

# **EXHIBIT 4**

MASTER FILE NO. 2021-15294

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

**AGREED COVID-19 DEPOSITION PROTOCOL**

The COVID-19 global pandemic has greatly affected virtually every aspect of American society, including civil litigation in this Court and across the federal and state systems. Governmental authorities have responded to this public health emergency by imposing travel restrictions, “stay at home” directives, and other social distancing measures designed to slow the communal spread of the disease. The Parties have a preference to conduct in-person depositions in the January 24<sup>th</sup> Explosion Litigation,<sup>1</sup> but social distancing, travel restrictions in various jurisdictions, and overall health concerns may sometimes preclude this option. Accordingly, to facilitate the conduct of depositions, IT IS HEREBY ORDERED that the provisions below (the “Protocol”) will govern any depositions taken in the January 24<sup>th</sup> Explosion Litigation, including in-person depositions and depositions where all, or some, of the participants, including the court reporter and videographer, are attending remotely (“Remote Deposition”).

**I. APPLICABILITY AND PURPOSE**

From the entry of this Protocol and until otherwise ordered by this Court, any deposition in the January 24<sup>th</sup> Explosion Litigation may be noticed to take place remotely. For any deposition that is to proceed remotely, the notice shall so specify and should specifically refer to this Protocol. However, when possible, but consistent with any orders issued by the Texas Supreme Court, there is a preference for in person depositions provided they can be conducted safely and in accordance with the terms of this Protocol.

This Order shall be interpreted to facilitate and not to impede the taking of Remote Depositions, but nothing herein shall be interpreted as precluding any party from objecting in good faith to a particular deposition occurring remotely based on the specific circumstances of the deponent, the nature of the deposition, or other particularized facts.

Except as specifically set forth herein, nothing in this Order shall be construed to abrogate or modify the Texas Rule of Civil Procedure.

**II. IN-PERSON DEPOSITIONS**

- A. Agreement for in-person deposition: Where counsel for the party noticing a deposition, the deponent, and the deponent’s counsel all agree, the deponent may be deposed in-person. However, and pursuant to the Thirty-Sixth Emergency Order Regarding the COVID-19 State of Disaster entered by the Supreme Court of Texas on March 5, 2021

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning(s) ascribed thereto in Case Management Order No. 1.

and any subsequent orders amending, modifying, or superseding the Thirty-Sixth Emergency Order Regarding the COVID-19 State of Disaster, any parties, attorneys, witnesses, court reporters, and videographers may choose to attend in-person depositions remotely, such as by teleconferencing, videoconferencing, or other means. In the event that one or more persons choose to attend an in-person deposition remotely, such choice shall not prevent or preclude any remaining Parties from conducting the deposition in person.

- B. Notification of intent to participate: Every person who intends to participate in a deposition shall notify counsel for the party noticing the deposition and the deponent's counsel of their intent to participate at least fourteen (14) days prior to the deposition. The notice shall include the name(s) of each person who intends to participate in the deposition and whether each such participant(s) will each participate in the deposition in person or remotely. Absent good cause for a need to appear in-person, persons who do not intend to question the deponent and are who merely spectating should appear remotely to limit the number of persons attending an in-person deposition and to allow for better social distancing at the deposition site.
- C. Accommodation of remote participation required: Any in-person deposition shall also provide a means by which other participants or spectators can participate in the deposition remotely consistent with the provisions of Section III of this Protocol.
- D. Location of in-person depositions:
1. General rule: Notwithstanding any other provision of this Protocol, all in-person depositions shall be conducted at a location that can comply with all applicable federal, state, and local COVID-19 guidelines and regulations. The Parties are ordered to meet and confer on the suitability of any deposition site and to cooperate in selecting a site that provides reasonable safety accommodations while also permitting in-person depositions to occur.
  2. Remote participation equipment required: Any deposition site must be equipped with a technology system capable of providing for remote participation as set forth in Section III of this Order. The party noticing the deposition, in consultation with the deponent and deponents' counsel, shall be responsible for arranging and ensuring that remote participation equipment is available.
  3. Default deposition site: Except as otherwise set forth herein, and unless otherwise agreed by counsel of record for the party(ies) noticing or cross-noticing a deposition and the deponent's counsel, the place for a deposition shall be the office of the deponent's counsel.
  4. Distanced Location: In the event that more people wish to attend a deposition in person than can be accommodated at the office of the deponent's counsel while complying with all applicable federal, state, and local COVID-19 guidelines and regulations, the party noticing the deposition shall make all arrangements necessary to reserve a location where the deposition will take place while complying with all

