

EXHIBIT 2

MASTER FILE NO. 2021-15294

IN RE: JANUARY 24 TH	§	IN THE DISTRICT COURT OF
EXPLOSION LITIGATION	§	HARRIS COUNTY TEXAS
This Document Relates to All Cases	§	11 TH JUDICIAL DISTRICT

ORDER REGARDING PRODUCTION OF ELECTRONICALLY STORED INFORMATION

This Order Regarding Production of Electronically Stored Information (“ESI Protocol”) shall govern the January 24th Explosion Litigation,¹ including all Related Cases later instituted in or transferred to this Court.

The Parties agree that this ESI Protocol will serve as a guideline for any document request issued to a Producing Party in this matter or any document request included in the PFS attached to CMO #1. Nothing in this protocol shall be deemed to constitute a waiver of any objections a Producing Party may have with respect to any document request. Nothing in this ESI Protocol shall be deemed to prevent a Party from seeking the Court’s intervention with respect to any issues that may arise regarding the application of this ESI Protocol to a document request issued to a Producing Party and/or any objections a Producing Party may have with respect to a document request if the Parties are unable to resolve any such issues or objections without the Court’s assistance. Likewise, nothing in this ESI Protocol shall be deemed to prevent any other Party from opposing relief sought from the Court.

Nothing in this ESI Protocol shall be construed to affect the authenticity or admissibility of information produced pursuant to this ESI Protocol. Compliance with this ESI Protocol does not constitute a waiver, by any Party, of any objection to the production of particular ESI. A Party’s compliance with this ESI Protocol will not be interpreted to require disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection. A copy of this ESI Protocol must be attached to any discovery request made by a Party to any third-party.

I. GENERAL PROVISIONS

- A. **Applicability:** This ESI Protocol will govern the production of electronically, magnetically, or digitally stored information (“ESI”). This ESI Protocol is consistent with the Texas Rules of Civil Procedure (the “Rules”). To the extent that a Party collected, processed, and produced documents prior to the entry of this ESI Protocol, such production will not be governed by the terms of this ESI Protocol and such production need not be reproduced.
- B. **Cooperation:** The Parties agree that they will adhere to the principles of cooperation, transparency, reasonableness, and proportionality, as set forth in

¹ Capitalized terms used but not defined herein shall have the meaning(s) ascribed thereto in Case Management Order No. 1 (“CMO #1”)

the Rules and Texas case law as they conduct discovery in the January 24th Explosion Litigation.

- C. **PSC E-Discovery Liaison:** To promote communication and cooperation between the Parties, the PSC shall designate one or more individuals through whom all e-discovery requests and responses are coordinated (“Plaintiffs’ E-Discovery Liaison”). Regardless of whether Plaintiffs’ E-Discovery Liaison is an attorney (in-house or outside counsel), a third-party consultant, or an employee of a Party, he or she must be: (a) Familiar with the Plaintiffs’ electronic systems and capabilities in order to explain these systems and answer relevant questions; (b) Knowledgeable about the technical aspects of e-discovery, including but not limited to electronic document storage, organization, and format issues; (c) Prepared to participate in e-discovery dispute resolutions; and (d) Responsible for organizing the Plaintiffs’ e-discovery efforts to insure consistency and thoroughness.
- D. **Defendants’ E-Discovery Liaisons:** To promote communication and cooperation between the Parties, each Defendant shall designate one or more individuals through whom all e-discovery requests and responses are coordinated (each a “Defendant E-Discovery Liaison”). Regardless of whether the Defendant E-Discovery Liaisons are attorneys (in-house or outside counsel), third-party consultants, or employees of a Party, he or she must be: (a) Familiar with their Defendant’s electronic systems and capabilities in order to explain these systems and answer relevant questions; (b) Knowledgeable about the technical aspects of e-discovery, including but not limited to electronic document storage, organization, and format issues; (c) Prepared to participate in e-discovery dispute resolutions; and (d) Responsible for organizing their Defendant’s e-discovery efforts to insure consistency and thoroughness.
- E. **Deadlines:** References to schedules and deadlines in this ESI Protocol shall comply with Rule 4 with respect to computing deadlines.
- F. **Definitions:**
 - 1. “Discovery Material” is defined as all information produced, given, or exchanged by and among all Parties, or received from non-Parties in the January 24th Explosion Litigation, including all deposition testimony, testimony given at hearings or other proceedings, interrogatory answers, responses to requests for admissions, documents, and all other discovery materials, whether produced informally or in response to requests for discovery.
 - 2. “DSC” mean the Defendants’ Steering Committee.
 - 3. “Party” or “Parties” means Plaintiffs and Defendants in this Litigation, whether individually or collectively.
 - 4. “Requesting Party” means the Party requesting production of documents. For purposes of document requests included in the PFS, the DSC is deemed

the Requesting Party. For purposes of document requests included in the Master Discovery propounded on each Defendant pursuant to CMO #1, the PSC is deemed the Requesting Party.

