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IN RE: SINGLAIR LITIGATION**THIS ORDER APPLIES TO ALL
CASES**

JOHN C. PORTO, P.J.Cv.
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY
MASTER DOCKET NO. ATL L-481-22
MCL NO. 637
CASE MANAGEMENT ORDER
DISCOVERY OF DOCUMENTS AND
ELECTRONICALLY STORED
INFORMATION BY PLAINTIFFS AND
DEFENDANT MERCK & CO., INC. AND
DEFENDANT MERCK SHARP & DOHME
CORP. - STIPULATED

THIS MATTER having come before the Court with the Consent of all Counsel, and for good cause having been show, the Court hereby enters the following order:

IT IS on this 16th day of November 2022, **ORDERED** as follows:

This Order shall apply to all cases that are currently pending in MCL No. 637 or subsequently transferred to MCL NO. 637. This Order sets forth the protocol for the production of documents, both hard-copy documents and electronically stored information (“ESI”), by and between Plaintiffs and Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp.¹ (collectively “Merck”) in the above-captioned action (the “Action”).

I. GENERAL

1. This Order will help to streamline Document and ESI discovery to best carry out the requirements set forth in the New Jersey Court Rules.

2. The Parties shall take all reasonable steps to comply with the protocols set forth herein.

¹ Defendant Merck Sharp & Dohme Corp. is now known as “Merck Sharp & Dohme LLC.”

3. Except as specifically limited herein, this Order governs the production of discoverable Documents and ESI (defined below) by the Parties during the Action. In the event of transfer to other courts, this Order will remain in effect in all respects, until adopted by the transferee court or replaced by a successor Order.

4. This Order shall not enlarge or affect the proper scope of discovery in this Action, nor imply that discovery produced under the terms of this Order is properly discoverable, relevant, or admissible in this or in any other litigation. Additionally, this Order does not alter or expand the preservation obligations of the Parties.

5. Subject to the Parties' objections and responses to requests for production of Documents, and subject to the Parties' Stipulated Protective Order, all Documents or portions of Documents that are identified as responsive to discovery requests not designated as "privileged" and not concerning and/or regarding or relating to other Merck products not the subject of the Litigation shall be produced in the manner provided herein. Portions of responsive documents that contain confidential or commercially sensitive information and that concern, regard, or relate to other Merck products not the subject of the Action may be redacted as provided for in the Stipulated Protective Order. Nothing in this Order shall be interpreted to require disclosure of materials that a Party contends are not discoverable or are protected from disclosure by New Jersey rule, the attorney-client privilege, the attorney work-product doctrine, and/or any other privilege that may be applicable and valid.

6. The parties agree to abide by the terms of this Order in good faith and they agree to promptly alert all other Parties concerning any technical problems associated with complying with this Order. To the extent compliance with this Order imposes an undue burden; the Parties shall promptly confer in an effort to resolve the issue.

7. Consistent with their obligations under the New Jersey Court Rules, the Parties will attempt to resolve, in person, in writing (including e-mail) or by telephone, disputes regarding the issues set forth herein prior to filing a motion with the Court, or otherwise seeking relief. If the Parties are unable to resolve the dispute after a good faith effort, the Parties may seek Court intervention in accordance with the Court's procedures.

II. DEFINITIONS

1. **"Confidentiality Designation"** means the legend affixed to Documents and ESI or provided in the "Confidentiality" metadata field pursuant to Section V below for Confidential Discovery Information as defined by, and subject to, the terms of the Parties' Stipulated Protective Order in the Action.

2. **"Document"** is defined to be synonymous in meaning and equal in scope to the usage of this term in the New Jersey Court Rules. The term "Document" shall include Hard-Copy Documents, Electronic Documents, and ESI as defined herein.

3. **"Electronic Document or Data"** means Documents or Data existing in electronic form including but not limited to: e-mail or other means of electronic communications, word processing files (e.g., Microsoft Word), computer presentations (e.g., PowerPoint slides), spreadsheets (e.g., Excel), and image files (e.g., PDF).

4. **"Electronically stored information"** or **"ESI,"** as used herein, has the same meaning as in the New Jersey Court Rules.

