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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF LOS ANGELES- SPRING STREET COURTHOUSE**

19 CAYDEN PERKINS, a deceased minor by
20 BETHANY PERKINS, individually and as
21 parent and representative of the Estate of
22 CAYDEN PERKINS,

23 Plaintiffs,

24 v.

25 HYLAND'S INC., a California Corporation,
26 and STANDARD HOMEOPATHIC
27 COMPANY, a Nevada Corporation, and
28 DOES 1-52, inclusive,

Defendants.

Case No. BC668741 (Lead)

Related Cases: BC677631, BC668830,
BC668752, BC658716, BC693554,
BC693984, BC697690, BC700255

*Assigned for All Purposes to the Hon. Carolyn
Kuhl, Dept. SS12*

**STIPULATION AND [PROPOSED]
ORDER PROTOCOL REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION**

Action Filed: July 14, 2017
Trial Date: None Set

1 This Protocol sets forth the agreement of Hyland’s, Inc., Standard Homeopathic Laboratories,
2 Inc. and Standard Homeopathic Company and all plaintiffs in the Hyland’s Teething Tablets/Teething
3 Gel proceedings that are deemed related including, but not limited to, the following matters: Jeannie
4 Matos, et al. v. Hyland’s Inc., et al.; Cayden Perkins, et al. v. Hyland’s Inc., et al.; Corbin Reber, et al.
5 v. Hyland’s Inc., et al.; Holly Toberman, et al. v. Hyland’s Inc., et al.; Tyler Couch, et al. v. Hyland’s,
6 Inc., et al.; Evon Puente, et al. v. Hyland’s, Inc., et al; Amia Marie Owens, et al. v. Hyland’s, Inc., et
7 al.; Stephenie Gonzalez, et al. v. Hyland’s, Inc., et al.; and Savanna Kay Barrera, et al. v. Hyland’s,
8 Inc., et al (collectively referred to as the “Parties”) regarding the protocol for the production of hard-
9 copy documents and electronically stored information (ESI), in the above-captioned action and in all
10 actions that are deemed related under lead case Perkins v. Hyland’s et. al. (the “Litigation”). Its
11 purpose is to streamline the production of hard-copy documents and Electronically Stored Information
12 (“ESI”) and “eliminate uncertainty and confusion regarding the discovery of electronically stored
13 information.” The Parties agree as follows:

14 **I. GENERAL**

- 15 1. The Parties shall take reasonable steps to comply with this protocol.
- 16 2. To the extent reasonably possible, the production of documents shall be conducted to
17 maximize efficient and quick access to documents and minimize related discovery costs. The terms of
18 this Protocol should be construed to ensure the prompt, efficient, and cost-effective exchange of
19 information consistent with the California Code of Civil Procedure, Local Rules, and any Orders by
20 this Court.
- 21 3. Except as specifically limited herein, this Protocol governs the production of
22 discoverable documents by the Parties during the Litigation. In the event of transfer to other courts,
23 this Protocol will remain in effect in all respects, until adopted by the remand or transferee court or
24 replaced by a successor Protocol.
- 25 4. This Protocol shall not enlarge, reduce, or otherwise affect the proper scope of
26 discovery in this Litigation, nor imply that discovery produced under the terms of this Protocol is
27 properly discoverable, relevant, or admissible in this or in any other litigation. Additionally, this
28 Protocol does not enlarge, reduce, or otherwise affect the preservation obligations of the Parties.

1 5. Subject to the Parties’ objections and responses to requests for production of
2 documents and subject to the Parties’ Stipulation and Agreed Protective Order, all documents that are
3 responsive to discovery requests and not designated as “privileged” shall be produced in the manner
4 provided herein. Nothing in this Protocol shall be deemed to limit or modify in any way the terms of
5 any Protective Order that has been or may be entered in this Litigation. Nothing in this Protocol shall
6 be interpreted to require disclosure of materials that a Party contends are not discoverable or are
7 protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or
8 any other privilege that may be applicable. Additionally, nothing in this Protocol shall be deemed to
9 waive or limit either Party’s right to object to the production of certain electronically stored
10 information, pursuant to the California Code of Civil Procedure, Local Rules and any Orders by this
11 Court on the ground that the sources are not reasonably accessible because of undue burden or cost.

