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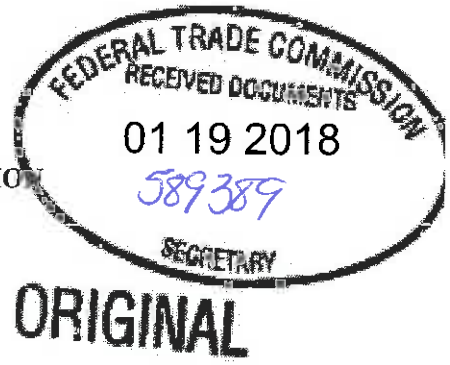

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of

Tronox Limited
a corporation,

National Industrialization Company (TASNEE)
a corporation,

The National Titanium Dioxide Company Limited (Cristal)
a corporation,

And

Cristal USA Inc.
a corporation.

Docket No. 9377

RESPONDENTS' JOINT MOTION TO AMEND THE PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Tronox Limited ("Tronox"), National Industrialization Company (TASNEE), the National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively, the "Respondents"), by and through their undersigned counsel, respectfully request this Court to amend Paragraph 7 of the Protective Order Governing Confidential Material to include Cristal USA's Senior Corporate Counsel & Secretary James G. Koutras and Tronox Limited's Deputy General Counsel Steven Kaye (collectively, "designated in-house counsel") as individuals to whom confidential material may be disclosed.[1]

[1] Complaint Counsel stated that they oppose this motion.

Background

This motion seeks a modest change to the December 7, 2017 Protective Order entered in this case to enable the Respondents a full and fair opportunity to respond to the allegations in the Complaint. The Protective Order precludes Respondents' employees, including in-house legal counsel, from accessing information designated as confidential by parties or third parties. Thus far, the FTC has designated nearly all of its discovery responses confidential, preventing counsel from sharing even basic factual information in the case with anyone at Tronox or Cristal.

It is necessary for designated in-house counsel to have access to material designated as confidential in this litigation to adequately participate in and direct the defense of the claims against Respondents. James G. Koutras and Steven Kaye are in-house counsel for the Respondents, and have special expertise in the titanium dioxide ("TiO2") industry and, of course, in the Respondents' own businesses, that outside counsel lack. For the same reason the ability to fully confront the witnesses and evidence against one's self is a fundamental tenet of due process, the two designated in-house counsel here should be given access to material designated as "confidential" in this litigation so that they may lead the defense against the FTC's charges. Denying such access would prejudice Respondents' ability to fully defend this case and, moreover, would leave this Court with a less-developed evidentiary record.

Argument

Matters of "prehearing discovery or procedure . . . are subject to the wide discretion of the Administrative Law Judge" and "resolution of discovery issues, as a general matter, should be left to the discretion of the ALJ."[2] *1-800 Contacts, Inc.*, 2017 WL 104384, at *4 (F.T.C. Jan. 4, 2017) (internal citations, alterations, and quotation marks omitted).

[2] This Court indicated in two cases where respondents filed motions to amend identical protective orders that it is within the Court's discretion to amend the protective order provided for in 16 C.F.R. § 3.31. *See ECM BioFilms, Inc.*, 2014 WL 1818841, at *4 (denying respondent's motion because it did not assert that a designated employee was not involved in "competitive decision-making"); *McWane, Inc.*, 2012 WL 3518638, at *2 (denying respondent's

As this Court has observed, "[a]ccess to confidential information may not be denied solely because of an attorney's status as in-house counsel. . . . Rather, the decision turns largely on the specific role of in-house counsel within the business: whether he or she has a part in the type of competitive decision-making that would involve the potential use of the confidential information." *Schering-Plough Corp.*, 2001 WL 1478371, at *1 (F.T.C. June 20, 2001) (internal citations and quotation marks omitted). Other factors relevant to the determination of whether a protective order should be modified include reliance of third parties on the protective order, and "any special circumstances that might justify a deviation from the standard protective order language." *McWane, Inc.*, 2012 WL 3518638, at *2.

I. Neither Mr. Koutras nor Mr. Kaye Are Involved in Competitive Decision-Making

Here, as set forth in their declarations,[3] neither of the designated in-house counsel plays a part in Respondents' competitive decision-making. *Cf. ECM BioFilms, Inc.*, 2014 WL 1818841, at *4 (denying Respondent's motion to amend an identical protective order because Respondent did not assert that a designated employee was not involved in "competitive decision-making"). In-house counsel's responsibilities are limited to providing legal advice – they do not participate in competitive decision-making with respect to corporate development, competition with other producers, pricing, marketing, or product design.

Granting access to this narrowly tailored group of Respondents' employees – who are not involved in competitive decision-making – does not risk disclosure of confidential material to businesspersons who could use the information to gain a competitive advantage. Nor is disclosure to Respondents' in-house counsel out of step with past practice in merger challenges. The Federal Trade Commission routinely stipulates to protective orders in parallel federal district

motion because third parties relied on the protective order, respondent failed to articulate a reason for not filing its motion earlier, and respondent did not assert special circumstances). As explained above and below, those motions were denied on grounds distinguishable from the instant case.

[3] The declarations of James G. Koutras and Steven Kaye are attached hereto as Exhibits A and B.

court proceedings that allow defendants' employees, including in-house counsel, access to confidential material. Because the Commission has yet to file for a preliminary injunction here, Respondents do not have the benefit of a more liberal confidentiality agreement that would allow for such consultation.

Recently, in *F.T.C. v. Advocate Health Care Network*, the Commission agreed in a parallel federal court merger challenge that defendants' employees who were "reasonably necessary to the conduct of the litigation" could access confidential information, and one representative from each defendant – who was not involved in "competitive decision-making" – could access "Highly Confidential" information. *See* Notice of Joint Mot. and Joint Mot. for Entry of Stipulated Protective Order, Ex. A at ¶¶ 5(b)(3), 5(c)(3), *Advocate Health Care Network*, No. 1:15-cv-11473 (N.D. Ill. Jan. 6, 2016) (attached hereto as Exhibit C); *see also* Defs.' Mot. for Entry of Protective Order at ¶ 7, *F.T.C. v. Staples, Inc.*, No. 1:15-cv-02115 (D.D.C. Jan. 7, 2016) (the Commission did not oppose a motion for a protective order allowing certain of defendants' in-house counsel to access confidential information, subject to specified conditions) (attached hereto as Exhibit D); Joint Mot. for Entry of a Final Protective Order at ¶¶ 14-15, *F.T.C. v. Steris Corp.*, No. 1:15-cv-01080 (N.D. Ohio June 23, 2015) (the Commission stipulated to an order allowing defendant's in-house counsel access to confidential information, but not highly confidential information) (attached hereto as Exhibit E). There is no basis to take a different position here, where designated in-house counsel do not participate in competitive decision-making and Respondents have limited the requested designees to only one individual per party.