5. **"Hard-Copy Document"** means Documents existing in tangible form, including but not limited to paper Documents.

6. **"Hash Value"** is a unique numerical identifier that can be assigned to a file, a group of files, or a portion of a file, based on a standard mathematical algorithm applied to the

characteristics of the data set. The most commonly used algorithms, known as MD5 and SHA, will generate numerical values so distinctive that the chance that any two data sets will have the same Hash Value, no matter how similar they appear, is less than one in one billion. “Hashing” is used to guarantee the authenticity of an original data set and can be used as a digital equivalent of the Bates stamp used in Hard-Copy Document productions.

7. “**Load file**” means an electronic file provided with a production set of document images that facilitate the loading of such information into a receiving party’s document review platform, and the correlation of such data in the platform.

8. “**Native Format**” means and refers to the format of ESI in which it was generated and/or as used by the producing party in the usual course of its business and in its regularly conducted activities.

9. “**Metadata**” means: (i) information embedded in or associated with a file that is not ordinarily viewable or printable from the application that generated, edited, or modified such native file which describes the characteristics, origins, custody, usage, and/or validity of the electronic file; and/or (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system.

10. “**Media**” means an object or device, real or virtual, including but not limited to a disc, tape, computer, or other device on which data is or was stored.

11. “**Optical Character Recognition**” or “**OCR**” means the optical character recognition file which is created by software used in conjunction with a scanner that is capable of reading text-based Documents and making such Documents searchable using appropriate software.

12. “**Protected Material**” means any Disclosure or Discovery Material, as defined by the Stipulated Protective Order in this Action, that is designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13. “**Searchable Text**” means the native text extracted from an Electronic Document or any Optical Character Recognition text (“**OCR text**”) generated from a Hard-Copy Document or electronic image.

14. “**Unitization**” means a set of paper-scanned images or electronically processed files and indicates where individual pages or files belong together as Documents, including attachments, and where each Document begins and ends.

III. DATA SOURCES AND CULLING CRITERIA

1. Custodians.

The Parties will cooperate, in good faith, in determining whether custodial files will be produced, and, if so, will agree upon a list of custodians whose custodial files will be searched to identify potentially responsive or relevant Documents or ESI. The Producing Party may conduct attorney-guided collection interviews with the identified custodians and perform targeted collections of the custodians’ Documents and ESI. If the Parties reach an impasse after meeting and conferring in good faith on the list of custodians, they will seek assistance from the Court.

Subject to the Parties’ objections and responses to requests for production of Documents and ESI, and subject to the Parties’ Stipulated Protective Order, the Parties shall begin producing responsive, non-privileged Documents and ESI, on a rolling basis, from the files of the identified custodians.

2. **Search Queries and Methodologies.**

The Parties agree that they will cooperate in good faith regarding the formulation of appropriate search queries and methods to be used to cull potentially responsive or relevant ESI. The Parties will continue to meet and confer regarding any search process issues as necessary and appropriate. The Parties may agree to modify the search queries or the search methodologies during the course of the search query negotiation process if the search queries or the results of search methodologies appear under-inclusive or over-inclusive. After the Parties agree upon the final list of search queries, no search queries will be added to the list absent written agreement by the Parties or, if the Parties reach an impasse after meeting and conferring in good faith, by Court order.

a) The mere fact that a document is hit or identified by the application of any agreed upon search terms does not mean that such document is necessarily responsive to any propounded discovery request or is otherwise relevant to this litigation. Determinations of discoverability, responsiveness and privilege shall be made by the Producing Party.

b) If the Parties cannot resolve any dispute regarding this section, consistent with The Sedona Conference Principles, Principle 6, the responding party is best suited to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.

3. **System Files.** The Parties may exclude certain files and folders that are reasonably identified as system files and not likely to contain user-created files.

4. **Global De-Duplication.** A Party is only required to produce a single copy of a responsive Document, and a Party shall make reasonable efforts to de-duplicate responsive Documents and ESI (based on MD5 or SHA-1 Hash Values at the document level) across

custodians. For emails with attachments, the Hash Value shall be generated based on the parent-child document grouping, and only e-mail messages in which the parent document and all attachments are exactly the same will be considered duplicates. However, Metadata identifying all custodians in possession of each document that is removed as a duplicate must be produced in the "CUSTODIAN" field in the production Load File.