12 6. The Parties agree to promptly alert all other Parties concerning any technical problems
13 associated with complying with this Protocol. To the extent compliance with this Protocol imposes an
14 undue burden with respect to any protocol, source, or search term listed herein, the Parties shall
15 promptly confer in an effort to resolve the issue. If the Parties are unable to resolve the issue by
16 mutual agreement after such conference, the Party seeking relief may move the Court for relief for
17 good cause shown.

18 7. Consistent with their obligations under the California Code of Civil Procedure, the
19 Parties will attempt to resolve, in person, in writing (including e-mail) and/or by telephone, disputes
20 regarding the issues set forth herein prior to filing a motion with the Court, or otherwise seeking relief.
21 If the Parties are unable to resolve the dispute after a good faith meet and confer, the Parties may
22 apply to the Court for relief.

23 8. To bring within the scope of these requests all documents that might otherwise be
24 construed to be outside of their scope, the following rules of construction apply: (i) The singular
25 form of a word includes the plural and vice versa; (ii) the present tense shall be construed to include
26 the past tense and vice versa; (iii) the connectives “and” and “or” shall be constructed either
27 disjunctively or conjunctively, whichever is appropriate to have the broadest reach; (iv) “Each” means
28 each and every, and “All” means all and any; (v) the masculine, feminine, or neuter pronoun shall not

1 exclude other genders; and (vi) references to employees, officers, directors, or agents shall include
2 both current and former employees, officers, directors, and agents.

3 9. Document and/or Documents - as used herein, shall mean and specifically includes, but
4 is not necessarily limited to, any document and/or writing, including the original, reproduction, or
5 copy, and non-identical copy thereof, including a copy with notations, marks, and/or deletions of any
6 kind, as broadly defined in Evidence Code § 250 to include all forms of tangible expression, including
7 pictures and sound recordings, and/or which may, but not required, to be considered evidence under
8 Evidence Code § 140, and includes any type and kind of writing, handwriting, typewriting, printing,
9 photostating, photographing, photocopying, information, charts, graphs, notes, diaries, journals,
10 calendars, contract documents, publications, calculations, written or recorded estimates of any
11 information, vouchers, minutes of meetings, invoices, reports, studies, computer tapes, computer
12 disks, CDs, DVDs, Blue Ray Discs, computer cards, computer files, electronic mails, photographs,
13 photograph negatives, photographic and/or radiographic slides, dictation belts, voice tapes, telegrams,
14 text messages, and/or notes and/or recordings of any telephone conversations and/or other oral
15 communications, drawings, photographs, audio recordings, visual recordings, printed images,
16 photographic images, transmission, communication, and/or information by electronic mail,
17 transmission, communication, and/or information by facsimile, transmission, communication, and/or
18 information by text messaging, transmission, communication, and/or information by instant
19 messaging, transmission, communication, and/or information by voice messaging, and every other
20 means of recording upon any tangible thing, any form of communication, information, transmission,
21 and/or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof,
22 and any record thereby created, regardless of the manner in which the record has been stored, any kind
23 of written, printed, typed, electronically created or stored, or other graphic matter and/or information
24 of any type, documentary material, or drafts thereof, including, but not limited to, any correspondence,
25 memoranda, interoffice and/or intra-office communications, and/or electronic images, and any and all
26 type and kind of electronically stored information including all metadata, and any other data and/or
27 data compilations stored in any manner and/or medium from which any writing, as defined herein and
28 in Evidence Code §250, and/or information that may and/or can be obtained and/or and translated, if

1 necessary, by the responding defendant(s) into a reasonably usable form.

2 10. Terms used in this Protocol that are not specifically defined herein shall have the
3 meaning provided in the Requests For Production of Documents and Electronically Stored
4 Information and/or the Agreed Protective Order. To the extent terms are not defined in the Requests
5 For Production of Documents and Electronically Stored Information and/or the Agreed Protective
6 Order they shall have the meaning provided in the statute, regulation, ordinance or other legal
7 authority from which that term is derived, if any, or in the most recent edition of Black's Law
8 Dictionary. Any other word or term used in these Requests not specifically defined below shall have
9 its customary usage and meaning.