applicable federal, state, and local COVID-19 guidelines and regulations (“Distanced Location”). The party noticing the deposition shall notify all counsel of record, the deponent, and the deponent’s counsel of the Distanced Location in writing at least seven (7) days prior to the deposition. Such notice shall not reset any other deadlines under the Texas Rules of Civil Procedure or the Orders of this Court.

5. Cost of Distanced Location: If a Distanced Location is necessary, the parties attending the deposition in-person will share the cost of reserving the Distanced Location. Any cost associated with reserving the Distanced Location will be apportioned equally among the parties attending the deposition in-person, and each party will be responsible for paying the apportioned amount.

E. Attendance at in-person depositions:

1. Screening questions: Within twenty-four (24) hours prior to arriving at the location of an in-person deposition, each person participating in-person shall serve on counsel for the party noticing the deposition and the deponents’ counsel a sworn statement answering the following questions:
  - a. Have you had contact with anyone who has been diagnosed with COVID-19 or have you been exposed to someone who may possibly have COVID-19 in the last fourteen (14) days?
  - b. Have you had any of the following symptoms within the past fourteen (14) days: fever, cough, shortness of breath/difficulty breathing, chills, muscle pain, sore throat, or recent loss of taste or smell?
  - c. Have you recently traveled to an area where you may be at increased risk for COVID-19 within the past fourteen (14) days?

Any person who answers “yes” to any of the questions in Section II.E.1 shall not attend the deposition in person and shall, instead, attend the deposition remotely.

2. Masks: Neither the deponent nor the attorney actively questioning the deponent shall wear a mask or other face covering while on the record during an in-person deposition. However, all other persons attending an in-person deposition should wear a mask or other face covering.

**III. REMOTE DEPOSITIONS**

- A. When remote participation is required: In the event that counsel for the party noticing a deposition, the deponent, and the deponent’s counsel do not all agree to an in-person deposition, all participants, including the deponent, attorneys, the court reporter and videographer, shall attend such deposition remotely. A requesting party has the right to postpone a deposition until conditions permit an in-person deposition and any party may seek appropriate relief from the Court to address the type and timing of any deposition during the Covid-19 pandemic.

B. Service Platform:

1. The Court will issue a subsequent order approving and appointing a court reporting service (“Vendor”) to serve as the preferred court reporting service for the January 24<sup>th</sup> Explosion Litigation. Unless otherwise agreed by all Parties, the Vendor shall provide the Remote Deposition videoconferencing platform through which the depositions will be conducted. Unless otherwise agreed by all Parties, all Remote Depositions will be conducted through videoconference, but in the event videoconference equipment is not reasonably available, then by teleconference.
2. Prior to the deposition, the Vendor will work with the deponent or deponent’s counsel to confirm that the deponent has adequate, functioning, and sufficient technology to participate in the deposition, including, but not limited to, a laptop, desktop, tablet, or other suitable device with internet connectivity, webcam, speaker, and microphone capabilities, and sufficient software and internet bandwidth to access and use the Vendor’s Remote Deposition videoconferencing platform. The Vendor will also work with the deponent or deponent’s counsel to confirm that the deponent has a space suitable to participate in the deposition with minimal background distractions.
3. Where practicable, the Vendor will provide, and the deponent’s counsel will assist with, training resources for the deponent and a test of the deponent’s equipment with the Vendor’s Remote Deposition videoconferencing platform at least 48 hours in advance of the deposition.
4. To avoid any potential disruptions of a Remote Deposition, all persons attending but not defending or actively questioning the deponent must mute their microphones and ensure they are not appearing in the recording of the deponent’s testimony.
5. All participants shall connect to the Vendor’s Remote Deposition videoconferencing platform through a private, password-protected network. Connection through a public Wi-Fi network is prohibited.
6. All persons participating in and/or observing a Remote Deposition shall spend sufficient time, in advance of the deposition, to ensure that they have adequate, functioning, and sufficient technology to participate in the deposition, including, but not limited to, a laptop, desktop, tablet, or other suitable device with internet connectivity, webcam, speaker, and microphone capabilities, and sufficient software and internet bandwidth to access and use the videoconferencing platform and to ensure that they understand how to use the Vendor’s Remote Deposition videoconferencing platform.
7. The Vendor shall provide the name and contact information of a service employee for purposes of IT support, troubleshooting, or any other issues that may arise during the Remote Deposition.