Similarly, North American TiO2 producers and buyers have agreed in other federal court litigation to allow in-house counsel – including Mr. Koutras – access to information those producers or buyers designated as "confidential" and "Attorneys Eyes Only" under protective orders entered in those cases. *See* Protective Order at ¶¶ 2, 6(b), 7(b), *Valspar Corp. v.*

Millennium Inorganic Chem., Inc., No. 13-cv-03214 (D. Minn. July 7, 2014) (TiO2 producers and a purchaser stipulated to a protective order allowing in-house litigation counsel to view "Confidential" and "Attorneys Eyes Only" information, which included "highly sensitive" commercial information) (attached hereto as Exhibit F); Stipulated Protective Order at ¶ 3(d)(E), *In re Titanium Dioxide Antitrust Litig.*, No. 1:10-cv-00318 (D. Md. Sept. 21, 2011) (TiO2 purchaser plaintiffs and producers stipulated to a protective order allowing in-house litigation counsel to view confidential information) (attached hereto as Exhibit G). The fact that these industry participants stipulated to protective orders allowing in-house counsel to access confidential information demonstrates the reasonableness of Respondents' request. In this case, as in previous cases involving TiO2 industry participants, allowing in-house counsel access to confidential material strikes an appropriate balance between protection of competitive information and a party's right to participate in the defense of claims against it.

In summary, since Respondents' in-house counsel are not involved in competitive decision-making, there is no basis to diverge from the Commission's well-established practice of stipulating to in-house counsel's access to confidential material in merger challenges brought in federal court, or from the practice of TiO2 industry participants in federal litigation stipulating to in-house counsel's access to competitively sensitive material.

II. Third Parties Did Not Rely on the Court's Protective Order

Further, there are no concerns that any third parties to this action have submitted confidential material in reliance on the Protective Order. *Cf. McWane, Inc.*, 2012 WL 3518638, at *2 (denying a motion to modify a protective order, in part, because third parties may have relied on the protective order). This Court entered the Protective Order *after* third parties provided confidential material during the Commission's investigation into the proposed

acquisition.[4] Accordingly, third parties who have already submitted confidential material prior to the issuance of the Protective Order can have had no valid reliance interest based on the Protective Order. Moreover, Respondents have taken care to file the instant motion as promptly as practicable, thus obviating the possibility that the same or different third parties could have submitted additional confidential material in reliance on the Protective Order.

III. Respondents Have a Special Need to Access Confidential Material

Finally, the Respondents' designated in-house counsel have a special need to access confidential material. This is compelled by the nature of this case. As courts have recognized, merger challenges are time-sensitive, creating the "need for expedition." Order at 2, *United States v. Anthem, Inc.*, No. 1:16-cv-01493 (D.D.C. Aug. 5, 2016) (attached hereto as Exhibit H). The instant case is no exception. Not only is it proceeding under the tight discovery timelines of the Commission's Part 3 Rules, but Respondents are also committed to accelerating this action in light of the impending May 19, 2018 merger deadline. Notably, without a parallel federal district court action, Respondents will have no chance to more fully or more expeditiously defend against the Commission's claims in another forum. For these reasons, the pace and nature of this case distinguishes it from the circumstances in *McWane* and *ECM BioFilms* – both conduct cases. In *McWane* and *ECM BioFilms*, trial did not commence until 244 days and 280 days, respectively, after the complaint was filed. Here, by contrast, there are only 154 days between the filing of the complaint and the start of trial.

Designated in-house counsel have substantial experience and expertise with respect to the TiO2 industry and Respondent companies, and Respondents' outside counsel will need to utilize that experience and expertise to expeditiously prepare their clients' defense in the relatively

[4] Respondents' diligence in promptly filing the instant motion distinguishes this case from *McWane* and *ECM BioFilms*. In *McWane* and *ECM BioFilms*, respondents waited nearly seven months and six months, respectively, to file a motion to amend the protective order, after third parties had already started providing confidential material in discovery.

condensed period of time between now and trial. Mr. Koutras has worked at Cristal USA for over ten years and Mr. Kaye has worked at Tronox for three and a half years. Both have amassed a wealth of experience and expertise. As set forth in their declarations, Respondents will call upon designated in-house counsel to quickly assess the importance of confidential material, the context of confidential material, and to assess what confidential material may be used for and against Respondents. *See Trading Techs., Int'l, Inc. v. BGC Partners, Inc.*, No. 1:10-cv-00715, 2011 WL 1547769, at *3 (N.D. Ill. Apr. 22, 2011) (allowing in-house counsel access to confidential information where counsel was "intimately involved in [a party's] overall litigation strategy"). Designated in-house counsel will assist in swiftly organizing and preparing Respondents' defenses, many if not all of which will require the review of confidential material.[5]

It is well accepted that the role of designated in-house counsel in preparing Respondents' defenses make them "indispensable to counsel as this case is prepared for trial." *In re Se. Milk Antitrust Litig.*, MDL No. 1899, 2009 WL 3713119, at *2 (E.D. Tenn. Nov. 3, 2009) (allowing named plaintiffs to access material designated as highly confidential). Permitting designated in-house counsel to access confidential material is essential to the mounting of an effective and complete defense in the instant action as well.

Because designated in-house counsel are not involved in competitive decision-making, third parties did not rely on the Protective Order, and Respondents have demonstrated a special need for access to confidential material, Respondents respectfully request this Court amend the Protective Order to include Cristal USA's Senior Corporate Counsel & Secretary James G. Koutras and Tronox Limited's Deputy General Counsel Steven Kaye as individuals to whom confidential material may be disclosed.

[5] The need for designated in-house counsel to access confidential material is amplified here, where Complaint Counsel has indicated that all of the nearly 5,000 third-party documents they collected during their investigation – and produced in its initial disclosures – should be treated as confidential. If Complaint Counsel continue to take such an overinclusive approach to confidentiality designations, Respondents' already critical need to share confidential material with designated in-house counsel will be magnified.

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Dated: January 19, 2018

Respectfully submitted,

/s/ Albert Teng
James L. Cooper
Peter J. Levitas
Ryan Z. Watts
Albert Teng

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ATTORNEYS FOR TRONOX LIMITED

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STATEMENT REGARDING COMMUNICATION WITH COUNSEL

Pursuant to Paragraph 4 of the Court's December 20, 2017 Scheduling Order, I certify that counsel for Respondents have conferred with Complaint Counsel in good faith to resolve by agreement the issues raised by this motion and have been unable to reach such an agreement.