10 11. Parties may request documents from third parties and/or by subpoenas and, using best
11 efforts, the documents will be produced in a format that allows for compliance with this protocol.
12 Such records will be produced directly to the requesting party. The non-requesting party has the
13 option of requesting copies of these documents.

14 12. Medical records and bills received by the parties are specifically exempted from the
15 ESI Protocol. The parties will produce medical records and bills in the form and format that they
16 received them from the medical provider.

17 **II. DEFINITIONS RELATED TO THE PRODUCTION OF ESI**

18 1. "Electronically Stored Information" (herein "ESI") is used as it is defined in CCP
19 §2016.020.

20 2. The term "Control Number" means a unique number assigned to the native file at the
21 time of production for use in identification of documents. A control number can also be used as a
22 "Bates number" for native files. (i.e., PLAINTIFF_000001.doc).

23 3. The term "Bates Number" means an identifier consisting of a two- to seven -letter
24 prefix, associated with the Producing Party's name, followed by six to nine numbers (e.g.
25 ABCD_00000001). Each page for static TIFF images is assigned a unique, incremental Bates
26 number.

27 4. The term "Confidentiality Designation" means the coded confidentiality designation
28 assigned to a document by the Producing Party and provided to the Receiving Party in a load file that

1 accompanies the production. This confidential information is defined by, and subject to, the terms of
2 the Parties' Stipulation and Agreed Protective Order in this Litigation.

3 5. The term "Custodian" means a person with custody of Documents during, or prior to,
4 the time of collection.

5 6. The term "Database" means a collection of related Electronic Data organized (often in
6 rows, columns and tables) in an electronic environment for a particular purpose. Databases often
7 perform various functions, including data analysis, data sorting and report generation. Microsoft
8 Access and Oracle are common database platforms.

9 7. The term "Document" shall include both Hard-Copy Documents and Electronic
10 Documents as defined herein.

11 8. The term "Electronic Data" means raw data stored in a Database, as defined herein.

12 9. The term "Electronic Document" means Documents existing in electronic form at the
13 time of collection, including but not limited to: e-mail, word processing files (e.g., Microsoft Word),
14 computer presentations (e.g., PowerPoint slides), and/or spreadsheets (e.g., Excel).

15 10. The term "Hard-Copy Document" means Documents existing only in paper form at the
16 time of collection.

17 11. The term "Load File" means a file provided with a production set of native documents,
18 metadata and other information that facilitates the loading/correlation of such information into/within
19 a Receiving Party's document review platform. (i.e., ".DAT", ".OPT", or ".LFP" file).

20 12. "Metadata" means: (i) information embedded in a Native File that is not ordinarily
21 viewable or printable from the application that generated, edited, or modified such Native File; and (ii)
22 information generated automatically by the operation of a computer or other information technology
23 system when a Native File is created, modified, transmitted, deleted or otherwise manipulated by a
24 user of such system. (e.g., date created, date sent, author, recipient).

25 13. The term "Native Format" means the format in which an Electronic Document was
26 created and used (i.e. Word, Excel, Outlook, etc.)

27 14. The term "Producing Party" means any Party to the Litigation that produces
28 Documents under this Protocol.

1 15. The term “Receiving Party” means any Party to the Litigation that requests or receives
2 Documents under this Protocol.

3 16. The term “Searchable Text” means the native text extracted from an Electronic
4 Document and any Optical Character Recognition text (“OCR”) generated from a Hard-Copy
5 Document or electronic image.

6 17. The term “Static Image” means a representation of ESI produced by converting a
7 Native File into a standard image format capable of being viewed and printed on standard computer
8 systems. A Tagged Image File Format (TIFF) image is an example of a Static Image. Static Images
9 should be Bates numbered sequentially in a way that facilitates the use of discovery materials by the
10 Parties and the Court.

