child Relationships: Parent-child relationships (the association between an attachment and its parent document) that have been maintained in the ordinary course of business should be preserved to the extent reasonably practicable. For example, if a Party is producing a hard copy printout of an email with its attachments, the attachments should be processed in order behind the e-mail to the extent reasonably practicable.

G. Non-Responsive Attachments: The Parties agree that non-responsive parent documents must be produced if they contain a responsive attachment and are not withheld as privileged. Non-responsive attachments to responsive parent emails need not be produced. A Bates numbered slip sheet will be provided for any document withheld pursuant to this III(G) and shall state that a non-responsive attachment has been withheld from production.

H. Load Files: All production items will be provided with a delimited data file or "load file," which will include both an image cross-reference load file (such as an Opticon file) as well as a metadata (.dat) file with the metadata fields identified below on the document level to the extent available without customized processing. The load file must reference each TIFF in the corresponding production.

The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load files in the production.

- I. **Color:** Documents or ESI containing color need not be produced in color. However, if an original document or ESI item contains color markings and it is necessary to see those markings in their original color to understand the meaning or content of the document, then the Requesting Party may, in good faith, request that the document or ESI item be produced in its original colors. For such documents, the Requesting Party shall provide a list of Bates numbers of the imaged documents sought to be produced in color. The production of documents and/or ESI in color shall be made in single-page JPEG format (300 DPI) or natively. All requirements for productions stated in this ESI Protocol regarding productions in TIFF format apply to any productions of documents and/or ESI in color made in such an alternative format. If a Producing Party wishes to object, it may do so by responding in writing and setting forth its objection(s) to the production of the requested document in color.
- J. **Hard Copy Materials Containing Color:** If hard copy materials are color scanned for production, the Producing Party will produce either single-page JPEG files formatted at 300 DPI or native PDF color scans. This paragraph does not impose any requirement that hard copy materials be scanned in color.
- K. **Confidentiality Designations:** Any confidential item produced must be marked in accordance with the terms of the Agreed Protective Order [[Doc. No. 36](#)] entered by the Court.
- L. **Production Media & Protocol:** A Producing Party may produce documents via email or via file-sharing service, including any network-based secure file transfer mechanism or FTP protocol. Any Requesting Party that is unable to resolve any technical issues with the electronic production method used for a particular production may request that a Producing Party provide a copy of that production using Production Media, as described below in this Section III(L).

A Producing Party may also produce documents on readily accessible computer or electronic media, including CD-ROM, DVD, or external hard drive (with standard PC compatible interface) (“Production Media”). All Production Media will be encrypted, and the Producing Party will provide a decryption key to the Requesting Party in a communication separate from the production itself. Each piece of Production Media will be assigned a production number or other unique identifying label corresponding to the date of the production of documents on the Production Media, as well as the sequence of the material in that production. For example, if the production comprises document images on three DVDs, the Producing Party may label each DVD in the following manner: “[PARTY] Production January 1, 2021-001,” “[PARTY] Production January 1, 2021-002,” and “[PARTY] Production January 1, 2021-003.” Where the Production Media used is a CD-ROM, DVD, external hard drive (with standard PC compatible interface), or USB drive, such production media must be sent no slower than overnight delivery via FedEx, UPS, or USPS. Each item of Production Media (or in the case of productions made via FTP link, each production transmittal letter) shall include: (1) text referencing that it was produced in MDL No. 2974, (2) the production date, (3) the Bates number range of the materials contained on such production media item, and (4) a short description of the production. Any replacement Production Media will cross-reference the original Production Media and clearly identify that it is a replacement and cross-reference the Bates number range that is being replaced. The ESI Liaisons shall designate the appropriate physical address for productions that are produced on Production Media to be sent.

However produced, a Producing Party shall provide clear instructions for accessing the production, including any necessary passwords or encryption keys.

IV. PAPER DOCUMENT PRODUCTION PROTOCOLS

- A. **Scanning:** A Producing Party may make paper documents available for inspection and copying in accordance with Fed. R. Civ. P. 34 or, additionally or alternatively, OCR paper documents if it chooses.

Where OCR is used, the Parties agree that the following ¶¶ IV(B)-(E) shall apply.

