

MASTER DOCKET NO. 2022-09420

IN RE:

JULY 27 CHEMICAL RELEASE
LITIGATION

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

190th JUDICIAL DISTRICT

AGREED PROTECTIVE ORDER

The Court, having considered this Agreed Protective Order, finds it necessary and in the interests of justice to enter a protective order to protect from public disclosure material obtained by discovery that is confidential and/or proprietary.

IT IS THEREFORE ORDERED THAT:

1. Except as otherwise provided below, the term “Confidential Material,” as used herein, shall mean any personal or proprietary information which is designated as “Confidential” or “Attorneys’ Eyes Only” by any “party.” A “party” is defined as any person or entity from whom discovery was sought and includes both parties and non-parties to the “above-captioned case,” which includes this MDL case created by order of the Multi-District Litigation Panel, any Related or Tag-Along Cases as defined in the Agreed Case Management Order No. 1, or any other case consolidated into this MDL by agreement of the parties.

2. Confidential Material may be a document, disclosure, data, thing, deposition testimony, or interrogatory answer produced, given, or served in the above-captioned case. This Order is solely to be used to facilitate discovery and not as evidence of any substantive question of fact.

3. Designation Criteria for “Confidential” Information. The parties may designate any document produced to the other as “Confidential” when counsel believes that such Confidential Material constitutes or reveals confidential information.

4. Designation Criteria for “Attorneys’ Eyes Only” Information. The parties may designate certain information produced to the other as “Attorneys’ Eyes’ Only.” The designation of “Attorneys’ Eyes Only” is reserved for any type or classification of non-public information, which a party believes in good faith would, or might reasonably have a tendency to, cause harm to the business operations of the party or provide improper advantage to others, if disclosed to the public without the restrictions set forth herein for such information, or information that is especially sensitive. In designating information as “Attorneys’ Eyes Only,” the producing party will make such designation only as to that information that it in good faith believes contains or constitutes “Attorneys’ Eyes Only” information.

5. Procedure for Designating Confidential Material. Confidential Material shall be designated as such by stamping the legend “Confidential” or “Attorneys’ Eyes Only” on each page of the document as to which confidentiality is claimed. If a party produces a file in Native Format (such as for an excel spreadsheet), the party shall produce a placeholder/cover sheet tiff or .pdf image for the file, which shall contain an endorsement stating that the document has been produced natively (such as “Produced Natively” or “This File Produced Natively”), along with the applicable Bates number. For a file produced in Native Format that contains Confidential Material, a party shall designate the file containing Confidential Material by stamping the file’s placeholder/cover sheet tiff or .pdf image as “Confidential” or “Attorneys’ Eyes Only.” All copies of Confidential Material shall again be stamped or otherwise labeled “Confidential” or “Attorneys’ Eyes Only” if the duplicating process does not reproduce the original stamp, including on documents produced in Native Format.

6. Use of Confidential Material. A non-producing party shall not, except with the consent of the producing party or by court order, use Confidential Material for any purpose,

including, without limitation, any business or commercial purpose, other than for the above-captioned case. The parties are prohibited from using or filing Confidential Material in another lawsuit.

7. Disclosure of Confidential Material. Except with the consent of the producing party or upon court order, Confidential Material shall not be disclosed directly or indirectly by the person receiving such materials to persons other than the following:

- (A) The Court, persons employed by the Court, and stenographers transcribing the testimony or argument at a hearing in the above-captioned case or any appeal therefrom;
- (B) Counsel for the parties, whether or not counsel of record, as well as associates, legal assistants, paralegals, secretarial, and clerical employees, and outside services (including, without limitation, copy services; litigation consulting services, document management services, and graphics services) who are assisting counsel in the above-captioned case;
- (C) Experts and consultants retained, employed, or consulted by outside counsel of record in connection with the prosecution, and/or defense of the above-captioned case, who execute the Undertaking described below;
- (D) Any party to this Agreement, including any employee or former employee of a party;
- (E) Witnesses in the above-captioned case who execute the Undertaking described below; and
- (F) Court reporters and videographers at depositions.

Any person identified in Sections 6(C), 6(D), 6(E), and 6(F) above who reviews Confidential Material shall, prior to being given access to the information, be informed of and given a copy of the provisions of this Agreement, and, as to those persons identified in Sections 6(C), 6(E), and 6(F) above, shall execute a sworn copy of the Undertaking, which shall be dated when signed, in the form annexed hereto as Exhibit A, indicating that he/she has read this Agreement and will abide by its terms.

Such sworn statements will not be disclosed to any other party but shall be maintained by lead counsel for each party until 90 days after the entry of a final, non-appealable judgment or dismissal. Such sworn statements may only be discovered for good cause shown as to a probable violation of the terms of this Agreement.

8. Designation of Testimony by Producing Party or Witness. The party producing a witness to give deposition and other oral testimony or a non-party witness shall have fourteen (14) days from the date of receipt of a copy of the deposition or other transcript in which to designate all or portions of the testimony as Confidential Material. All deposition exhibits that are designated as Confidential Material shall remain so and shall be subject to all the terms of this Agreement without the necessity of a party re-designating that exhibit as Confidential Material. From the time the testimony is given through that fourteen-day period, all information disclosed in the testimony shall be deemed Confidential Material subject to the terms of this Agreement.