5. **Email Thread Suppression:** Each Party may also suppress e-mails in such a way as to eliminate earlier or incomplete chains of e-mails and redundant attachments and produce only the most complete iteration of an e-mail chain. Each Party shall preserve family relationships when engaging in email thread suppression. In instances where an earlier or incomplete email chain contains a unique attachment a party shall not suppress or otherwise remove the document family from production.

6. **Embedded Objects:** Some Microsoft Office and .RTF files may contain embedded objects. Such objects typically are the following file types: Microsoft Excel, Word, PowerPoint, Project, Outlook, Access and PDF. Subject to claims of privilege and immunity, as applicable, objects with those identified file types shall be extracted as separate files and shall be produced as attachments to the file in which they were embedded unless otherwise subject to an exception provided within this Order.

7. **Previously Collected and Produced Data.** The Parties agree that there is no obligation to recollect or reproduce any prior collections or productions collected or produced prior to the entry of this Order. This includes not requiring either party to reproduce productions in the production format outlined in this Order.

IV. Preservation

1. The Parties acknowledge that they have an obligation to take reasonable and proportional steps to preserve discoverable information in the Party's possession, custody or control.

2. If there is a dispute concerning the scope of a Party's preservation or collection efforts, the Parties will attempt to resolve the dispute without Court intervention. In particular, before initiating discovery about preservation and collection, a Party shall confer with the other Party concerning the specific need for such discovery, including its relevance to claims and defenses, and the suitability of alternative means for obtaining the information. If the Parties reach an impasse, the Parties will seek assistance from the Court.

3. The Parties agree that certain sources of information are not reasonably accessible, and therefore need not be collected. The Parties agree that the following Documents or ESI is not reasonably accessible:

a) Shadowed, damaged, residual, slack, fragmented, or other data only accessible by forensics.

b) Random access memory (RAM), temporary files, or other ephemeral data that is difficult to preserve without disabling the operating system.

c) On-line access data such as temporary Internet files, history, cache, cookies, and the like.

d) Data stored on photocopiers, scanners and fax machines.

e) Data in metadata fields that are frequently updated automatically, such as last-opened dates, except that metadata shall be produced in accordance with Section V, Paragraph 1.

f) Data maintained or duplicated from or in any electronic system used for the purpose of system recovery or information restoration and/or retention, including, but not limited to, system recovery backup or other media, continuity of operations systems, and data or system mirrors or shadows.

g) Server logs, system logs, or network logs.

h) Data remaining from systems no longer in use that is unintelligible on any system.

i) Lists reflecting no information except that a call was made from one cellular or land-line phone, the date, time, and duration of the call (e.g., call logs).

j) Computer programs, operating systems, computer activity logs, programming notes or instructions, batch files, system files, and miscellaneous files or file fragments

k) Other forms of ESI whose preservation requires extraordinary affirmative measures that are not utilized in the ordinary course of business.

V. **FORMAT OF PRODUCTION**

1. **Non-Redacted Electronically Stored Information Not Produced in Native Form.** As stated in the Stipulated Protective Order, non-redacted ESI should be produced in a form no less “searchable” than it is maintained in the normal course of the producing party’s business. ESI will be produced in single-page, black and white, 300 DPI, Group IV TIFF image file format together with Concordance or Summation Load Files (OPT or DII files) (depending on the preference of the requesting party). Conversion of Word documents: When Word documents are converted to TIFFs, the version that will be converted is as it was last saved and with track changes turned on. This means the images and extracted text will reflect the track changes. In all

events, conversion of Microsoft Office document types to TIFF shall reflect comments, speaker notes, footers, headers and track changes.

2. TIFF images should show any and all text and images which would be visible to the reader using the native software that created the document. For example, TIFF images of e-mail messages should include the BCC line. PowerPoint documents should be processed with hidden slides and all speaker notes unhidden and should be processed to show both the slide and the speaker's notes on the TIFF/JPG image. Color originals may be produced in B&W TIFF format, but either party may subsequently request, by Bates number(s), a replacement set of images in color only to the extent that the Requesting Party demonstrates that the loss of the color detracts from the usability or reduces the ability to understand the information imparted in the original, however categorical or wholesale requests are deemed invalid.