Dated: January 19, 2018

/s/ Albert Teng
Albert Teng

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PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of

Tronox Limited
a corporation,

National Industrialization Company (TASNEE)
a corporation,

The National Titanium Dioxide Company Limited (Cristal)
a corporation,

And

Cristal USA Inc.
a corporation.

Docket No. 9377

[PROPOSED] ORDER AMENDING THE PROTECTIVE ORDER

Pending before the Court is Respondents' Joint Motion to Amend the December 7, 2017 Protective Order Governing Confidential Material. Respondents' Motion is **GRANTED**. The Amended Protective Order is attached hereto.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

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[PROPOSED] AMENDED PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the

designation "CONFIDENTIAL - FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL - FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; (e) any witness or deponent who may have authored or received the information in question; and (f) the following in-house counsel of Respondents: James G. Koutras (Cristal USA Inc.) and Steven Kaye (Tronox Limited).

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed in camera. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have in camera treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted in camera treatment. If that party wishes in camera treatment for the document or transcript, the party shall file an appropriate motion with

the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where in camera treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

PUBLIC

EXHIBIT A

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of

Tronox Limited
a corporation,

National Industrialization Company (TASNEE)
a corporation,

The National Titanium Dioxide Company Limited (Cristal)
a corporation,

And

Cristal USA Inc.
a corporation.

Docket No. 9377

DECLARATION OF JAMES G. KOUTRAS

1. I am Director – Senior Corporate Counsel & Secretary for Respondent Cristal USA Inc. ("Cristal USA"), and act on behalf of National Industrialization Company (TASNEE) and the National Titanium Dioxide Company Limited (Cristal) (collectively the "Cristal Entities") in the above-captioned matter. I submit this Declaration in Support of Respondents' Joint Motion to Amend the Protective Order Governing Confidential Material.

2. I am over 21 years of age, and I am competent to make this Declaration. The statements herein are true and are within my personal knowledge.

3. I am the senior legal officer at Cristal USA and have primary responsibility for the management of Cristal USA's legal affairs. I also have responsibilities for the legal affairs of

Cristal and TASNEE. My responsibilities include negotiating financing and insurance for the Cristal Entities; implementing corporate compliance and governance functions; managing employment, labor, intellectual property, and immigration legal matters; providing legal advice for the Cristal Entities' Global Strategy group regarding potential or pending transactions, including advising on the key legal issues arising from the proposed acquisition of Cristal's TiO2 business by Tronox Limited ("Tronox"); supervising litigations and government investigations; advising the Cristal Entities' boards of directors and senior management of legal matters, including the status of and trial strategy for this case; and acting as a secretary for corporate entities.

4. I have been extensively involved in Tronox's proposed acquisition of Cristal's titanium dioxide business. My knowledge of the Tronox-Cristal transaction and legal strategy are essential to the Cristal Entities' defense of the proposed acquisition. I provided and continue to provide legal advice in connection with the Cristal Entities' consideration of the proposed transaction and with respect to integration planning. I have been involved in the collection of information in response to various regulatory authorities' requests for information about the transaction, including the Federal Trade Commission's ("FTC") Request for Additional Information and Documentary Material, issued on April 13, 2017. I was also involved in the preparation of the Cristal Entities' employees for FTC investigational hearings. Furthermore, I supervise and direct outside counsel for the Cristal Entities with respect to the defense of this administrative action. I have the most comprehensive knowledge of the transaction and FTC proceedings of any in-house counsel at the Cristal Entities.

5. It is critically important that I be permitted to receive and review confidential material as defined by the December 7, 2017 Protective Order. I need access to this information

to inform my judgment and assist outside counsel and the Cristal Entities in formulating a defense of the transaction. In order to respond to the FTC's allegations, the Cristal Entities must collect and analyze internal information. I am uniquely positioned to analyze information and access and direct outside counsel to information, which is particularly important given the compressed timeframe under which information must be analyzed for this case. My ability to access, analyze, and direct outside counsel to information will be materially impaired if I do not have knowledge of the confidential material underlying the FTC's allegations.

6. I have worked at Cristal USA for over ten years and possess extensive knowledge of the Cristal Entities and the titanium dioxide industry. Access to confidential material is important to allow me to be an active and contributing member of the litigation team. Anything less will cause the Cristal Entities to be significantly impaired in their ability to mount an effective and complete defense.

7. Full access to confidential material is also necessary for me to provide informed legal advice to the Cristal Entities and for me to discharge my corporate responsibilities. This matter is of the utmost importance to the Cristal Entities. I cannot provide informed legal advice to the Cristal Entities unless I have access to the confidential material that Complaint Counsel may rely upon in support of the allegations in the complaint, and the confidential material in the record that could be used in Respondents' defense. While, of course, I will not disclose the confidential material to the Cristal Entities, I will consider it to inform my legal advice, including strategies for litigation.

8. I am not involved in any competitive decision-making at the Cristal Entities. Except when I am providing legal advice, I do not participate in any decisions about competition with other titanium dioxide suppliers and do not make any decisions about pricing strategies.

Except when I am providing legal advice, I am neither involved in decision-making regarding marketing of Cristal's products nor in decisions about Cristal's product design.

9. I sporadically participate in matters involving Cristal's price increase announcements and contractual disputes. I only provide legal advice with respect to these matters and do not participate in competitive decision-making. In connection with potential or pending transactions, I provide legal advice and do not recall any instances in which I provided non-legal advice.

10. I have read and understand the December 7, 2017 Protective Order and agree to be bound by its terms. If allowed access to confidential material, I will not use the information, directly or indirectly, for any purpose besides defense of this action. I acknowledge and agree that I am subject to the jurisdiction of this Court and the Commission's contempt powers.

11. I have previously received and reviewed confidential material, including confidential material from the Cristal Entities' titanium dioxide customers and competitors, in cases that were subject to protective orders. I have never revealed or misused such confidential material and nobody has accused me of doing so.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19 day of January 2018.

James G. Koutras
Director – Senior Corporate Counsel &
Secretary
Cristal USA Inc.

PUBLIC

EXHIBIT B

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen Ohlhausen, Acting Chairman
Terrell McSweeny

In the Matter of

Tronox Limited
a corporation,

National Industrialization Company (TASNEE)
a corporation,

The National Titanium Dioxide Company Limited (Cristal)
a corporation,

And

Cristal USA Inc.
a corporation.

Docket No. 9377

DECLARATION OF STEVEN KAYE

1. I am Deputy General Counsel for Respondent Tronox Limited ("Tronox") in the above-captioned matter. I submit this Declaration in Support of Respondents' Joint Motion to Amend the Protective Order Governing Confidential Material.

2. I am over 21 years of age, and I am competent to make this Declaration. The statements herein are true and are within my personal knowledge.