11 18. The term “Slip Sheet” means a single-page, Bates-numbered Static Image that precedes
12 or demarcates the production of a Native File. If a Native File has any Confidentiality designation, the
13 Slip Sheet shall state such designation. The Slip Sheet should contain all information needed to
14 identify the Native File produced, including the following: (i) the name of the Native File, (ii) Bates
15 number of the Native File, and (iii) any Confidentiality designation.

16 **III. FORMAT OF PRODUCTION**

17 1. Hard-Copy Documents: Hard-Copy Documents shall be scanned with OCR, and shall
18 be produced as black and white, Group IV compression, single-page TIFF images, at not less than 300
19 dpi resolution with the document boundaries (BegBates, EndBates) contained in a separate load file.
20 Reasonable efforts shall be used to scan the pages at or near their original size and so that the image
21 appears straight and not skewed. Physically oversized originals, however, may appear reduced. In
22 addition, reducing image size may be necessary to display Bates Numbers and Confidentiality
23 Designations without obscuring text.

24 2. Electronic Documents: The Parties have agreed to produce all documents in native
25 format. Documents will be produced in the file type in which they were preserved and collected (the
26 file type the documents were created in/stored in the normal course of business). Documents shall be
27 produced and delivered with a load file. That load file shall contain an assigned control number,
28 corresponding agreed-upon metadata for each document as designated in Paragraph 8 (below), and

1 any confidentiality designation.

2 3. Redaction of Electronic Documents: The Producing Party may redact, or remove from
3 production, protected and/or privileged documents. The Producing Party shall convert to static image
4 TIFF any electronic document for redaction and provide these TIFF files in the native production
5 along with OCR and corresponding metadata as outlined below in Paragraph 8. The TIFF images
6 shall be produced as black and white, Group IV compression, single-page TIFF images, at not less
7 than 300 dpi resolution with the document boundaries (BegBates, EndBates).

8 4. Ordering: The Producing Party will take reasonable steps to produce relevant, non-
9 privileged attachments to Electronic Documents contemporaneously and in sequential order. For
10 example, all electronic documents attached to an e-mail are to be produced contemporaneously and
11 should appear sequentially following the parent e-mail.

12 5. Printing of Produced Confidential Native Documents: Usage and printing of
13 confidential documents produced in native format is controlled by the Protective Order and to the
14 extent any exhibits are used at depositions/trial, the parties agree to print the slip sheets with the
15 accompanying control number and confidentiality designation.

16 6. Databases: If requested, the Parties shall identify and describe Databases that contain
17 Electronic Data responsive to document requests, as well as provide a summary of the type of
18 responsive Electronic Data in each Database. The Parties shall cooperate to produce responsive
19 Electronic Data from any such Database in a reasonably useable production format.

20 7. Searchable Text: The Parties agree that they will produce extracted text for
21 simultaneously produced Electronic Documents and Electronic Data. For redacted documents, OCR
22 text will be provided for the non-redacted text. With respect to Hard-Copy Documents, the Parties
23 agree to produce OCR Text.

24 8. Metadata: For Electronic Documents, the Parties agree to produce the Metadata set
25 forth below in a .DAT file to the extent such Metadata is available, responsive, not privileged, and are
26 already populated in the Party's normal course of business. To the extent that the Parties produce in
27 this Litigation any Electronic Documents produced or received in any other litigation, the Parties shall
28 produce such Electronic Documents with the Metadata produced or received in the other litigation.

1 Only fields with an asterisk (*) will be produced for redacted records or hard copy documents.

METADATA FIELD NAME	DESCRIPTION
DOCID/CONTROLNUMB	Control Number
ProdBeg* <i>for tiffed documents</i>	Beginning Bates number
ProdEnd* <i>for tiffed documents</i>	Ending Bates number
ProdBegattach* <i>for tiffed documents</i>	Beginning Bates number for attachment
ProdEndattach* <i>for tiffed documents</i>	Ending Bates number for attachment
Page Count* <i>for tiffed documents</i>	Total Page Count for tiffed documents
DocType	Type of document (e.g., email; email with attachment; Attachment; email without attachment; Standard file.)
Attach Count	Email Field
Attach Name	Email Field
FileName	Efile filename
DocExt	The file document extension (i.e. .xls, .doc. ppt)
Author	For attachments and loose files
Author	Efile creator
From	Email author
To	Email field
CC	Email field
BCC	Email field
Sent Date	Email field
Received_Date	Email field
Create_Date	Efile field
Mod_Date	Efile field
Original File Path	The file path to where the file was originally save in the ordinary course of business