3. If a document is produced in native format, a single-page Bates-stamped TIFF image slip-sheet containing the confidential designation and text stating the document has been produced in native format should also be provided. If documents requested in native format require redactions, the parties should meet and confer regarding how to implement redactions while ensuring that proper formatting and usability are maintained. Each native file should be named according to the Bates number it has been assigned and should be linked directly to its corresponding record in the load file using the NATIVELINK field. To the extent that either party believes that native files should be produced for a specific document or class of documents not required to be produced in native format pursuant to this paragraph or to the extent records do not easily conform to native or TIFF format (i.e., structured data), the parties should meet and confer in good faith.

4. Non-redacted ESI shall be produced with searchable extracted text of the entire Document (at the document level in a .TXT file) and the following Metadata fields in a Concordance .DAT file, where applicable:

FIELD NAME	SAMPLE DATA	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
BEGBATES	ABC000001	Beginning production number or Bates number for a given file/document	E-mail and E-Doc
ENDBATES	ABC000002	Ending production number or Bates number for a given file/document	E-mail and E-Doc
BEGATTACH	ABC000001	Beginning production number or Bates number for the attachment range	E-mail and E-Doc
ENDATTACH	ABC000015	Ending production number or Bates number for the attachment range	E-mail and E-Doc
VOLUME	PROD00001	Production volume	All
PAGES	100	Number of pages for a document	All
CUSTODIAN(S)	Smith, John; Brown, Julie	Custodial source(s) of documents, including documents not produced due to de-duplication.	All
DUPLICATE CUSTODIAN	Smith, John	Other custodians that also had a duplicate of the record	E-mail and E-Doc
RECORDTYPE	EMAIL, ATTACHMENT, EFILE, HARDCOPY	Type of document	All
TITLE	File title	File title	E-mail and E-Doc
FILENAME	Minutes.doc	The file name of a document	E-mail and E-Doc
FILEEXT	.doc, .pdf	File extension of original document	E-Doc
FILESIZE	45	Document file size in bytes	E-Doc
APPLICATION	Excel, Word, Outlook	Application used to create the native file	E-mail and E-Doc
SORTDATE	4/5/2012	Last modified date for efile, send date for email and attachments	E-mail and E-Doc
CREATEDATE	4/5/2012	Date created for efile	E-Doc
CREATETIME	12:00 pm	Time document was created	E-Doc

FIELD NAME	SAMPLE DATA	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
SENTDATE	4/5/2012	Date sent for emails	E-mail
SENTTIME	12:00 pm	Time sent for emails	E-mail
SUBJECT	Meeting Minutes	Subject line extracted from e-mail message or title from operating system metadata	E-mail and E-Doc
AUTHOR	Smith, John	Author of email	E-mail
FROM	Smith, John	Sender	E-mail
TO	Jones, Tom; Brown, Julie	Recipient	E-mail
CC	Cain, John	Copyee	E-mail
BCC	Stevens, Lisa	Blind Copyee	E-mail
MD5HASH		MD5Hash of loose files or attachments	All
EMAIL CONVERSATION INDEX		ID used to tie together email threads	E-mail
DESIGNATION	Confidential, Highly Confidential	Confidentiality designation	All
REDACTED		Field for documents with a redaction	All
D:001\RET000005.txt	Relative path to document level text file		
E-mail and E-Doc			
NATIVELINK	D:\001\ABC000005.xls	Path or hyperlink to documents being produced in native file format	

This list of fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of the ESI or that do not exist as part of the original Metadata of the Document with the exception of the MD5HASH, Email Conversation Index, Designation, and “Redacted” categories. The Parties acknowledge there can be differences between the Operating System (Windows) and Application date/time fields and also agree that Producing Party has no obligation to try and reconcile the differences, if any.

If documents, such as electronic mail, are produced, the relationship between related documents (e.g., email attachments) should be preserved. All Electronic Documents attached to an email are produced contemporaneously and sequentially immediately after the parent email.

Parties may request the production of Documents or ESI in Native form by Bates number in the event that a Document or ESI produced in TIFF form is illegible.