5. “PSC” means the Plaintiffs’ Steering Committee.
 6. “Producing Party” means the Party that may be producing documents in response to the request of Requesting Party.
- G. **Authenticity and Admissibility:** Nothing in this ESI Protocol shall be construed to determine the authenticity or admissibility of any document or data. All objections to the authenticity or admissibility of any document or data are preserved and may be asserted at any time.
- H. **Confidential Information:** Nothing herein shall contradict the Parties’ rights and obligations with respect to any Protected Information under the Agreed Confidentiality and Protective Order.
- I. **Encryption:** To the extent that Discovery Material is not uploaded directly to the Repository pursuant to the terms of CMO #1, and to maximize the security of information in transit, any media on which Discovery Material is produced to a Requesting Party may be encrypted by the Producing Party. In such cases, the Producing Party shall transmit the encryption key or password to the Requesting Party, under separate cover, contemporaneously with sending the encrypted media.

II. ESI IDENTIFICATION

- A. Contemporaneously with the service of a Party’s PFS or Master Discovery answers under CMO #1, each Party will provide in writing the information listed in items (1) through (4) below. The Parties agree and understand that their respective responses are based on their knowledge and understanding as of the date of the response, and each Party agrees to amend or supplement its responses in a timely manner if it learns that in some material respect its response is incomplete or incorrect.
1. A list of custodians (including current employees, former employees, and any other individuals or companies) likely to have discoverable information, including for Defendants each custodian’s job title and a brief description of the custodian’s job responsibilities and employment period to the extent that it exists and is reasonably accessible.
 2. A list of sources (e.g. servers, databases, document repositories, email accounts, social media accounts, etc.) that may be searched depending upon the scope of the document requests and the Producing Party’s specific objections to certain requests.

3. A general description or, at the Producing Party's option, copies of the Party's operative document retention policies, throughout the relevant time period, pertaining to known data within the scope of discovery.
4. A description of any ESI within the scope of discovery that the Producing Party contends is inaccessible or only of limited accessibility and, hence, not producible by that Party without undue burden and/or expense, including:
 - a. The reasons for the Party's contention regarding accessibility; and
 - b. The proposed capture and retrieval process available (if any) for identification and/or recovery of the information deemed inaccessible (including cost estimates if readily available).

III. SEARCH METHODOLOGY

- A. The Parties have begun, and will continue, to meet-and-confer to discuss and attempt to reach an agreement on the appropriate scope and limitations of both preservation and production of ESI. The Parties will discuss possible options for ensuring an efficient discovery process, such as the possible use of search terms or technology assisted review, the possible use of testing and sampling, relevant date ranges, possible custodians that may have potentially discoverable information, any obstacles to accessing and producing ESI, and the timing of productions. This section governs materials that have been or will be collected for processing and review.
- B. The Parties may employ electronic searches to locate potentially responsive ESI. The Producing Party may use reasonable electronic searches of ESI so long as such searches meet the standard of care promulgated in the Rules.
- C. The Parties recognize the intrinsic value of available tools to expedite review and minimize the expenses associated with e-discovery. These tools include, but are not limited to, limiting the scope of the electronic search (through the use of search terms, cull terms, time frames, fields, document types, and custodian limitations), predictive coding, technology-assisted review ("TAR"), deduplication and near de-duplication, e-mail threading, date restrictions, and domain analyses. The Producing Party may deploy these and similar tools and technological methodologies to speed up document review, including global de-duplication within their own productions, using near de-duplication technology, predictive coding, TAR, and computer assisted review. Producing Parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.
- D. The Parties will discuss and attempt to reach an agreement on search methodologies with the goal of limiting the scope of documents to be reviewed for production, minimizing the need for motion practice, and facilitating production in accordance with the deadlines set by the Court or agreed upon by the Parties. Agreement on a

search methodology does not relieve a Party of its obligations under the Rules to conduct a reasonable search and produce all known relevant and responsive documents of which it is aware. The Parties agree that there may be certain categories of relevant ESI that may not permit automated searches.