Original File Name	The name of the file last saved in the ordinary course of business
Subject	Email subject
Custodian (s)	Primary Custodian
Duplicate Custodians	When global deduplication is performed all custodians will be supplied in this field
HASH	An MD5 has identification unique to each electronic document
File_Path	Link to the associated native file or tiff images
CONFID	Confidentiality Designation
Redaction	Whether a document contains redactions or not.
Text	Extracted or OCR text depending on document type. The full text of records will be produced as separate document level text files.

IV. PRODUCTION SPECIFICATIONS

1. Generally: The Parties will cooperate to ensure that the logistics of production are efficient and economical, including production media, Document Numbering, Load Files and general organization of produced documents. Productions will be delivered in the following load file formats:

- i. File Path Load File – .OPT or .LFP file,
- ii. Metadata load file - .DAT file using the standard Concordance delimiters and including fielded data from above chart,
 - 1. Column Delimiter: - (ASCII 020)
 - 2. Text Qualifier: - þ (ASCII 231)
 - 3. New line: Registered sign - ® (ASCII 174)
 - 4. Example: þCOMPANYþþCUSTODIANþþAUTHORþ

iii. Full Extracted or OCR (searchable) Text of Documents – Document level text files named to match the starting file number of the corresponding document. Text

1 files will all be saved to separate directory on production media named "Full Text,"
2 and

3 iv. Native files will all be saved to separate directory on production media named
4 "Natives."

5 2. De-duplication: The Parties will make reasonable efforts to de-duplicate Electronic
6 Documents globally and will provide an accompanying field identifying all custodians of de-
7 duplicated copies. Electronic files will be de-duplicated based upon calculated MD5 Hash values for
8 binary file content and must be identical in all regards.

9 3. Production Media: Documents and Electronic Data shall be produced by FTP, or on a
10 hard drive, CD, DVD, or another mutually agreeable media storage device

11 4. The custodian/source metadata field, if applicable, shall be provided for all documents
12 produced. There is no requirement that a Producing Party objectively code paper documents or ESI to
13 provide metadata fields not otherwise available.

14 5. In scanning paper documents, the unitization of the document and any attachments
15 shall be maintained as it existed in the original when creating the image file. Distinct documents shall
16 not be merged into a single record, and single documents shall not be split into multiple records (i.e.,
17 paper documents should be logically unitized). Parent-child relationships (the association between an
18 attachment and its parent document) shall be preserved. Original document orientation shall be
19 maintained (i.e., portrait to portrait and landscape to landscape).

20 6. Comments, edits, track changes, formulas and any other information contained in the
21 files to be produced shall be preserved in the ordinary course of business. Settings as to these fields
22 shall be preserved, processed and produced as the file was last saved by the user/custodian.

23 7. Document formats that present imaging or production problems shall be promptly
24 identified, and the parties shall meet and confer to attempt to resolve the problems.

25 8. When documents produced in accordance with this Order are used in any proceeding
26 herein, including depositions, hearings, or trial, the printed native file or image copy of documents
27 shall be the copy used. Extracted text shall not be used in any proceeding as a substitute for the image
28 of any document.

1 9. When processing ESI, Pacific time shall be selected as the time zone.

2 10. Objects embedded in Microsoft Word and .RTF files will be extracted as separate
3 documents and, if responsive and non-privileged, will be produced as attachments to the document.

4 11. Compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a
5 reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible
6 compression resulting in individual folders and/or files.

7 **V. SEARCH METHODOLOGY**

8 1. Plaintiffs have requested certain custodial files from the Defendants. Defendants
9 agreed to collect documents from the following custodians: Eric Baier, Pejman Parhami, Julie Kim,
10 Stephen Reta, Edyta Frackiewicz, Mary Borneman and Iris Bell. Pursuant to Judge Kuhl’s
11 recommendation at the May 2, 2018, status conference, defendants agreed to also collect documents
12 from Richard Walton. If plaintiffs believe that collection from additional custodians is needed, the
13 parties will further meet and confer. Defendants will produce responsive, non-privileged, reasonably
14 accessible documents, on a rolling basis. This paragraph does not relieve parties from otherwise
15 responding to production requests, or restrict additional custodians to be added.