5. **Production – Handling Completely Non Responsive Documents Attached to Production Eligible Documents.** In an effort to avoid unnecessary expense and burden, the parties agree that completely non-responsive documents attached to an otherwise production-eligible document can be produced as a single-page Bates-stamped TIFF image slip-sheet containing the text stating the document has been withheld as non-responsive. When producing responsive attachments, the parent email will be produced, regardless of responsiveness unless otherwise protected from disclosure.

6. **ESI to be Produced in Native Form.** Spreadsheets, audio and video that do not require redaction should be produced in native format. Files produced in Native Format shall be named either with a sequential Bates number followed by the file name or with a sequential Bates number followed by the Confidentiality Designation, if applicable, and the file name. A placeholder TIFF with the original file name, the language “Document Produced in Native” (or similar language), and stamped with assigned Bates number and confidentiality designation shall be included for each native file produced. To the extent native files, except electronic spreadsheets, are redacted, production shall be made in TIFF format in accordance with the section on redacted document and not in Native Format. To the extent native file electronic spreadsheets are redacted, those documents will be produced natively with native file redactions.

7. **Redacted Documents.** The Parties may redact Documents or ESI on the following bases: attorney-client privilege, attorney work-product privilege, Protected Material and “Personally Identifiable Information,” “Sensitive Private Data,” or “Nonpublic Personal Information” as these terms are defined under federal, state or foreign data protection laws, and

for other unrelated Merck products. If, during the course of discovery, the parties identify other kinds of information that any party has a reasonable basis for redacting, the parties will meet and confer regarding it before such redactions are made. If the issue cannot be resolved, the parties will seek resolution from the Court.

8. If during the course of litigation, a data subject with privacy rights pursuant to the Data Protection Laws identified herein exercises his or her right to erasure of personal data contained within the previously produced Protected Material, the Producing Party shall furnish newly redacted versions of the Protected Material within a reasonable time. The Requesting Party will promptly destroy the original version of the Protected Material and replace it with the redacted version. The Producing Party may also require the entire document destroyed and replaced with a slip-sheet indicating the Protected Material is subject to erasure pursuant to the applicable Data Protection Law.

9. If the receiving Party finds a document to be incomprehensible or unintelligible because of a redaction, the Parties will meet and confer to try in good faith to resolve the dispute. For redacted electronic files, and redacted Hard-Copy Documents, the Parties agree to produce ESI and Hard-Copy Documents as redacted single-page, black and white, 300 DPI, Group IV TIFF image file format together with Concordance or Summation Load Files (depending on the preference of the requesting party), with Metadata in the dat. file. All Electronic Documents attached to an e-mail are to be produced contemporaneously and sequentially immediately after the parent e-mail. The Metadata fields for a redacted Document or ESI will include BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, CUSTODIAN, and TEXT, which shall contain the OCR or Optical Character Recognition text so as not to reveal redacted text. To the extent Documents or ESI have been de-duplicated, the CUSTODIAN field shall list all custodians that

had possession of the Document. No other Metadata fields will be produced for a redacted Document.

10. **Hard-Copy Documents.** Hard-Copy Documents should be produced as single-page, black and white, 300 DPI, Group IV TIFF image file format together with Concordance or Summation Load Files (depending on the preference of the requesting party) with coded data contained in a separate file. The producing party shall also provide document level OCR text files to accompany the TIFF format production. The minimum fields for a scanned Hard-Copy Document record will be BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, CUSTODIAN, and TEXT, indicating the beginning and ending Bates numbers, attachments ranges of all documents, the custodian information, and the OCR or Optical Character Recognition text.

11. **Document Unitization for Hard-Copy Documents.** If a Hard-Copy Document consists of more than one page, the Unitization of the Document and any attachments and/or affixed notes shall be maintained as it existed in the original Document, so that each page will not be split, but instead sequenced and saved together, as they existed in the original.

12. **Non-Custodial Documents.** For ESI and Documents from non-custodial sources, the Parties shall cooperate to produce responsive ESI and Documents in a reasonably useable production format.