E. Keyword Search Terms.

1. If used, prior to implementing search terms against collected ESI, the Producing Party will disclose in writing a list of proposed search terms to the Requesting Party.
2. The Parties will meet and confer regarding any additional search terms proposed by the Requesting Party, if any, and whether any search terms should be limited using secondary or tertiary search terms.
3. If there is no dispute as to the search terms, the Producing Party may proceed with use of the disclosed or agreed upon search terms. If the Parties are unable to resolve any disputes over search terms through the meet and confer process (which may include statistical sampling of disputed search terms), the Parties will submit the dispute to the Court for determination in accordance with the Rules and any other applicable Case Management Orders.
4. The Producing Party agrees to quality check the data for an agreed set of custodial documents that do not hit on any terms (the Null Set) by selecting a statistically valid random sample of the Null Set (the "QC Subset"). The Producing Party shall review the QC Subset for responsive documents and will produce responsive documents from the QC Subset, if any, separate and apart from the general production. The Parties will then meet and confer to determine if any additional terms, or modifications to existing terms, are needed to ensure substantive, responsive documents are not missed.

F. Predictive Coding/Technology Assisted Review.

1. If used, prior to implementing predictive coding/technology assisted review for the purpose of identifying or culling the documents to be reviewed or produced, the Producing Party will disclose to the Requesting Party, in writing, the proposed predictive coding/technology assisted review protocol. While no specific benchmarks or stabilization percentages are agreed to by the parties undertaking TAR processes, it is agreed that the Producing Party has an obligation to make their best efforts to ensure that the process abides by the Rules.
2. The Parties will meet and confer regarding any proposed revisions to the predictive coding/technology assisted review protocol.
3. If there is no dispute as to the predictive coding/technology assisted review protocol, the Producing Party may proceed with use of the predictive

coding/technology assisted review. If the Parties are unable to resolve any disputes over the protocol through the meet and confer process, the Parties will submit the dispute to the Court for determination in accordance with the Rules and any other applicable Case Management Orders.

- G. Deficiency Procedure. If the Requesting Party has good cause to believe that a Producing Party's discovery efforts have been deficient, the Parties will meet and confer with the goal of identifying a means by which the Producing Party can provide assurances of the reasonableness of its discovery efforts.
1. As used in this section, "good cause" requires more than mere speculation; the Requesting Party must offer some concrete evidence of a deficiency in the Producing Party's discovery process.
 2. The Parties will consider appropriate means to assess the reasonableness of a Producing Party's discovery efforts.
 3. If the Parties are unable to agree upon a means by which the Producing Party can provide assurances of the reasonableness of its discovery efforts, the Parties will submit the dispute to the Court for determination in accordance with the Rules and any other applicable Case Management Orders.
- H. A Producing Party may also utilize search methodology to identify and redact certain documents and page ranges that otherwise require HIPAA redactions or redactions of personally protected information (e.g. tax identification numbers or materials that would enable identity theft).
- I. If a Party contends that the production of materials sought from one or more sources are outside the scope of permissible discovery, the Parties shall meet and confer to attempt to resolve the issue. Nothing in this Protocol shall prevent a Party from seeking the Court's intervention with respect to any such issue if the Parties are unable to resolve it themselves or from preventing any other Party from opposing any relief sought.

IV. TIMING OF DISCOVERY

Discovery of documents shall proceed in the following fashion:

- A. After receiving requests for document production and upon reaching agreement regarding the scope, the Parties shall search and review their documents and produce responsive electronic documents on a rolling basis, until such production is complete.
- B. The PSC and DSC shall meet and confer at least monthly regarding production status.

V. FORMAT OF PRODUCTION

The Parties will produce ESI in accordance with the protocols and specifications set forth in the Agreed Production Specification Protocol attached to CMO #1 as Exhibit 3.