16 2. The parties will use search terms to cull collected electronic data. The search terms will
17 be agreed to by the parties. This paragraph does not relieve parties from otherwise responding to
18 production requests, or prevent the Parties from re-visiting agreed upon search terms. If the Parties are
19 unable to resolve any dispute after a good faith meet and confer, the Parties may apply to the Court for
20 relief. Defendants proposed search terms to be reviewed by Plaintiffs. Plaintiffs then supplied
21 suggested search terms and Defendants generated a “Search Term Hit” report. This report was
22 provided to Plaintiffs. Defendants then suggested additional terms as did Plaintiffs. Also, and per
23 Judge Kuhl’s recommendations at the April 18, 2018, status conference, certain terms were removed
24 from the list of search terms. The updated and revised terms were run across the collected ESI to
25 generate a revised “Search Term Hit” report. This report was also provided to plaintiffs. Once all ESI
26 for agreed upon custodians has been collected and searched a final “Search Term Hit Report” will be
27 provided to Plaintiffs to review. Additional changes to the list can be discussed between the parties.
28 Once a final set of terms is agreed to, the “Final Search Term List” will be the agreed starting point for

1 review and production by defendants of documents responsive to Plaintiffs' requests for production.
2 This paragraph does not limit additional terms to be added that arise during the course of the litigation
3 provided such terms are agreed to or by Court order.

4 3. The parties will notify each other after the review and production of their documents is
5 substantially complete pursuant to discovery responses. The parties shall meet and confer concerning
6 the production of additional files.

7 **VI. COSTS**

8 1. Each Party shall bear the cost of its own production. To the extent the Producing party
9 believes that information is being requested that is cumulative or repetitive, imposes an undue burden,
10 or is from a source that is not reasonably accessible due to undue burden or cost, the Producing Party
11 may object. The Producing part shall provide information on costs to process or review. The Parties
12 shall then promptly meet and confer to resolve the issue. In the event the issue cannot be resolved, the
13 Parties may proceed consistent with the California Code of Civil Procedure and Local Rules.

14 **VII. PROTECTIVE ORDER**

15 1. The documents that have been or will be produced by the parties will be subject to the
16 terms of the Protective Order.

17 **VIII. PRIVILEGED DOCUMENTS AND ATTORNEY WORK PRODUCT**

18 1. For a document(s) where there is a claim of privilege or work product, the producing
19 party will generate a slip sheet or redacted document and produce the slip sheet or redacted document
20 in the rolling production from which the document was originally located. Producing Parties will
21 produce privilege logs in searchable PDF format within 60 days after the rolling production that
22 contained the redacted document or slip sheet. When there is a chain of privileged e-mails, the
23 Producing Party need only include one entry on the privilege log for the entire email chain, and need
24 not log each email contained in the chain separately. Redacted documents will be produced in TIFF
25 format with corresponding searchable OCR text and the associated metadata for the document,
26 ensuring the redacted content is fully protected from disclosure. The parties may modify the deadlines
27 for production of privilege logs by agreement.

28 ///

1 **IX. APPLICABILITY**

2 1. This order governs all pending or future Requests to Produce, Requests for Admission,
3 Interrogatories, and deposition notices/riders.

4 DATED: June 8, 2018


KIESEL LAW LLP

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6 By: 
7 Paul R. Kiesel
8 Ashley Conlogue

Attorneys for Plaintiffs

10 DATED: June 7, 2018

**WILLIAMS KHERKHER HART
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Attorneys for Plaintiffs

16 DATED: June 7, 2018

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DATED: June ____, 2018

CLARK HILL LLP

By: _____

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HOMEOPATHIC COMPANY and
STANDARD HOMEOPATHIC
LABORATORIES, INC.

IT IS SO ORDERED.

DATED: June ____, 2018

HONORABLE CAROLYN B. KUHL