

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
(at Covington)

JUDITH ROMO, et al.,	)	<u>Lead Case</u>
	)	Civil Action No. 2: 15-089-DCR
Plaintiffs,	)	
	)	
V.	)	
	)	<b>CASE MANAGEMENT ORDER</b>
MCKESSON CORP., et al.,	)	<b>No. 2</b>
	)	<b>(Preservation Order)</b>
Defendants.	)	

\*\*\* \*\*

Being sufficiently advised, it is hereby **ORDERED** as follows:

**I. General**

This Order shall govern the preservation of potentially relevant documents, data, electronically stored information (“ESI”) and tangible things within the possession, custody and/or control of the parties in cases consolidated before this Court in *Romo, et al., v. McKesson Corp., et al.*, Civil Action No. 2: 15-cv-089-DCR, Eastern District of Kentucky, and to every action that is, or will in the future become, a part thereof (collectively “the Litigation”).

**II. Definitions**

**A. Documents and Electronically Stored Information**

As used herein, “Documents” and “Electronically Stored Information” shall be defined as they are in Rule 34 of the Federal Rules of Civil Procedure. Information that serves to identify or locate such documents and ESI, such as file inventories, file folders, indices and metadata, if any, are also included in this definition. No party is under an

obligation to preserve voice mail, instant messages, or information on hand held devices synchronized to other electronic media that store such data. No party is under an obligation to preserve temporary, transient, residual or fragmented data. Except as otherwise described in this Order, the corporate parties may continue the routine, good-faith operation of their electronic information systems.

**B. Preservation**

As used herein, “*Preservation*” shall be interpreted to accomplish the goal of maintaining the integrity of potentially relevant *Documents*, *ESI* and *Tangible Things* and shall include taking reasonable steps to prevent the partial or full destruction, alteration, shredding or deletion of such materials related to plaintiffs’ claims. Provided that reasonable steps have otherwise been taken to preserve potentially relevant *Documents*, *ESI* and *Tangible Things* related to plaintiffs’ claims, the defendants may continue the practice of rewriting and/or reusing backup tapes and media. Electronic documents and data shall be maintained and preserved in their native format, except as authorized by §V below.

**C. Product(s)**

As used herein, the term “*Product(s)*” means any and all propoxyphene-containing pain medicine(s), including “Darvocet” and “Darvon” and/or generic prescription propoxyphene containing pain medicines. Defendants are not obligated by this Litigation to preserve materials relating to any other products.

**D. Healthcare Provider**

As used herein, the term “*Healthcare Provider*” means any surgeon, physician (whether homeopathic, osteopathic or chiropractic), physician assistant, physical, occupational or rehabilitative therapist, pharmacist, nurse, psychologist, dentist, psychiatrist,

social worker, alternative healthcare practitioner, counselor or other practitioner of the healing arts.

**E. Medical Facility**

As used herein, the term “*Medical Facility*” means any location where the healing arts are practiced including but not limited to hospitals, doctor’s offices, clinics, urgent care centers, emergency rooms, trauma centers and nursing and long-term care facilities. For purposes of this Order, “*Medical Facility*” also refers to any location where prescription pharmaceutical products are dispensed, including but not limited to, pharmacies.

**III. Preservation Obligations —Defendants**

Defendants shall take reasonable steps, including the dissemination of Legal Hold Notices to employees and manufacturers of the product(s) to preserve *Documents*, *ESI* and *Tangible Things* believed to be reasonably related to plaintiffs’ claims in this litigation. Such material may include regulatory documents, purported adverse event reports, INDs/NDAs/ANDAs as applicable, product literature, lot samples, and promotional materials, if any, for the Product(s). This obligation requires defendants and their employees to preserve all relevant e-mails, websites, ESI on removable media, postings or statements made on social media, chat rooms, blogs, etc.

**IV. Preservation Obligations— Plaintiffs**

The individual plaintiffs in the Litigation shall take all reasonable steps to ensure the preservation of *Documents*, *ESI* and *Tangible Things* that are reasonably related to plaintiffs’ claims in the Litigation. This includes, but is not limited to, the following *Documents*, *ESI* and *Tangible Things*:

- A. Product labels, bottles, packaging, containers and remaining Product.

B. ESI stored on the hard drive of a computer owned by plaintiff or plaintiff's decedent. This obligation does not require a plaintiff to copy or create a duplicate image of the hard drive. Plaintiff's obligation is fulfilled if the relevant ESI and documents are retained on the hard drive. However, if the computer is replaced, the plaintiff will retain the old computer hard drive in order to satisfy his or her preservation obligation.

C. ESI stored on any removable media owned by plaintiff or plaintiff's decedent. This obligation does not require a plaintiff to copy or create a duplicate image of the media. Plaintiff's obligation is fulfilled if the relevant documents are retained on the media or plaintiff creates and maintains complete hard copies of any documents on the media.