13. **Searchable Text.** The Parties agree that they will produce Searchable Text for all Electronic Documents and Electronic Data produced. For all non-redacted ESI, the searchable text will be extracted directly from the native file. Likewise, the Parties agree that they will produce Searchable Text for all Hard-Copy Documents that have been converted to images. For

any document where text has been redacted, Searchable Text will be provided for the non-redacted text.

14. **Bates Numbering.** Each page of a produced image shall have a unique Bates number electronically “burned” onto the image at a location that does not unreasonably obliterate or obscure any information from the source Document. Each TIFF image or native file assigned a Bates number shall be assigned a Bates number that is unique and maintains a constant length across the entire document production. No other legend or stamp will be placed on the document image other than confidentiality legends (where applicable) or redactions.

15. **No Color.** Documents and ESI in color need not be produced in color. A party may request by bates-number that a reasonable number of specifically-identified documents be produced in a color .PDF or .JPG format.

16. **Foreign Language Documents.** To the extent that Documents or ESI are produced that contain languages other than English, in whole or in part, the producing party shall produce all foreign language documents and ESI in the original language. The producing party has no obligation to provide a translation of the Document or ESI or any portion thereof.

17. **Compressed Files:** Compressed file types (i.e., .CAB, .GZ, .TAR, .Z, .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 files.

18. **Production Format - Structured Data.** To the extent a response to a non-objectionable discovery request requires production of discoverable electronic information contained in a database, the parties will meet and confer to discuss the most appropriate and cost-effective production format, which may include an export of data.

19. **Production Format – Social Media.** ESI from social media websites (e.g., LinkedIn, Facebook, Twitter) may be produced by capturing information through “screen shots” or “screen captures” and converting same into images along with corresponding extracted text or OCR unless the Parties agree to perform bulk exports of accounts, such as by exporting out a profile from LinkedIn or downloading a copy of an individual’s Facebook data or archive

20. **Production Media.** Documents shall be produced on encrypted CDs, DVDs, USB hard drives, portable hard drives or through secure file transfer protocols (e.g., FTP) or similar secure electronic transmission. The Production Media shall be labeled with the Volume Number along with the Bates Number range(s) of the materials, and where not practicable to do so, may be provided in an accompanying letter. The Producing Party shall send, under separate cover, an explanation of how to decrypt the files.

21. **Replacements.** All files that are replaced for any reason must be annotated with an “R” designation appended to the Bates prefix. A cross reference file will be provided identifying the document’s original Bates and its replacement Bates number.

22. **No Designation of Discovery Requests:** Production of hard copy documents and ESI in the reasonably usable form set out in this Stipulation need not include any reference to the requests to which a document or ESI may be responsive.

VI. NOTIFICATION IN THE EVENT OF A SECURITY BREACH OR UNAUTHORIZED ACCESS TO PRODUCED MATERIAL

1. If a Receiving Party discovers any breach of security, including any actual or suspected unauthorized access, relating to produced materials designated as protected by the Protective Order, the Receiving Party shall:

a) Promptly provide written notice to Producing Party of such breach within forty-eight (48) hours of the breach discovery.

b) Investigate and make reasonable efforts to remediate the effects of the breach and provide the Producing Party with assurances that such breach shall not recur.

c) Provide sufficient information about the breach that the Producing Party can reasonably ascertain the size and scope of the breach. The Receiving Party agrees to cooperate with the Producing Party or law enforcement in investigating any such security incident.

d) The Receiving Party shall promptly take all necessary and appropriate corrective action to terminate the unauthorized access and/or correct the breach.

VII. PRIVILEGE AND PRIVILEGE LOGS

1. The parties agree that certain privileged communications or documents need not be included in a privilege log: (a) communications to or from outside legal counsel for Defendants; (b) any communications regarding litigation holds or preservation, collection, or review in this or any other litigation and (c) any communication or document that post-dates the filing of the complaint.