3. I am one of the senior legal officers at Tronox and have responsibility for many of the legal aspects of Tronox's corporate activities and its titanium-dioxide business. In my role as Deputy General Counsel, I advise on the key legal issues arising from the proposed acquisition of Cristal's titanium dioxide business. My responsibilities also involve supervising outside counsel, serving as principal point of contact between outside counsel and Tronox business personnel, facilitating the flow of information between outside counsel and Tronox, and communicating with senior management and the board of directors about this litigation.

4. I have been extensively involved in Tronox's proposed acquisition of Cristal's titanium dioxide business, and possess knowledge that is essential to Tronox's defense of the acquisition against the Commission's allegations. Before this action was filed, I also provided legal advice in connection with Tronox's consideration of the proposed acquisition of Cristal's titanium dioxide business. During the Commission's Request for Additional Information and Documentary Material, issued on April 13, 2017, I was involved in the collection of information responsive to the Commission and attended meetings with the Commission to discuss the proposed transaction. Since this Part 3 proceeding was filed before this Court on December 4, 2017, I have attended hearings, provided information and guidance relating to discovery filings, and supervised all aspects of the litigation from within Tronox.

5. It is critically important that I be permitted to receive and review confidential material as defined by the December 7, 2017 Protective Order in order for Tronox to adequately mount a defense against the Commission's allegations. To respond to the allegations raised by Complaint Counsel, Tronox entities must collect and analyze internal information, and coordinate a large number of internal personnel. I am uniquely positioned to coordinate and direct outside counsel to the relevant internal information, as well as to help analyze this information, which is

particularly important given the compressed timeframe in this case. My ability to collect, analyze, and direct outside counsel to information will be materially impaired if I do not have access to the confidential material underlying the Commission's allegations.

6. I have worked at Tronox for three and a half years and, during that time, have been the primary legal officer in charge of the titanium dioxide business. As such, I am uniquely situated as a leader of the litigation team, one who has company and industry specific knowledge as well as legal expertise. Anything less than my full participation will cause Tronox to be significantly impaired in its ability to mount an effective and complete defense. To fully participate in and contribute to the legal decision-making in this case, it is vital that I have access to the confidential material underlying the Commission's allegations.

7. Full access to confidential material is also necessary for me to provide informed legal advice to Tronox in the course of discharging my corporate responsibilities. This matter is both important and sensitive to Tronox. I cannot provide informed legal advice to my senior management or board of directors unless I have access to confidential material filed in this matter, including the identity and nature of the Commission's witnesses, evidence, and legal arguments. Although I will not disclose any confidential material to other Tronox employees, I will use it to inform my legal advice, including proposed strategies for litigation.

8. I am not involved in any competitive decision-making at Tronox. Except when providing legal advice, I do not participate in any decisions about competition with other titanium dioxide suppliers and do not make any decisions about pricing strategies. Except when providing legal advice, I am neither involved in decision-making regarding marketing of Tronox's products nor decisions about Tronox's product design. In connection with potential or pending transactions, I only provide legal advice.

9. I sporadically participate in meetings where potentially competitively sensitive issues are discussed. I only provide legal advice in these meetings and do not participate in competitive decision-making.

10. I have read and understand the December 7, 2017 Protective Order and agree to be bound by its terms. If allowed access to confidential material, I will not use the information, directly or indirectly, for any purpose besides defense of this action. I acknowledge and agree that I am subject to the jurisdiction of this Commission and its contempt powers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of January 2018 in Stamford, Connecticut.

Steven Kaye
Deputy General Counsel
Tronox Limited

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EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and STATE OF ILLINOIS Plaintiffs, v. ADVOCATE HEALTH CARE NETWORK, ADVOCATE HEALTH AND HOSPITALS CORPORATION, and NORTHSHORE UNIVERSITY HEALTHSYSTEM Defendants	No. 1:15-cv-11473

NOTICE OF JOINT MOTION AND
JOINT MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER

PLEASE TAKE NOTICE that Defendants Advocate Health Care Network and Advocate Health and Hospitals Corporation (together "**Advocate**") and Defendant NorthShore University HealthSystem ("**NorthShore**") (affiliation herein referred to as the "**Transaction**"), along with Plaintiff, the Federal Trade Commission (the "**Commission**") and the State of Illinois, will move this Court, before the Honorable Jorge L. Alonso, at the Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Chicago, IL 60604, Courtroom 1700, at 11:00 am on January 7, 2015, for an order, pursuant to Fed. R. Civ. P. 26(c) and the Court's Standing Order on Protective Orders ("**Standing Order**") for entry of the proposed Stipulated Protective Order attached hereto as Exhibit A.

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The Parties have reached substantial agreement on the Stipulated Protective Order, but have not agreed to the language in three paragraphs. The redlined version of the Stipulated Protective Order attached at Exhibit A indicates proposed language that the parties dispute and contains comments from the parties regarding their respective positions on these issues. In particular, the parties dispute the following:

1. **Paragraph 2(b)(8)**:

    a. The Plaintiffs propose including "or competitively sensitive trade secrets, research, development, or commercial information" as a category of Highly Confidential Information, provided "the disclosure of which would cause competitive harm to the producing party, a party to the litigation, or a third party, and that harm could not be avoided by less restrictive means." The Defendants do not agree to the inclusion of this category under Paragraph 2(b)(8).

2. **Paragraph 5(c)(3)**:

    a. The parties dispute how to define the term "commercial decision-making" for purposes of the Stipulated Protective Order. The Plaintiffs propose that the Stipulated Protective Order guide the Court on what constitutes "competitive decision-making" by including a definition from *FTC v. Sysco Corp.*, 83 F. Supp. 3d 1 (D.D.C. 2015). The Defendants propose a definition of "competitive decision-making" drafted for this specific case.

3. **Paragraph 21**

    a. The Plaintiffs propose a penalty clause borrowed from protective orders in *FTC v. Whole Foods*, 2007 WL 2059741, 07-cv-01021-PLF (D.D.C. July 6, 2007) and *FTC v. Sysco Corp., et al.*, 83 F. Supp. 3d 1 (D.D.C.2015), among others. The

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Defendants disagree with the inclusion of this penalty clause in the Stipulated Protective Order.