D. To the extent discovered or otherwise known or found, postings or statements made by plaintiff or plaintiff's decedent on social media, chat rooms, blogs, etc.

E. All diaries and calendars from January 1, 1991 to the present, or for a period of five years pre-dating the date of the first alleged ingestion of the Product to the present, whichever period is longer.

F. E-mails (whether on plaintiff's or plaintiff's decedent's hard drive or stored on ISP servers or services such as g-mail, Hot-mail, and the like) and written communications.

G. Records of and printed results from Internet searches reasonably related to plaintiff's claims.

H. Medical and pharmacy records and records of medical or pharmacy expenses. For cases currently pending in this Litigation, each plaintiff shall notify the individuals or entities listed below in subparagraphs 1. through 6. within sixty (60) days of this Order, or within forty-five (45) days of discovering an additional individual or entity, that they have records relevant to the plaintiff's claims and that those records must be preserved, pending

collection by a party to the Litigation or appropriate party designee. For future cases transferred or reassigned to this Litigation, each plaintiff must comply with this notice requirement within sixty (60) days of a case being docketed to this Court. The following individuals or entities must be notified pursuant to paragraph H:

1. All pharmacies that dispensed any medications to the plaintiff or plaintiff's decedent from January 1, 1991 to the present, or for a period of five years pre-dating the date of the first alleged ingestion of the Product to the present, whichever period is longer;

2. All Medical Facilities, Healthcare Providers and/or others persons who plaintiff claims provided any samples of the Products to the plaintiff or plaintiff's decedent;

3. All Medical Facilities and/or other Healthcare Providers who prescribed the Products for the plaintiff or plaintiff's decedent;

4. All Medical Facilities and/or Healthcare Providers who treated plaintiff or plaintiff's decedent from January 1, 1991 to the present, or from the five year period pre-dating the date of the first alleged ingestion of the Product to the present, whichever period is longer;

5. All medical examiners, coroners, or toxicology laboratories involved in the examination or investigation of a plaintiff's decedent's death; and

6. If plaintiff is seeking lost wages, all of his/her/plaintiff's decedent's employers for the period from five years prior to the date for which he or she is seeking lost wages through the last day for which plaintiff is seeking lost wages.

7. Plaintiff shall provide the names and addresses of all individuals or entities to which notices were sent, in due course, if requested by defendants through discovery.

## **V. Acceptable Methods of Preservation**

The following methods of preserving *Documents*, *ESI* and *Tangible Things* shall satisfy a Party's duty to preserve in the Litigation. Defendants may select any of the non-exclusive methods set forth under each sub-section A through C as the means to preserve *Documents*, *ESI* or *Tangible Things*, and the decision as to which method to use is at the judgment of the party. The methods below shall be deemed sufficient, but do not rule out other methods.

### **A. E-mail**

The defendants shall preserve e-mail communications and associated attachments (of employees located in the United States) reasonably related to plaintiffs' claims, by either:

1. Maintaining one set of back-up tapes for implicated servers; or
2. Creating an electronic snapshot of implicated servers; or
3. Maintaining e-mail files on a server or within an electronic archive.

### **B. Databases**

Defendants utilize a variety of databases to operate their business. Defendants will issue a preservation notice to employees located in the United States believed to have information reasonably related to plaintiffs' claims; the scope of this notice will include information stored in databases housed on servers located in the United States. The defendants shall preserve data held in such databases, believed to contain information reasonably related to plaintiffs' claims, by:

1. Maintaining such data in accessible electronic systems; or
2. Creating an electronic snapshot of relevant database servers; or
3. Maintaining one set of back-up tapes for relevant database servers.

**C. Electronic documents contained in Shared or Home Directories**

Where electronic documents in shared or home directories (e.g., word processing documents, spreadsheets, and PowerPoint presentations) are subject to a deletion schedule, the defendants shall preserve documents believed to be reasonably related to plaintiffs' claims contained in shared and home directories housed on servers located in the United States by:

1. Maintaining such directories and files contained therein in accessible electronic systems; or
2. Creating an electronic snapshot of relevant shared drive or home directory servers; or
3. Maintaining one set of back-up tapes for relevant servers.

**D. Tangible Documents**

For Documents not in electronic form the party shall maintain the original form of the document, a copy, or scanned image.

**VI. Reservation of Rights**

The Court acknowledges that the parties do not concede that any of the information subject to this Order is discoverable, relevant or admissible. Likewise, the Court recognizes that the parties expressly reserve the right to challenge any specific discovery request concerning any such information. Further, the parties reserve the right to challenge the competency, relevance, materiality, privilege and/or admissibility into evidence of such

documents, information or material in these or any subsequent proceedings or at the trial of these or any other actions, in this or any other jurisdiction.

This 26<sup>th</sup> day of January, 2016.



**Signed By:**

**Danny C. Reeves** DCR

**United States District Judge**