2. In an effort to avoid unnecessary expense and burden, the Parties agree that, for documents redacted or withheld from production on the basis of attorney-client privilege, work product doctrine and/or any other applicable privilege, the Producing Party will prepare a summary log containing, for each document (except those exempted above) claimed as privileged, an export of the metadata fields listed below to the extent such information exists and has not been suppressed or redacted for privilege. The export should include the following information from the top line email or document:

- BEGNO (if not produced) or BEGBATES (if produced)
- ENDNO (if not produced) or ENDBATES (if produced)
- BEGATTACH (if not produced) or BEGBATESATTACH (if produced)
- ENDATTACH (if not produced) or ENDBATESATTACH (if produced)
- NUMBER OF ATTACHMENTS
- CUSTODIAN

- AUTHOR
- PRIVILEGE PERSON
- FROM
- TO
- CC
- BCC
- DOCUMENT DATE
- FILE NAME
- DOCUMENT TYPE or FILE EXTENSION
- DESCRIPTION OF DOCUMENT
- PRIV_TYPE

3. The parties agree for documents withheld from production on the basis of attorney-client privilege, work product doctrine and/or any other applicable privilege, the Producing Party will prepare a summary log entry for each document withheld, or in the case of fully withheld document families, an individual entry for each document family which asserts the privilege type of the document family.

4. The parties agree that redactions made on the basis of attorney-client, work product doctrine and/or any other applicable privilege need not be included on a privilege log as the basis for the redaction will be evidenced on the face of the document. The Producing Party shall promptly address reasonable requests for additional information if a receiving party requires additional context to evaluate an assertion of privilege or protection.

5. The Parties further agree that this summary log satisfies the producing parties' obligations under New Jersey Rule of Court 4:10-2(d).

6. The Parties agree that the Producing Party need not annotate any log to indicate any attorneys, but the Producing Party will provide an index based on the individuals/entities found in the "Privilege Person" field on the privilege log identifying each "Privileged Person," at the time of the document, as either "In-House Counsel," "Outside Counsel" or "Non-Attorney Acting at

the Direction of Counsel,” and organization information for each “Privilege Person,” at the time of the document, as either “Merck,” “Outside Counsel,” or “Other.”

7. If the requesting party requires further information, it shall explain in writing the need for such information and identify, by Bates number or other unique identifier, each document for which it seeks this information. Within thirty (30) days of such a request, the Producing Party must either (i) provide the requested information or (ii) challenge the request. 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 Parties must request a conference with the Court before any motions may be filed.

VIII. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

1. No Waiver by Disclosure. Pursuant to New Jersey Rule of Court 4:10-2(e)(2) and New Jersey Rule of Evidence 530, subject to the provisions of this Order, if a Party (the “Producing Party”) discloses information in connection with this litigation that the Producing Party thereafter claims to be privileged or protected by the attorney-client privilege or work product protection (“Protected Information”), the disclosure of that Protected Information will not constitute or be deemed a waiver or forfeiture – in this or any other federal or state action – of any claim of privilege or work product protection that the Producing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter.

2. Notification Requirements; Best Efforts of Receiving Party. A Producing Party must promptly notify the party receiving the Protected Information (“the Receiving Party”), in writing, that it has disclosed that Protected Information without intending a waiver by the disclosure. Upon such notification, the Receiving Party must – unless it contests the claim of attorney-client privilege or work product protection in accordance with paragraph (3) below –

promptly (i) notify the Producing Party that it will make best efforts to identify and return, sequester, or destroy (or in the case of electronically stored information, delete) the Protected Information and any reasonably accessible copies it has and (ii) provide a certification that it will cease further review, dissemination, and use of the Protected Information. Within five business days of receipt of the notification from the Receiving Party, the Producing Party must explain as specifically as possible why the Protected Information is privileged.

3. Contesting Claim of Privilege or Work Product Protection. If the Receiving Party contests the claim of attorney-client privilege or work product protection, the Receiving Party must – within five business days of receipt of the notice of disclosure – move the Court for an Order compelling disclosure of the information claimed as unprotected (a “Disclosure Motion”). The Disclosure Motion must be filed under seal and must not assert as a ground for compelling disclosure the fact or circumstances of the disclosure. Pending resolution of the Disclosure Motion, the Receiving Party must not use the challenged information in any way or disclose it to any person other than those required by law to be served with a copy of the sealed Disclosure Motion.

4. Stipulated Time Periods. The parties may stipulate to extend the time periods set forth in paragraphs (2) and (3).

5. Attorney’s Ethical Responsibilities. Nothing in this Order overrides any attorney’s ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Producing Party that such materials have been produced.