- B. **Coding Fields:** The following information shall be produced in the load file accompanying production of hard copy scanned images documents: (a) BegBates, (b) EndBates, (c) BegAttach, (d) EndAttach, (e) Custodian, (f) Confidentiality, and (g) Redacted (Y/N). All hard copy scanned items will be produced with a load file data field named “Paper Document” or “Hard Copy” and coded with a “Y” or “Yes”. Any objective document coding data created at the time of scanning that is available as metadata to the Producing Party but not listed above, and that is not protected from disclosure by the attorney-client privilege or the attorney work product doctrine, shall be included in the load file in an appropriately identified data field.
- C. **Unitization of Paper Documents:** Paper documents should be physically unitized for production to the extent reasonably practicable. Therefore, when scanning paper documents for production, distinct documents shall not be merged into a single record and single documents shall not be split into multiple records.
- D. **File/Binder Structures:**
1. **Unitization:** Where the documents were organized into groups, such as folders, clipped bundles, and binders, this physical structure shall be maintained and provided in the load file to the extent reasonably practicable. The relationship among the documents in a folder or other grouping should be reflected in proper coding of the beginning and ending document and attachment fields to the extent reasonably practicable. The Parties will make their best efforts to unitize documents correctly.
 2. **Identification:** Where a document, or a document group - such as folder, clipped bundle, or binder - has an identification spine or other label, the information on the label shall be scanned and produced as the first page of the document or grouping.

- E. **Custodian Information:** The Parties will utilize best efforts to ensure that paper records for a particular Document Custodian are produced in consecutive Bates stamp order.

V. **ESI METADATA FORMAT AND PROCESSING ISSUES**

- A. **System Files:** ESI productions may be de-NISTed using the industry standard list of such files maintained in the National Software Reference Library by the National Institute of Standards & Technology as it exists at the time of de-NISTing. Other file types may be added to the list of excluded files by agreement of the Parties.

B. **Metadata Fields and Processing:**

1. **Date and Time:** No Party shall intentionally modify the date or time as contained in any original ESI.
2. **Time Zone:** To the extent reasonably practicable, ESI items shall be processed using a consistent time zone (preferably, GMT).
3. **Auto Date/Time Stamps:** To the extent reasonably practicable, ESI items shall be processed so as to preserve the date/time shown in the document as it was last saved, not the date of collection or processing.
4. Except as otherwise set forth in this ESI Protocol, ESI files shall be produced with at least each of the data fields set forth in Appendix 1, to the extent such metadata exists, that can reasonably be extracted from a document.
5. The Parties are not obligated to manually populate any of the fields in Appendix 1 if such fields cannot reasonably be extracted from the document using an automated process, with the exception of the following fields: (a) BegBates, (b) EndBates, (c) BegAttach, (d) EndAttach, (e) Custodian, (f) Confidentiality, (g) Redacted (Y/N), and (h) native link fields, which should be populated regardless of whether the fields can be populated pursuant to an automated process.

C. Redaction:

1. The Parties agree that, where ESI items need to be redacted, they shall be produced solely in TIFF format with each redaction clearly indicated, except in the case of personal database files (e.g., MS Access), which shall be governed by Section III(C), supra. Metadata fields reasonably available and unnecessary to protect the privilege protected by the redaction shall be provided. In some cases, MS Excel-type spreadsheets that need to be redacted may be redacted in native format if reasonably practicable; otherwise they will be produced in TIFF format. Nothing herein is meant to endorse or waive any rights to redact or object to redactions.
2. If the items redacted and partially withheld from production are Excel-type spreadsheets as addressed in III(C), supra, and the native items are also withheld, to the extent reasonably practicable, each entire ESI item must be produced in TIFF format, including all unprivileged pages, hidden fields, and other information that does not print when opened as last saved by the custodian or end-user. For PowerPoint-type presentation decks, this shall include, but is not limited to, any speaker notes. For Excel-type spreadsheets, this shall include, but is not limited to, hidden rows and columns, all cell values, annotations, and notes.
3. If the items redacted and partially withheld from production are audio/visual files, the Producing Party shall, to the extent reasonably practicable, provide the unredacted portions of the content. If the content is a voice recording, the Parties shall meet and confer to discuss the appropriate manner for the Producing Party to produce the unredacted portion of the content.

D. Email Collection and Processing:

1. **Email Threading:** The Parties may use email thread suppression to avoid review and production of information

contained within an existing email thread in another document being reviewed and produced. This applies both to emails and attachments, but this process shall not be used to eliminate unique email attachments.

2. **Email Domains:** Emails from domains typically associated with junk email, such as fantasy football-related emails, retailer advertising, and newsletters or alerts from non-industry sources, may be excluded from the ESI search process.