Dated: January 6, 2016

Respectfully submitted,

/s/ James T. Greene
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Charles Loughlin, Esq.
Sean P. Pugh, Esq.
Federal Trade Commission
Bureau of Competition
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Counsel for Defendant NorthShore University HealthSystem

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of January, 2016, I served the foregoing Notice of Joint Motion and Joint Motion for Entry of Stipulated Protective Order on the following counsel via electronic mail:

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Counsel for Defendant NorthShore University HealthSystem

/s/ John L. Roach IV
John L. Roach IV

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EXHIBIT A

PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and STATE OF ILLINOIS Plaintiffs, v. ADVOCATE HEALTH CARE NETWORK, ADVOCATE HEALTH AND HOSPITALS CORPORATION, and NORTHSHORE UNIVERSITY HEALTHSYSTEM Defendants	No. 1:15-cv-11473

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~~[~~Agreed~~]~~[1] Confidentiality Order

~~[if by agreement]~~ The parties to this Agreed Confidentiality Order ("Order") have agreed to the terms of this Order; accordingly, it is ORDERED:

~~[if not fully agreed] A party to this action has moved that the Court enter a confidentiality order. The Court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the Court. Accordingly, it is ORDERED:~~

[1] ~~Counsel should include or delete language in brackets as necessary to the specific case. Any other changes to this model order must be shown by redlining that indicates both deletions and additions to the model text. Counsel may also modify this model order as appropriate for the circumstances of the case. This model order is for the convenience of the parties and the court and not intended to create a presumption in favor of the provisions in this model order and against alternative language proposed by the parties. The court will make the final decision on the terms of any order notwithstanding the agreement of the parties.~~

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1. Scope. All materials produced or adduced in the course of discovery, including initial disclosures, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively "documents"), shall be subject to this Order concerning Confidential Information or Highly Confidential Information as defined below. This Order is subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. Confidential Information and Highly Confidential Information.

(a) As used in this Order, "Confidential Information" means information designated as "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" by the producing party that falls within one or more of the following categories: (~~a~~i) information prohibited from disclosure by statute; (~~b~~ii) information that reveals trade secrets; (~~c~~iii) research, technical, commercial or financial information that the party has maintained as confidential; (~~d~~iv) medical information concerning any individual; (~~e~~v) personal identity information, including social security numbers; (~~f~~vi) income tax returns (including attached schedules and forms), W-2 forms and 1099 forms; or (~~g~~vii) personnel or employment records of a person who is not a party to the case.[2] Information or documents that are available to the public may not be designated as Confidential Information.

(b) As used in this Order, "Highly Confidential Information" means information designated as "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" by the producing party that qualifies as "Confidential Information" under Paragraph 2 of this Order, and that constitutes (i) specific cost, rates, reimbursements, pricing, sales, revenue, or margin

Comment [LR1]: See next comment

Comment [LR2]: The parties believe that a two-tiered approach to confidentiality designations is necessary in this case given the various interests at stake, including those of third parties

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[2] ~~If protection is sought for any other category of information, the additional category shall be described in paragraph 2 with the additional language redlined to show the change in the proposed Order.~~

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information relating to ~~the~~ Producing Party or a customer of ~~the~~ Producing Party; (2) specific current or future pricing, rates, or reimbursement plans, (3) specific information on capacity or plans for capacity expansion; (4) proprietary technology and know-how; (5) specific payor contracts; (6) specific payor claims data; (7) specific marketing and advertising data or plans that identify specific competitors or customers; or (~~7~~8) current or future proprietary strategies or policies related to competition that have been kept confidential by the producing party, [or competitively sensitive trade secrets, research, development, or commercial information,] the disclosure of which would cause competitive harm to the producing party, a party to the litigation, or a third party, and that harm could not be avoided by less restrictive means.

~~2.~~

3. Designation.

(a) A party may designate a document as Confidential Information or Highly Confidential Information for protection under this Order by placing or affixing the words "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" on the document and on all copies in a manner that will not interfere with the legibility of the document. Confidential Information or Highly Confidential Information contained in electronic documents may also be designated confidential by placing the designation "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," or "HIGHLY CONFIDENTIAL – SUBJECT PROTECTIVE ORDER," ~~or any other appropriate notice that identifies this proceeding,~~ on the face of the CD or DVD or other medium on which the document is produced. Once designated in good faith as "CONFIDENTIAL –

Comment [CC3]: Plaintiffs' position Plaintiffs propose inclusion of this additional language ("or competitively sensitive trade secrets, research, development, or commercial information") to protect third parties from turning over their "competitively sensitive" materials to the Defendants for review by Defendants' employees. Plaintiffs believe that "competitively sensitive" materials produced by third parties in this litigation should be treated with the utmost protection. This language mimics language contained in FRCP26(c)(1)(G), which provides guidance on seeking protective orders, and is in line with what was protected as highly confidential material in *FTC v. OSF Healthcare Sys.*, another hospital merger case from this district. *See FTC v. OSF Healthcare Sys.*, 11-cv-50344 (N.D. Ill.), Dkt. No. 123, para. 2.

Comment [LR4]: Defendants position: Defendants strongly object to this language. The terms are so overly broad as to swallow the entire definition of "Confidential Information" under Paragraph 2(a), and effectively undermine the multi-tiered approach to designations that the parties have worked hard to craft. They also mirror the terms used in Paragraph 2(a)(ii) and (iii) of this Protective Order, and thus including such terms in Paragraph 2(b) render them virtually meaningless within Paragraph 2(a). Defendants note that Plaintiff's reference to FRCP26(c)(1)(G) is particularly inapposite in this respect, as Paragraph 2(a) already mimics this rule. Moreover, such broad terms could easily lead to later disputes about designations, which would in turn result in disputes brought before the Court under Paragraph 9 of the Protective Order. The Defendants believe that judicial economy and the interests of the parties strongly favor precise definitions so as to avoid such disputes. Defendants are acutely concerned about inclusion of the term "commercial information" in this context, as it would sweep in virtually any type of information the Plaintiffs may have obtained from third parties during the course of the FTC's investigation. The "Highly Confidential" tier of protection is not designed to sweep in such broad categories of documents, but rather is designed to protect discrete and easily identifiable types of information that clearly should not be widely disclosed, such as cost, pricing, sales, revenue, margin, or claims data, specific contracts with managed care organizations or other payors, or specific marketing data or plans.

Comment [LR5]: The parties believe it is necessary to protect certain competitively sensitive information from possible disclosure to and use by other market participants in a way that would undermine competition.

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Comment [LR6]: The parties have added language describing how they may designate material falling within the definition of "Highly Confidential."

Comment [LR7]: The parties believe this modification is necessary to account for electronic documents that may be produced natively on electronic discs, so as to provide a clear mechanism for designating such material confidential.