8. At least seven (7) days before the deposition, the Vendor shall provide invitations to attend the deposition remotely via email to all counsel of record and to the deponent and deponent's counsel if the deponent is not represented by counsel of record in the January 24<sup>th</sup> Explosion Litigation.
  9. The Parties agree to work collaboratively to address and troubleshoot technological issues that arise during a Remote Deposition and make such provisions as are reasonable under the circumstances to address such issues. To the extent a deposition is time limited, any time spent resolving or attempting to resolve technical difficulties that occur during a Remote Deposition will not count against the time a party has to question the deponent.
- C. Deponent's location:
1. The deponent shall endeavor to provide his or her testimony in an environment with minimal background distractions. The deponent shall endeavor to participate in the deposition from a quiet, well-lit, indoor location, while seated in front of a neutral background and facing the camera being used to record the deponent. An artificial background may be used if agreed by counsel for the party noticing the deposition and the deponent's counsel.
  2. The deponent shall attempt to turn off or silence any applications on his or her computer that may run in the background that could disrupt the video and audio recording.
  3. Unless otherwise agreed in advance by counsel for the party noticing the deposition and the deponent's counsel, no person may be physically located in the same room as the deponent during the taking of a remote deposition except for a non-attorney who is present solely for the purpose of providing technical assistance to the deponent in using the platform. During the deposition, the deponent shall not, without informing counsel for the party noticing the deposition, consult any outside sources of information other than the exhibits presented to the deponent to obtain information in connection with his or her testimony during the deposition.
- D. Swearing in the Deponent: The court reporter may administer the oath remotely, and any oaths administered remotely will satisfy the requirements of Texas Rule of Civil Procedure 199.1. For depositions taken outside of the United States, a court reporter appearing remotely in the United States may administer the oath to a foreign deponent. Any oath administered remotely shall be deemed to have the same effect as an oath administered in person.
- E. Disclosure of participant location: All persons participating in and/or observing a Remote Deposition shall be identified on the record and shall identify their physical location on the record.
- F. Recording: The Vendor shall record each deposition stenographically and by video. A videographer shall remotely capture the deposition video and provide a certified recording. Only the Vendor shall be permitted to capture video of a deposition, and no

other participants shall make any recordings (video or audio) of the deposition. The Vendor shall only record the video feed for the deponent. Attorneys questioning a deponent shall always be visible to the deponent and should endeavor to appear on video visible to the other participants while asking questions. Audio of the attorneys questioning and defending a deponent shall be recorded, but video of the attorneys questioning and defending a deponent shall not be recorded absent a request from any attendee that the such attorney's video be recorded.