E. **De-duplication:** A Producing Party may use global or horizontal de-duplication. All BCC recipients whose names would have been included in the BCC metadata field, to the extent such metadata exists, but are excluded because of horizontal/global de-duplication, must be identified in the BCC metadata field specified in Appendix 1 to the extent such metadata exists. Duplicate custodian information may be provided by a metadata “overlay” and will be provided by a Producing Party after the Party has substantially completed its production of ESI.

1. Duplicate electronic documents shall be identified by a commercially accepted industry standard (e.g., MD5 or SHA-1 hash values) for binary file content. All electronic documents bearing an identical value are a duplicate group. The Producing Party may produce only one document image or native file for duplicate ESI documents within the duplicate group to the extent practicable. The Producing Party is not obligated to extract or produce entirely duplicate ESI documents.
2. Duplicate messaging files shall be identified by a commercially accepted industry standard (e.g., MD5 hash values) for the email family, which includes the parent and email attachments. Duplicate messaging materials will be identified at a family level, including message and attachments(s). Email families bearing an identical value are considered a duplicate group. The Producing Party may produce only one document image or native file for duplicate emails within the duplicate group to the extent practicable.

- F. **Zero-byte Files:** The Parties may filter out stand-alone files identified as zero- bytes in size that do not contain responsive file links or file names.
- G. **Hidden Text:** ESI items processed after the execution date of this ESI Protocol shall be processed, to the extent practicable, in a manner that preserves hidden columns or rows, hidden text, worksheets, speaker notes, tracked changes, and comments.
- H. **Embedded Objects:** Microsoft Excel (.xls) spreadsheets embedded in Microsoft Word documents will be extracted as separate documents and treated like attachments to the document. The Parties agree that other embedded objects, including, but not limited to, logos, icons, emoticons, and footers, may be culled from a document set and need not be produced as separate documents by a Producing Party (e.g., such embedded objects will be produced within the document itself, rather than as separate attachments).
- I. **Compressed Files:** Compression file types (i.e., .CAB, .GZ, .TAR, .Z, and .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.
- J. **Password-Protected, Encrypted or Proprietary-Software Files:** The Parties shall meet and confer regarding any ESI items that are password protected or encrypted or that require proprietary software for review.

VI. CULLING AND REVIEWING ESI AND PAPER DOCUMENTS

- A. **Plaintiff-Specific ESI:** To the extent that Plaintiffs' Counsel collects and processes Plaintiff-Specific ESI for migration into an ESI review platform, Plaintiffs shall produce the documents in the manner required of Defendants under this ESI Protocol. However, to the extent that Plaintiffs' Counsel does not process the documents for review into an ESI review platform, Plaintiffs' Counsel shall, to the greatest extent practicable, produce native files preserving the original file names and file type.

For materials received as hard copy items or static image files, Plaintiffs' Counsel shall avoid creating and producing bulk static image files by scanning/combining or electronically unitizing such received items. Instead, Plaintiffs' Counsel shall produce these materials as individual files organized by custodian or source (i.e. each custodian's records should be scanned and produced as separate files) when received in this condition.

B. Use of Continuous Active Learning and/or Technology Assisted Review (collectively, "TAR"):

1. A Producing Party may use Continuous Active Learning and/or Technology Assisted Review (collectively referred to as "TAR") to sort and prioritize documents for review without disclosure of such use to the non-producing party.

2. The Producing Party agrees to evaluate the desirability of using TAR to limit review of custodial ESI materials and other unstructured ESI (if, at the Producing Party's discretion, review is planned) prior to production. In the event that a Producing Party decides that use of a TAR process is desirable, the Parties agree to meet and confer to discuss the planned TAR methodology and workflow. In the event that a Producing Party decides that use of a TAR process is not desirable due to the volume or nature of the ESI collected, the cost of a TAR review, or the unacceptability of the validation or other parameters sought by the Receiving Party, the use of TAR by the Producing Party is not per se required. Instead, following the Producing Party's good faith evaluation, the Parties agree to meet and confer to discuss whether an alternate methodology such as search terms, or another hybrid approach shall be utilized. The Parties agree to utilize good faith to reach agreement on the most practicable way to proceed. Should the Parties not be able to reach agreement, the Parties agree to submit the matter to the Court.