VI. DE-DUPLICATION

A. De-Duplication and Near De-Duplication.

1. Parties may de-duplicate globally. If Parties de-duplicate globally, it is agreed that for each production, an updated metadata overlay file will be produced with "All Custodians" data provided.
2. The Parties agree that an e-mail that includes content in the "bcc" or other blind copy field shall not be treated as a duplicate of an otherwise identical e-mail that does not include content in the "bcc" or other blind copy field.
3. The Parties also agree that the use of near-de-duplication protocols can reduce the cost of the review and production of ESI.
4. A Party may also de-duplicate "near duplicate" email threads as follows:
 - a. In an email thread, only the final-in-time document need be produced, provided that:
 - i. All previous emails in the thread are contained within the final message.
 - ii. The software used to identify these "near-duplicate" threads is able to identify any differences to the thread such as changes in recipients (e.g., side threads, subject line changes), dates, selective deletion of previous thread content by sender, etc. To the extent such differences exist, documents with such differences shall be produced.
 - iii. Where a prior email contains an attachment, that email and attachment shall not be removed as a "near-duplicate."
5. To the extent that de-duplication is used, the Parties expressly agree that a document produced from one custodian's file but not produced from another custodian's file as a result of de-duplication will nonetheless be deemed as if produced from that other custodian's file for purposes of deposition, interrogatory, request to admit, and/or trial.

B. E-mail Threads & Attachments.

1. Producing Party may produce e-mail solely as part of an inclusive e-mail thread, even though such e-mails were transmitted by themselves or as part

of a non-inclusive shorter e-mail thread, provided that any otherwise duplicate e-mail thread having a previous e-mail in the thread deleted or modified will be identified as a separate inclusive e-mail.

2. Producing Party may produce e-mail messages only as part of an e-mail chain, provided that:
 - a. Producing Party will make reasonable efforts to correct any errors that occur as part of its efforts to produce e-mail chains, as described above, including, but not limited to, incomplete production of attachments.
 - b. If any issues arise from Producing Party's production of e-mail chains, even if not strictly production "errors," the Producing Party and the Requesting Party will meet and confer in good faith to resolve or address such issues.
 - c. If Producing Party wishes to proceed with the production of e-mail messages only as part of an e-mail chain, as described above, the Requesting Party and the Producing Party will meet and confer to attempt to resolve the issue. If the Producing Party and the Requesting Party cannot resolve the issue, the Parties may seek relief.

VII. PRIVILEGE AND REDACTIONS

- A. The inadvertent production provisions of CMO #1, Section 6(O), shall control the inadvertent production of privileged information in any Discovery Materials governed by this Protocol.
- B. Redactions.
 1. The Parties need not log redacted documents on a privilege log. A Requesting Party may request additional information if the nature of the privilege is not apparent on the face of the document.
 2. A Producing Party may redact ESI that the Producing Party claims is subject to attorney client privilege, work product protection, or any ESI for which there is a legal prohibition against disclosure.
 3. The Producing Party shall mark each redaction with the bases for each redaction (e.g., privilege).
 4. The Producing Party shall preserve an un-redacted version of the item.

C. Claims of Privilege and Privilege Log.

1. Pursuant to the Rules, the Producing Party must furnish a log of documents withheld from production on the basis of attorney-client or work-product privilege (“Privilege Log”) within forty-five (45) days from the date the Party substantially completes production. To the extent a Producing Party needs more time, the Parties will meet and confer and reasonable extensions of time shall not be denied absent good cause.
2. Consistent with Rule 193.3, the Producing Party’s Privilege Log will contain the following information, if available:
 - a. Date of document or communication (including month, day, and year)
 - b. Type of document
 - c. Author of document
 - d. Sender of document (if different from author), including email address
 - e. Recipient names (including email addresses)
 - f. CC names (including email addresses)
 - g. BCC names (including email addresses)
 - h. Bates range of the privileged documents
 - i. Indication of the privilege
 - j. File name
 - k. If produced, family member designation within the production
 - l. A description of the subject matter of the document or communication with information sufficient to demonstrate the existence of a privilege
3. A Party need only log the topmost e-mail in an e-mail thread so long as the description of the subject matter includes enough information sufficient to demonstrate the privilege.
4. To the extent a Party seeks to use categorical logs in lieu of providing the information above, the Producing Party will initiate a meet and confer with the Requesting Party. However, documents comprising attorney-client communications and/or attorney work product relating to the January 24th Explosion Litigation and dated after the start of the January 24th Explosion Litigation need not be included on a privilege log.
5. To the extent available, individuals should be identified with enough information to identify why the privilege attaches, such as name and job title or other justification for assertion of privilege.
6. If the Requesting Party objects to a document (or part of it) being withheld or redacted as privileged, it shall meet and confer with the Producing Party.

Should the Parties not be able to agree to a resolution of the dispute, the Requesting Party may submit the dispute to the Court.

VIII. COSTS

The Parties agree that the Producing Party bears the burden of discovery costs absent agreement or court order.

IT IS SO ORDERED.

Signed on this 7th day of May, 2021.



Hon. Judge Mark Davidson