6. **Burden of Proving Privilege or Work-Product Protection.** The Producing Party retains the burden – upon challenge pursuant to paragraph (3) – of establishing the privileged or protected nature of the Protected Information.

7. **Voluntary and Subject Matter Waiver.** This Order does not preclude a party from voluntarily waiving the attorney-client privilege or work product protection. The provisions of New Jersey Rule of Evidence 530 and New Jersey Rule of Court 4:10-2 apply when the Producing Party uses or indicates that it may use information produced under this Order to support a claim or defense.

8. **Review.** Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

9. **In camera Review.** Nothing in this Order limits the right of any party to petition the Court for an in-camera review of the Privileged Information.

IX. MISCELLANEOUS

1. **Discovery Liaisons.** Each Party shall designate one or more individuals as Designated ESI Liaison(s) for purposes of meeting and conferring with the other parties and of attending Court hearings on the subject of relevant ESI. The Designated ESI Liaison shall be reasonably prepared to speak about and explain the party's relevant electronic systems and capabilities and the technical aspects of the manner in which the party has responded to eDiscovery, including (as appropriate) relevant ESI retrieval technology and search methodology.

2. **Third Party Documents.** A Party that issues a non-Party subpoena ("Issuing Party") shall include a copy of this Order with the subpoena and state that the Parties to these Actions have requested that third parties produce documents in accordance with the specifications

set forth herein. Within 14 days of receiving any Documents or ESI obtained pursuant to a non-Party subpoena, the Issuing Party shall produce such Documents or ESI to all other Parties, except where the Third Party Documents are to be used in a deposition in which case the Issuing Party shall produce such Documents or ESI to all other Parties no later than three (3) days prior to the deposition. Nothing in this Order is intended or may be interpreted to narrow, expand, or otherwise affect the rights of the Parties or third parties to object to a subpoena.

3. **Good Faith.** The Parties shall make their best efforts to comply with and resolve any differences concerning compliance with this Order. If a producing party cannot comply with any material aspect of this Order, such Party shall inform the requesting party in writing at or before the time of production as to why compliance with the Order was unreasonable or not possible. No Party may seek relief from the Court concerning compliance with the Order unless it has conferred with other affected Parties to these actions.

4. **No Effect on Discovery or Admissibility.** This Order does not address, limit, or determine the relevance, discoverability, agreement to produce, or admissibility of ESI. Nothing in this Order shall be construed to affect the admissibility of any document or data. All objections to the admissibility of any document or data, except as to the authenticity of the documents produced by a Party as to which that Party stipulates, are preserved and may be asserted at any time.

5. **Proportionality.** Nothing contained herein is intended to limit a party's proportionality and burden arguments specifically related to the costs to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

6. **Costs and Burden.** The Parties believe that the burdens placed on it during this litigation, including during discovery, must be proportional to the litigation itself, including the nature of the claims and the amount in controversy. See New Jersey Rule of Court 4:10-2, et. seq., including R. 4:10-2(f) and R. 4:10-2(g). All Parties reserve the right to seek shifting or sharing of certain discovery costs, including vendor and attorney fees, in appropriate circumstances.

7. **Protective Order.** Nothing in this Order shall be deemed to limit, modify, or override any provision of the Stipulated Protective Order.

8. **Modification.** This Order may be modified by the Court on motion for good cause shown. The Parties may also enter into written agreements regarding the topics covered by the Order, which need not be submitted to the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

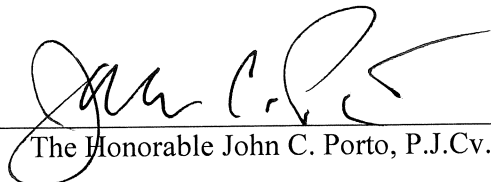
Dated: _____, 2022

Respectfully submitted,

**COUNSEL FOR
PLAINTIFFS**

**COUNSEL FOR
DEFENDANTS MERCK &
CO., INC. and MERCK
SHARP & DOHME CORP.**

APPROVED AND SO ORDERED this 16th day of November, 2022.



The Honorable John C. Porto, P.J.Cv.

A COPY OF THIS ORDER SHALL BE POSTED ONLINE BY THE COURT.