C. Structured Data: To the extent a response to discovery requires production of discoverable ESI contained in a structured database, the Parties shall meet and confer to determine whether existing report formats or exportable data formats can be utilized. Nothing herein shall obligate a Producing Party to create custom reports or data exports not available in the ordinary course of business. The

Parties shall meet and confer to discuss the associated cost and proportionality of any custom reporting.

VII. CLAIMS OF PRIVILEGE

- A. **Production of Privilege Logs:** Except as provided otherwise below, for any document withheld in its entirety, the Producing Party will produce privilege logs. A Producing Party will produce a Metadata Privilege Log, pursuant to Section VII(C)(1) below, for documents withheld on the basis of privilege within 45 days of substantial completion of each document production.
- B. **Exclusions from Logging Potentially Privileged Documents:** The following categories of documents do not need to be contained on a Producing Party's privilege log.
1. Any communications exclusively between a Producing Party and its outside counsel, an agent of outside counsel other than the Party, any non-testifying experts in connection with specific litigation, or with respect to information protected by Fed. R. Civ. P. 26(b)(4), testifying experts in connection with specific litigation.
 2. Any privileged materials or work product created by or specifically at the direction of a Party's outside counsel, an agent of outside counsel other than the Party, any non-testifying experts in connection with specific litigation, or with respect to information protected by Fed. R. Civ. P. 26(b)(4), testifying experts in connection with specific litigation.
 3. To the extent a Party seeks to use categorical logs in lieu of providing the information above, the Producing Party will initiate a meet and confer with the Requesting Party.
- C. **Privilege Log Requirements:**

1. **Metadata Privilege Log:** To the extent applicable, each Party's privilege log(s) need only provide objective metadata (to the extent it is reasonably available and does not reflect privileged or protected information) and an indication of the privilege or protection being asserted (a "Metadata Privilege Log").
 - a. Objective metadata includes where available the following (as applicable to the document types as shown in Appendix 1):
 - i. A unique privilege log identifier
 - ii. Custodian
 - iii. Custodian Other or CustodianAll (if applicable)
 - iv. File Name
 - v. Email Subject
 - vi. Author
 - vii. From
 - viii. To
 - ix. CC
 - x. BCC
 - xi. Date Sent
 - xii. Date Received
 - xiii. Date Created
 - b. A Party must manually populate on its metadata privilege log an author and date for any withheld document where that information is not provided by the objective metadata, unless such information is not reasonably discernable from the document or the information is not necessary to evaluate the claim of privilege in light of the metadata that is discernable and/or the information provided in the Attorney/Description of Privileged Material field.
 - c. The "Email Subject" or "File Name" field may be redacted where the contents of the metadata field reveals privileged information.

2. Should a Receiving Party, in good faith, have reason to believe a particular entry on a Metadata Privilege Log is responsive and does not reflect privileged discoverable information, the Receiving Party may request, and the Producing Party will not unreasonably refuse to create, a privilege log for that particular entry in compliance with Fed. R. Civ. P. 26(b)(5). If ten (10) or fewer requests are made, the information in compliance with Fed. R. Civ. P. 26(b)(5) shall be provided within fifteen (15) days of the request; if more than ten (10) requests are made, the Parties shall meet and confer on a reasonable time to provide information in compliance with Fed. R. Civ. P. 26(b)(5).
- D. **Documents Redacted for Privilege:** The Parties need not log redacted documents on a privilege log. The privilege designation will be available on the face of the document.
 - E. **Challenges to Privilege Claims:** Following the receipt of a privilege log, a Requesting Party may identify, in writing (by Bates/unique identified number), the particular documents that it believes require further explanation. If a Party challenges a request for further information, the Parties shall meet and confer to try to reach a mutually agreeable solution. If they cannot agree, the matter may be brought to the Court.
 - F. **Redactions:** A Producing Party may redact ESI that is subject to the attorney client privilege, the attorney work product doctrine, contains Personal Healthcare Information, Personally Identifiable Information, is ESI that pertains solely to a product or products not at issue in this Litigation, or contains any information that is subject to a legal protection or prohibition from disclosure. Where such information is redacted, the redaction applied will be textual and state the basis for redaction (e.g., “Redaction for PHI/PII,” “Non-Paragard Product Redaction”).

VIII. CLAWBACK

- A. **Non-Waiver:** Pursuant to Federal Rule of Evidence 502(d), the production of any material or information shall not be deemed to waive any privilege or work product protection in the Litigation or

in any other federal or state proceeding. Nothing in this Paragraph VIII is intended to or shall serve to limit a Party's right to conduct a review of any material or information for segregation of privileged and/or protected information before production.