- G. Communicating with deponent: Except as provided herein, all discussions and communications with the deponent after the deponent has been sworn shall be done on the record and audible or visible to all participants. Parties may schedule a separate, non-recorded "breakout room" with the Vendor where the deponent's counsel may speak with the deponent during breaks in the testimony. Alternatively, during breaks in testimony, the deponent's counsel may communicate with the deponent directly via telephone call or in writing (e.g., text, email, chat). These consultations will not be on video or audio. However, any and all prohibitions regarding substantive conversations with the deponent that would be in effect during an "in-person" deposition will remain in place.
- H. Marking and using exhibits:
1. The method(s) by which exhibits may be used at the deposition will be agreed to by the Parties in advance of the deposition.
  2. Use of exhibits at deposition can include, but are not limited to the following:
    - a. Electronic exhibits that are shared/marked as needed through the Vendor's remote deposition platform.
    - b. Hard copies of exhibits sent to the deponent and, as described below in certain situations to the deponent's counsel in advance of the deposition.
  3. Regardless of the method utilized by counsel, a copy (print or electronic) of any exhibits used must be made available to opposing counsel at or before the time they are introduced in the deposition. The noticing party and any other party who intends to use exhibits during a deposition shall send electronic copies of all potential exhibits to the Vendor no later than 24 hours before the scheduled start of the deposition, unless otherwise agreed by all Parties. For deponents who prefer hard copies over electronic copies, or for any deposition exhibits that are voluminous, counsel taking the deposition shall, to the greatest extent practicable, provide hard copies for the deponent and the deponent's counsel.
  4. Any party who intends to use hardcopy exhibits during the Remote Deposition shall deliver complete paper copies of all potential exhibits to the deponent, counsel defending the deponent, and all other counsel of record no later than 24 hours before the deposition, in binders or individually numbered folders, in a sealed box, unless otherwise agreed by all Parties. No party shall open any package or electronic copies of exhibits sent in advance of the Remote Deposition until instructed to do so during the deposition by the deposing attorney. The opening of the package by

the deponent and, if requested, deponent's counsel, shall occur on the video, and the court reporter shall note such occurrence on the record. Other participants may open their packages off-screen, but not before being instructed to do so by the noticing attorney. If there are any questions or concerns about the contents of the package after it is opened, the deposition will go off the record and shall not proceed until those issues are resolved to the satisfaction of all participants.

5. In the event exhibits are displayed electronically, and the deponent does not have control of the electronic exhibit, a deponent may ask the technician to scroll up or back in the document so that the deponent may see the entire document before being questioned about the exhibit.
6. In the event exhibits identified at deposition are to be used at trial or hearing:
  - a. They can be displayed on screen when/if the deposition is played, concurrently with testimony. However, a party is not required to display a document concurrently with testimony about the document.
  - b. Any exhibit that is marked or highlighted by the deponent during the deposition can be submitted as an exhibit along with the non-marked version of the exhibit that was sent to the deponent in advance of or during the deposition.
  - c. Exhibits that are marked or highlighted by the deponent during the deposition will be considered exhibits of record for use at subsequent hearings or trials. Non-marked or highlighted versions of exhibits will also be considered exhibits of record for use at subsequent hearings or trials.
7. All documents remaining in possession of the deponent must be returned pursuant to the protective order at the close of the deposition.
8. To the extent feasible, documents requested of the deponent will be furnished to examining counsel in accordance with other agreements or requirements pertaining to advanced disclosure.
- I. Use of remote depositions: The Parties may inform the finder of fact that a deposition was taken remotely rather than in person due to the COVID-19 pandemic. Remote Depositions will be recorded. Any Remote Deposition conducted in accordance with this Protocol may be admitted at trial with the same effect and pursuant to the same evidentiary rules as one recorded in person. The Parties will not object to use of video recordings at trial on the basis that the deposition was taken remotely.
- J. Miscellaneous:
  1. Counsel for the party noticing a non-party deposition shall serve a copy of this Order with any subpoena for a remote deposition.



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2. Any pauses, lags, and/or disruptions in technology, including but not limited to interruptions in internet connection, will not result in waiver of objections by any party. The deponent's counsel shall notify all deposition attendees as soon as possible as to its objections.
  3. If any pauses, lags, and/or disruptions are persistent or prolonged, the parties should consider: (1) extending the remote deposition by an amount of time equal to the duration of the pause, lag, and/or disruption; or (2) rescheduling the remote deposition for a later date. In the event that a deposition is rescheduled, the amount of time spent on the record, minus any disruption time, shall be deducted from the total time permitted for that deposition.
  4. This Order may be amended or modified at any time by agreement of the Parties or further order of the Court. The Court reserves the right to revoke or revise this protocol as the situation with COVID-19 continues to develop and as additional guidance is provided by the Supreme Court, Office of Court Administration, the Centers for Disease Control and Prevention, Harris County, or otherwise.

Signed on this 7<sup>th</sup> day of May, 2021.

  
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Hon. Judge Mark Davidson