UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: FRESENIUS GRANUFLO/ NATURALYTE DIALYSATE PRODUCTS LIABILITY LITIGATION	)	**MDL No. 1:13-md-02428-DPW**
This Document Relates To:	)	
ALL CASES	)	

CASE MANAGEMENT ORDER NO. 4
(Preservation of Documents Order)

THIS MATTER, upon consultation with the Parties, the Court finds that an Order regarding the preservation of documents and other potential evidence is both desirable and necessary. **IT IS HEREBY ORDERED** as follows:

I. APPLICABILITY OF ORDER

1. This Order shall govern all cases (a) transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to its Order of March 29, 2013; (b) any tag-along actions subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.4 of the Rules of Procedure of that Panel; and (c) all related cases originally filed in this Court or transferred or removed to this Court.

II. PRESERVATION OF DOCUMENTS

2. All parties and their counsel shall preserve evidence that may be relevant to this action. The duty to preserve extends to documents, data, and tangible things in the possession, custody and control of the parties to this action, including a party's employees, agents, contractors who possess or may possess materials reasonably anticipated to be subject to discovery in this action.

3. For purposes of this order, evidence that may be relevant to this action means documents, data and tangible things that relate or refer to the subject matter of this litigation, including the legal claims and theories alleged by Plaintiffs in individual Complaints pending in this multi-district litigation as of the date of this Order. This paragraph may be amended by agreement or upon motion and for good cause shown, as the litigation proceeds.

4. For purposes of this order, "documents, data, and tangible things" is to be interpreted broadly and is intended to include writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; E-mail; computer and network activity logs; hard drives; backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; Web pages; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video, phonographic, tape, or digital recordings or transcripts thereof; drafts; jottings; and notes. Information that serves to identify, locate, or link such material such as file inventories, file folders, indices, and metadata, is also included in this definition. No party will be required to preserve any computer or network activity logs to the extent that to do so would violate relevant foreign privacy laws.

5. For purposes of this order, "Preservation" is to be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery under the Federal Rules of Civil Procedure 26, 45, and 56 (e). Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible

6. As it concerns the preservation of documents and other potential evidence:

(a) Fresenius Medical Care North America shall comply with legal hold instructions issued August 15, 2012 and any supplemental instructions relating to the preservation of documents, data and tangible things that may be relevant to this action.

(b) Fresenius Medical Care North America shall preserve backups of the electronic data on the servers housing data described in Paragraph 3 of this Order that were made on or around November 25-27, 2011; March 12, 2012; and July 31 2013 during the pendency of this litigation.

(c) Fresenius Medical Care North America shall preserve during the pendency of this litigation the last backup made of the voice mail system prior to September 13, 2013.

(d) Fresenius Medical Care North America's obligation to preserve the specified backups shall have no bearing on their obligation, if any, to produce documents from those backups or on the cost allocations and burdens if such production is agreed or required.

(e) Fresenius Medical Care North America may continue to follow its ordinary business protocol of overwriting backups every thirty (30) days so long as it is otherwise in compliance with this order.

7. If, prior to the entry of this order, counsel for any party has become aware of the destruction and/or loss of evidence covered by this order, counsel for the party shall inform and notify opposing counsel of the destruction or loss no later than thirty (30) days after the date upon which this order is entered. If, during the pendency of this order, any party or counsel learns or becomes aware that evidence covered by this order has been destroyed or lost, counsel for the party shall inform and or notify all opposing counsel no later than fourteen (14) days after learning or becoming aware of such destruction or loss.

8. To the extent not expressly set forth herein, it is expected that the parties shall otherwise comply with their obligations concerning preservation of evidence as set forth in the applicable Federal Rules, Local Rules of this District and the law of this Circuit.

III. SUPPLEMENTATION AND AMENDMENTS TO THIS ORDER

9. This Order may be modified in the interest of justice, expedience, or judicial economy on the Court's own motion or a motion by the parties for good cause shown.

IT IS SO ORDERED

BY THE COURT:

Douglas P. Woodlock
United States District Judge

November 15, 2013