- B. **Clawback Process:** The clawback process is set forth in the Agreed Protective Order [[Doc. No. 36](#)], which is incorporated herein by reference.

IX. MISCELLANEOUS PROVISIONS

- A. **Objections Preserved:** Nothing in this ESI Protocol shall be interpreted to require disclosure of information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity. The Parties do not waive any objections as to the production, discoverability, authenticity, admissibility, or confidentiality of documents and ESI.
- B. **Variations or Modifications:** The Parties may agree to modify provisions of this Order in particular circumstances applicable to those Parties without seeking approval of the Court.
- C. **Destruction and Return of ESI:** The process for the destruction and/or return of Confidential Materials, which includes Confidential ESI, is set forth in the Agreed Protective Order [[Doc. No. 36](#)], which is incorporated herein by reference.

Dated: _____, 2021

Agreed to by:

/s/ C. Andrew Childers

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SO ORDERED, this the 14th day of June, 2021.



The Honorable Leigh Martin May
United States District Judge
Northern District of Georgia

Appendix 1: ESI Metadata and Coding Fields¹

<i>Field</i>	<i>Data Field Type</i>	<i>ESI other than Email File types</i>	<i>Email File types, Outlook File types</i>
ProdBegDoc	Text	Starting Bates # of item	Starting Bates # of item
ProdEndDoc	Text	Ending Bates # of item	Ending Bates # of item
ProdBegAttach	Text		Starting bates # of family
ProdEndAttach	Text		Ending bates # of family
AttachNames	Text		Name of each attachment
AttachCount	Integer		Number of attachments
File Type	Text	Identifies file type as collected	For Outlook items identifies calendar entry, task list item, email note as collected.
PGCOUNT	Integer	Number of pages where item is produced as image	Number of pages as produced as image
Email Store Name (or Logical Path/Original File Path)	Text		Name of email container file where available
Custodian	Text	Name of person or source of item collected	Name of person or source of the item collected
File Path	Text	File path/folder structure for the item as collected	File path/folder structure for the item as collected
From	Text		Sender of message
To	Text		Recipients of message

¹ Field Names can vary from system to system and even between different versions of systems. Thus, Parties are to be guided by these Field Names and Descriptions when identifying the metadata fields to be produced for a given document pursuant to this ESI Protocol.

CC	Text		Copied recipients
BCC	Text		Blind copied recipients
Subject	Text		Subject of message
Date_Sent	Date		Date message sent
Time_Sent	Time		Time message sent
FileName	Text	Name of file collected	Name of file collected
FileExtension	Text	Extension of file collected	Extension of file collected
FileSize	Numerical or Text	Size of the file collected	Size of the file collected
Date_Created	Date/Time	Date file collected was created	
Date_LastMod	Date/Time	Date file collected was last modified if available	
LastModifiedBy/Last Edited By	Text	Last user to modify file collected if available	
TIMECREATED	Date/Time	Date file collected was created	
TimeLastModified	Date/Time	Time file collected was last modified if available	
Title	Text	Title of file collected where metadata is available	
Author	Text	User shown as author of file collected where metadata is available	
Confidentiality	Text	Any confidentiality designation asserted on an item produced	Any confidentiality designation asserted on an item produced
MD5 Hash	Text	MD5 or SHA-1 hash value of file collected	MD5 or SHA-1 hash value of file collected

Native Path Link	Text or Link	Path including filename to native file where produced as native (Relative Path)	
Text Link	Text or Link	Path including filename to the associated searchable text file (Relative Path)	Path including filename to the associated searchable text file (Relative Path)
Outlook Flag Status	Text		“Complete” or “Follow Up” if set
Importance	Text		“High,” “Low,” or “Normal” if set
Record Type	Text		Identification of an item as an email message or an attachment
E-mail Folder Path	Text		Identification of the original path where an item was collected.
Redacted	Text	“Y” or “YES” if redacted	“Y” or “YES” if redacted
Redacted Reason (Coded field not Metadata)	Text	Basis for redaction	Basis for redaction
DuplicateFilePath May be called “DeDuped Paths”	Text	File path of deduplicated files	File path of deduplicated files
DupeCustodian May be provided as “All Custodians”	Text	Name of Custodian or source of duplicate file	Name of Custodian or source of duplicate file