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SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," such material shall be treated as such under the terms of this Order until such designation is withdrawn by the producing party or third party or by further order of this Court. As used in this Order, "copies" includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information or Highly Confidential Information. The marking "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" shall be applied prior to or at the time of the documents are produced or disclosed. Any documents produced prior to the Court's entry of this Order, including all documents produced during Plaintiff Federal Trade Commission's investigation that preceded this litigation ("Commission Investigation"), shall ~~keep its previously designated protected status~~be considered Highly Confidential Information for a period of 21 days from the date of entry of this Order. If a producing party wishes to ~~designate~~maintain the status of a document, or portion thereof, or category of documents previously produced in this litigation or submitted by it during the Commission Investigation, as Highly Confidential Information, it shall notify the parties in this matter within ~~fourteen~~twenty-one (~~14~~21) days of entry of this Order and apply the appropriate designation to the document or documents in accordance with this Paragraph. After 21 days of entry of this Order, any document produced prior to the Court's entry of this Order—including any document produced during the Commission Investigation—that is not designated as HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER shall maintain its status as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER in accordance with Paragraph 19 of this Order. Applying the marking "CONFIDENTIAL –

Comment [LR8]: The parties seek to ensure that the provisions of this Order remain in place for documents designated as confidential until further action determines otherwise

Comment [LR9]: The parties believe that it is necessary to afford a short window following the Court's entry of this Order to properly designate and protect any Highly Confidential documents that were previously produced to Defendants prior to this Order

Comment [CC10]: The parties wish to clear up any confusion with respect to how documents previously produced in this litigation will be treated following a brief notification period after the Court enters this Order.

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SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" to a document does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order. Any copies that are made of any documents marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" shall also be so marked, except that indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential Information or Highly Confidential Information are not required to be marked. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain Confidential Information or Highly Confidential Information, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted ~~and the reasons therefor~~.

Comment [LR11]: The parties believe that allowing for the production of redacted copies of otherwise confidential documents will facilitate discovery and reduce disputes over designations

(b) The designation of a document as Confidential Information or Highly Confidential Information is a certification by an attorney or a party appearing pro se that the document contains Confidential Information or Highly Confidential Information as defined in this order.[3]

4. Depositions.[4]

[3] An attorney who reviews the documents and designates them as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER must be admitted to the Bar of at least one state but need not be admitted to practice in the Northern District of Illinois unless the lawyer is appearing generally in the case on behalf of a party. By designating documents ~~confidential~~Confidential or Highly Confidential pursuant to this Order, counsel submits to the jurisdiction and sanctions of this Court on the subject matter of the designation.

[4] ~~The parties or movant seeking the order shall select one alternative for handling deposition testimony and delete by redlining the alternative provision that is not chosen.~~

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~~Alternative A.~~ Deposition testimony is protected by this Order only if designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" on the record at the time the testimony is taken. Such designation shall be ~~specific~~ made as to the portions that contain Confidential Information or Highly Confidential Information. Deposition testimony so designated shall be treated as Confidential Information or Highly Confidential Information protected by this Order until ~~fourteen~~ twenty-one (21) days after delivery of the transcript by the court reporter to any party or the witness. Within ~~fourteen~~ twenty-one (21) days after delivery of the transcript, a designating party may serve a Notice of Designation to all parties of record identifying the specific portions of the transcript that are designated Confidential Information or Highly Confidential Information, and thereafter those portions identified in the Notice of Designation shall be protected under the terms of this Order. The failure to serve a timely Notice of Designation waives any designation of deposition testimony as Confidential Information or Highly Confidential Information that was made on the record of the deposition, unless otherwise ordered by the Court.

~~Alternative B. Unless all parties agree on the record at the time the deposition testimony is taken, all deposition testimony taken in this case shall be treated as Confidential Information until the expiration of the following: No later than the fourteenth day after the transcript is delivered to any party or the witness, and in no event later than 60 days after the testimony was given. Within this time period, a party may serve a Notice of Designation to all parties of record as to specific portions of the testimony that are designated Confidential Information, and thereafter only those portions identified in the Notice of Designation shall be protected by the terms of this Order. The failure to serve a timely Notice of Designation shall waive any~~

Comment [LR12]: The parties anticipate that for several depositions, the entirety of their content may be Confidential or Highly Confidential, and therefore propose this change to clarify that they may so designate such depositions

Comment [LR13]: The parties anticipate that there may be a relatively high number of depositions in this matter and for that reason believe that twenty-one days for delivery of a Notice of Designation is more appropriate

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~~designation of testimony taken in that deposition as Confidential Information, unless otherwise ordered by the Court.~~

5. Protection of Confidential ~~Material~~Information.

(a) General Protections. Confidential Information or Highly Confidential Information shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in subparagraphs (b) or (c) for any purpose whatsoever other than in this litigation, including any appeal thereof. ~~[INCLUDE IN PUTATIVE CLASS ACTION CASE: In a putative class action, Confidential Information may be disclosed only to the named plaintiff(s) and not to any other member of the putative class unless and until a class including the putative member has been certified.]~~

(b) Limited Third-Party Disclosures for Confidential Information. The parties and counsel for the parties shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except as set forth in subparagraphs (1)-(~~9~~10). Subject to these requirements, the following categories of persons may be allowed to review Confidential Information:

(1) Plaintiffs. Plaintiff Federal Trade Commission and its employees, Plaintiff State of Illinois and its employees, and personnel retained by the Federal Trade Commission or the State of Illinois as experts, investigators, or consultants;

~~(1)~~(2) Counsel. Counsel for the parties and employees of counsel who have responsibility for the action;

~~(2)~~(3) Parties. Individual parties and employees of a party but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of ~~Understanding~~ and Agreement to Be Bound;

~~(3)~~(4) The Court and its personnel;

Comment [LR14]: The parties believe that the term "Confidential Material" should be changed to "Confidential Information" throughout the Protective Order, in keeping with Paragraph 2, so as to eliminate any confusion

Comment [LR15]: The parties recognize that disclosure to the Federal Trade Commission will be necessary in this litigation

Comment [LR16]: The parties believe it is important for individual employees to execute Attachment A, so that the terms of this Protective Order are clearly understood by and enforceable against any individuals who have access to Confidential Information

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~~(4)~~(5) Court Reporters and Recorders. Court reporters and recorders engaged for depositions;

~~(5)~~(6) Contractors. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents;

(7) Consultants and Experts. Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment ~~of Understanding~~ and Agreement to Be Bound;

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(8) Witnesses at depositions. During their depositions, witnesses in this action to whom disclosure is reasonably necessary and counsel representing the witnesses at those depositions, but only to the extent that (a) the witness wrote or previously had lawful access to the document; (b) the witness is, or at the time the document was prepared was, an employee of the producing party; (c) the producing party consents to the disclosure; or (d) the witness is an employee of a party that was not the producing party, but only to the degree that such employee satisfies the requirements of Paragraph 5(b)(3) of this Order. Witnesses shall not retain a copy of documents containing Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts. Pages of transcribed deposition testimony or exhibits to depositions that are designated as Confidential Information pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

Comment [LR17]: The parties believe this change is necessary to protect against the disclosure of Confidential Information during depositions to employees of the parties or third parties whom otherwise would not have access to such Confidential Information under this Protective Order

(9) Author or recipient. The author or recipient of the document (not including a person who received the document in the course of litigation); and

(10) Others by Consent. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered.