The responsible party shall make a good faith effort that any confidentiality designations be stated orally on the record or as soon as possible after transcription by giving written notice identifying the information to be so designated by page and line number(s) to counsel of record and the witness within the fourteen-day time period described above. If any deposition is displayed or read to the jury at trial, all deposition statements and all markings indicating that the deposition had previously been designated by the party as Confidential Material shall be removed prior to offering the deposition testimony into evidence or displaying same to the jury, and no mention shall be made of the previous designation of confidentiality.

Any deposition reporter and videographer who records testimony in the above-captioned case at a deposition shall be required to comply with paragraph 3 above.

All deposition testimony and exhibits designated “Confidential” shall be bound in a separate transcript, and clearly marked “Confidential.” If any deposition is recorded via videotape, counsel accepts responsibility for insuring that Confidential Material is not disclosed to any person not entitled under this Agreement to receive it.

9. Use of Confidential Material at Trial. If any document or other material is used as an exhibit at trial or otherwise displayed to the jury, all markings indicating that the document or material had previously been designated by the party as Confidential Material shall be removed prior to offering the document or material into evidence or displaying same to the jury, and no mention shall be made of the previous designation of confidentiality.

10. Court Filings. All materials designated “Confidential” will be filed under seal and in accordance with Tex. R. Civ. P. 76a, unless the party desiring to file with, or submit to, the Court the Confidential Material (1) receives written consent from the producing party that the Confidential Material need not be filed under seal or (2) obtains an order from the Court that the Confidential Material is not confidential per Section 11 below.

11. Return of Discovery Material. All provisions of this Agreement restricting the use of information obtained during the above-captioned case shall continue to be binding after its conclusion, including all appeals, unless the parties agree otherwise in writing. Any and all originals and copies of documents or other information designated as “Confidential” or “Attorney’s Eyes Only” shall be returned to the producing party within sixty (60) days after a final, non-appealable judgment or settlement or destroyed in that time frame, except that counsel of record for each party may maintain in its files copies of pleadings and other papers filed with the Court, each written discovery request and responses thereto, and each deposition together with exhibits marked at the deposition. Within the same time frame and upon written request by the

producing party, any analyses, memoranda, or notes (excluding indices that do not summarize the substance of Confidential Material) which were internally generated based upon Confidential Material shall be destroyed. The foregoing sentence does not apply to attorney work product. In the event that documents are returned or destroyed at the request of the producing party, the other party or its counsel of record shall certify in writing that all such documents as required by this paragraph have been returned or destroyed, as the case may be.

12. Objections to Confidentiality Designation. Any party may object to the designation of particular information as Confidential Material by giving written notice to the party making the designation. Such notice shall identify with specificity the Confidential Material to which the objection is directed and the basis of the objection. If any party disputes the designation of the Confidential Material and such dispute cannot be resolved within five (5) business days of receipt of such notice, it shall be the obligation of the party opposing the designation to file an appropriate motion requesting *in camera* review and a ruling by the Court regarding the designation. The party supporting the designation shall then have ten (10) business days after the filing of the motion in which to file papers in support of the designation. The party opposing the designation may not schedule the hearing for its motion regarding the designation until after the conclusion of this ten (10) day period. The disputed Confidential Material shall be treated as originally designated pending a ruling from the Court. In any proceedings challenging a designation pursuant to this paragraph, the party making the designation shall have the burden of proof that the challenged Confidential Material is entitled to the protection of the original designation.

13. No Waiver. Neither the taking of any action not in accordance with the provisions of this Agreement nor the failure to object thereto shall be construed as a waiver of any right to object to the furnishing of information and, except as expressly provided, shall not relieve any party or

witness of the obligation to produce information properly sought in the course of the above-captioned case. Nothing herein shall be construed to affect in any way the admissibility of any document, testimony or other evidence at trial. Nothing contained in this Agreement or any declaration of confidentiality or restriction hereunder shall be used or characterized by any party as an “admission” by a party opponent.


14. Agreement Applicable to Non Parties. Any non-party from whom documents or information is sought shall be entitled to designate materials and testimony Confidential Material pursuant to the terms of this Agreement, and the parties may designate materials and testimony produced by non-parties as Confidential Material pursuant to the terms of this Agreement.

15. Stipulation Effective On Signing. After the execution of this Agreement by the parties’ respective counsel, but before any approval by the Court, this Agreement shall become effective immediately upon execution.

16. If a party inadvertently fails to designate a document as Confidential Material, that party may do so at any time. A party’s inadvertent failure to designate a document as Confidential Material does not waive or otherwise affect a party’s right to use these designations.

17. This Agreement may be modified or amended only by written agreement of duly authorized representatives of the parties or, upon a showing of good cause, by order of the Court.

Signed on this _____ day of _____, 2022.

Signed: 
5/18/2022 _____

Judge Presiding

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as set forth below.

[This space intentionally left blank. Attorney signatures are on following page.]

AGREED:

/s/ Todd Mensing

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EXHIBIT A

UNDERTAKING ON CONFIDENTIAL MATERIAL

The undersigned has read the attached Agreement, understands its contents) and hereby undertakes to make no disclosures of Confidential Material to any person who is not permitted to have access to Confidential Material under the Agreement as applicable. In addition, the undersigned agrees not to use Confidential Material for any purpose whatsoever other than in connection with the above-captioned case. The undersigned understands that a violation of this Undertaking could be punishable and hereby submits to the jurisdiction of the Court for purposes of enforcement of the Agreement and this Undertaking.

Date: _____

Name: _____
(Print or type)

Signature: _____

Automated Certificate of eService

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Status as of 5/18/2022 1:40 PM CST

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