(c) Limited Third-Party Disclosures for Highly Confidential Information. The parties and counsel for the parties shall not disclose or permit the disclosure of any Highly Confidential Information to any third person or entity except as set forth in subparagraphs (1)-(10). Subject to these requirements, the following categories of persons may be allowed to review Highly Confidential Information:

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(1) Plaintiffs. Plaintiff Federal Trade Commission and its employees, Plaintiff State of Illinois and its employees, and personnel retained by the Federal Trade Commission or the State of Illinois as experts, investigators, or consultants;

(2) Outside Counsel. Outside counsel of record for the parties and employees of outside counsel who have responsibility for the action, provided they are not employees of a Defendant;

(3) ~~Parties~~Defendants' Designees. The Defendants may designate, subject to such persons having completed the certification contained in Attachment A, Acknowledgment ~~of Understanding~~ and Agreement to Be Bound, and subject to the approval of the Court, up to one representative each of Advocate Health Care Network and NorthShore University HealthSystem who can have access to Highly Confidential Information. The proposal to designate Defendants' employees must be accompanied by a declaration from each proposed designee detailing their responsibilities at Defendants' companies, confirming that they are not involved in "competitive decision-making,"[5] [as considered most recently in *FTC v. Sysco Corp.*, 83 F. Supp. 3d 1, at *3 (D.D.C. Mar. 12, 2015),] and confirming that they will not share Highly Confidential Information or relate the substance therein to anyone not approved by the Court. Defendants' Designees may only access Highly Confidential Information in person at the offices of their outside counsel, or using a secure electronic data room or document review platform using individual login identifications and passwords;

(4) The Court and its personnel;

(5) Court Reporters and Recorders. Court reporters and recorders engaged for depositions;

(6) Contractors. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents;

(7) Consultants and Experts. Consultants, investigators, or experts employed ~~by the parties or~~outside counsel of record for the parties to assist in the preparation and trial of this action but only provided they are not employed by or otherwise affiliated with any Defendant and after such persons have

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Comment [CC18]: Plaintiffs' position: Plaintiffs have endeavored to provide the Court with some guidance on how other Courts have interpreted "competitive decision-making." However, Plaintiffs do not think an exact definition of "competitive decision-making" is appropriate. Rather, as the Court in *FTC v. Sysco Corp.* noted, cases that have provided guidance of what constitutes "competitive decision-making" were meant to be "illustrative and not exhaustive." *FTC v. Sysco Corp.*, 83 F. Supp. 3d 1, at *3 (D.D.C. 2015). Plaintiffs propose providing additional guidance to the Court in footnote 5 below but otherwise do not seek to confine the Court to a specific definition of "competitive decision-making."

Comment [LR19]: Defendants' position: the Defendants believe that a definition of "competitive decision-making" is not as illusory as the Plaintiffs would seem to believe, and that a precise definition within the context of this case is more helpful than general references to protective orders in cases involving entirely different markets, such as the grocery supply companies involved in *Sysco*.

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[5] [Plaintiffs' language: "The *Sysco* court defines "competitive decision-making" to include, among other things, "business decisions that the client would make regarding, for example, pricing, marketing, or design issues when that party granted access has seen how a competitor has made those decisions." *Id.* at *3.]

[6] [Defendants language: "Competitive decision-making" under this Order means substantive decision-making authority on behalf of a party with respect to: (i) entering into contracts with managed care organizations or other payors; (ii) determining pricing or reimbursement rates with respect to such managed care organizations or payors; or (iii) strategic positioning of a party within the market for health care services in the Chicago, Illinois area.]

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completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(8) Witnesses at depositions. During their depositions, witnesses in this action to whom disclosure is reasonably necessary and outside counsel representing the witnesses at those depositions, but only to the extent that (a) the witness wrote or previously had lawful access to the document, (b) the witness is, or at the time the document was prepared was, an employee of the producing party, (c) the producing party consents to the disclosure, or (d) the witness is an employee of a party that was not the producing party, but only to the degree that such employee satisfies the requirements of Paragraph 5(c)(3) of this Order. Witnesses shall not retain a copy of documents containing Highly Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts. Pages of transcribed deposition testimony or exhibits to depositions that are designated as Highly Confidential Information pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

(9) Author or recipient. The author or recipient of the document (not including a person who received the document in the course of litigation); and

(10) Others by Consent. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered.

Notwithstanding any provision to the contrary in paragraphs 5(a), 5(b), or 5(c), this Order shall not prevent or restrict outside counsel of record for any Defendant from providing advice to their clients, and in the course of providing such advice, relying generally on the examination and general description of documents designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER." Such advice, however, cannot include the disclosure of specific quantitative information or competitive plans.

Notwithstanding any provision to the contrary in paragraphs 5(a), ~~or~~ 5(b), or 5(c), this Order shall not prevent Plaintiff Federal Trade Commission from, subject to taking appropriate steps to preserve the protections designated on materials, using or disclosing

Comment [LR20]: The parties propose specific further limitations on the use of Highly Confidential Information, as set forth in this paragraph

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Comment [CC21]: The parties do not want to limit the ability of counsel to provide general advice to their clients on the nature and scope of documents used during the course of litigation

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Confidential Information or Highly Confidential Information as provided by its Rules of Practice, sections 6(f) and 21 of the Federal Trade Commission Act, or any legal obligation imposed upon the Federal Trade Commission.

~~(c)~~(d) Control of Documents. Counsel for the parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Information or Highly Confidential Information. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of three years after the termination of the case. If any party becomes aware of the unauthorized disclosure of Confidential Information or Highly Confidential Information, the party must notify the designating party in writing as soon as practicable.

6. Inadvertent Failure to Designate. An inadvertent failure to designate a document as Confidential Information or Highly Confidential Information does not, standing alone, waive the right to so designate the document; provided, however, that a failure to serve a timely Notice of Designation of deposition testimony as required by this Order, even if inadvertent, waives any protection for deposition testimony. If a party designates a document as Confidential Information or Highly Confidential Information after it was initially produced, the receiving party, on notification of the designation, must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Order. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated Confidential Information or Highly Confidential Information, even where the failure to so designate was inadvertent and where the material is subsequently designated Confidential Information or Highly Confidential Information.

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Comment [CC22]: Certain confidentiality provisions apply to the FTC and govern the use or disclosure of documents obtained by the FTC during the course of an investigation. The FTC seeks to incorporate those provisions here to avoid any conflict between this Order and other applicable rules

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Comment [LR23]: The parties believe this addition is necessary as the documents produced in this case have been and will be voluminous, leading to heightened risk of unauthorized disclosure and the need for immediate notice of such disclosure to the designating party

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7. Filing of Confidential Information or Highly Confidential Information. This Order does not, by itself, authorize the filing of any document under seal. Any party wishing to file a document designated as Confidential Information or Highly Confidential Information in connection with a motion, brief or other submission to the Court must comply with LR 26.2. To the extent that a document filed or to be filed under seal was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion within one day of such filing.

Comment [CC24]: The parties may seek to file numerous documents belonging to third parties in connection with motions and other filings made in this proceeding. The parties believe this provision is fair to third parties and provides them with adequate notice of such filing

8. No Greater Protection of Specific Documents. Except on privilege grounds not addressed by this Order, no party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an order providing such special protection.

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9. Challenges by a Party to Designation as Confidential Information or Highly Confidential Information. The designation of any material or document or specific redaction within a document as Confidential Information or Highly Confidential Information is subject to challenge by any party. The following procedure shall apply to any such challenge.

(a) Meet and Confer. A party challenging the designation of Confidential Information or Highly Confidential Information must do so in good faith and must begin the process by conferring directly with counsel for the designating party. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the

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designation. The designating party must respond to the challenge within ~~five~~ seven (~~5~~7) business days.

Comment [LR25]: The parties believe that additional time to respond to challenges would be helpful in this case given the voluminous amount of material that has been and will be produced

(b) Judicial Intervention. A party that elects to challenge a confidentiality designation may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The burden of persuasion in any such challenge proceeding shall be on the designating party. Until the Court rules on the challenge, all parties shall continue to treat the materials as Confidential Information or Highly Confidential Information under the terms of this Order.

10. Action by the Court. Applications to the Court for an order relating to materials or documents designated Confidential Information or Highly Confidential Information shall be by motion. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make orders concerning the disclosure of documents produced in discovery or at trial.

11. Use of Confidential Documents or Information at Trial. Nothing in this Order shall be construed to affect the use of any document, material, or information at any trial or hearing. A party that intends to present or that anticipates that another party may present Confidential information or Highly Confidential Information at a hearing or trial shall bring that issue to the Court's and parties' attention by motion or in a pretrial memorandum without disclosing the Confidential Information or Highly Confidential Information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial. If counsel plans to introduce into evidence at a hearing any document or transcript

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containing Confidential Information or Highly Confidential Information produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order from the Court regarding the use of that document. If that other party or third party wishes to seek an order from the Court regarding the use of that document or transcript, the other party or third party shall file an appropriate motion with the Court within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record.

12. Nothing in this Order:

(a) Limits a party's use or disclosure of its own documents, information, or transcripts of testimony designated as Confidential Information or Highly Confidential Information, or

~~11.~~ (eb) Prevents disclosure of Confidential Information or Highly Confidential Information by any party with the consent of the party that designated the Confidential Information or Highly Confidential Information.

~~12~~13. Confidential Information or Highly Confidential Information Subpoenaed or Ordered Produced in Other ~~Litigation~~Proceedings

(a) If a receiving party is served with a subpoena or an order issued in any investigation or in any other proceeding or matter ~~other litigation~~ that would compel disclosure of any material or document designated in this action as Confidential Information or Highly Confidential Information, the receiving party must so notify the designating party, in writing, immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

Comment [CC26]: The parties believe that this additional protection is necessary to afford third parties with an opportunity to intervene and seek protected status for their documents or information that are confidential and may be used in open court

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Comment [LR27]: This paragraph clarifies the parties' right to disclose Confidential Material under circumstances in which they themselves effectively control the designation, or where they have been given consent to disclose

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Comment [LR28]: The parties believe this adjustment is necessary in order to protect the defendants from the disclosure of their protected information in future government investigations

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(b) The receiving party also must immediately inform in writing the party who caused the subpoena or order to issue in the other investigation, proceeding, or matter ~~litigation~~ that some or all of the material covered by the subpoena or order is the subject of this Order. In addition, the receiving party must deliver a copy of this Order promptly to the party in the other action that caused the subpoena to issue.

Comment [LR29]: See immediately prior comment

(c) The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the designating party in this case an opportunity to try to protect its Confidential Information or Highly Confidential Information in the court from which the subpoena or order issued. The designating party shall bear the burden and the expense of seeking protection in that court of its Confidential Information or Highly Confidential Information, and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the party has in its possession, custody or control Confidential Information or Highly Confidential Information by the other party to this case.

14. Challenges by Members of the Public to Sealing Orders. A party or interested member of the public has a right to challenge the sealing of particular documents that have been filed under seal, and the party asserting confidentiality will have the burden of demonstrating the propriety of filing under seal.

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15. Obligations on Conclusion of Litigation.

(a) Order Continues in Force. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

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(b) Obligations at Conclusion of Litigation. Within sixty-three days after dismissal or entry of final judgment not subject to further appeal, all Confidential Information or Highly Confidential Information and documents marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" under this Order, including copies as defined in ¶3(a), shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction to the extent practicable in lieu of return;[7] or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so.

(c) Retention of Work Product and one set of Filed Documents. Notwithstanding the above requirements to return or destroy documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information or Highly Confidential Information so long as that work product does not duplicate verbatim substantial portions of Confidential Information or Highly Confidential Information, and (2) one complete set of all documents filed with the Court including those filed under seal. Any retained Confidential Information or Highly Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information or Highly Confidential Information.

[7] ~~The parties may choose to agree that the receiving party shall destroy documents containing Confidential Information and certify the fact of destruction, and that the receiving party shall not be required to locate, isolate and return e-mails (including attachments to e-mails) that may include Confidential Information, or Confidential Information contained in deposition transcripts or drafts or final expert reports.~~

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(c) Deletion of Documents filed under Seal from Electronic Case Filing (ECF) System. Filings under seal shall be deleted from the ECF system only upon order of the Court.

16. Order Subject to Modification. This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

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17. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Information or Highly Confidential Information by counsel or ~~the parties~~ any producing party is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

Comment [LR30]: The parties believe this change is necessary to reflect accurately that many documents have been already, and many more documents may later be produced by third parties.

18~~7~~. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

19. For purposes of this Order, ~~A~~any document or portion thereof submitted by a Defendant or a third party during a ~~Federal Trade Commission investigation~~the Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act or any other federal statute or regulation, including Federal Rule of Civil Procedure 26(c) and the Local Rules of this District, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any Confidential Information or Highly Confidential

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Information derived from a document subject to this Order, shall be treated as Confidential Information or Highly Confidential Information, pursuant to Paragraph 3(a) of this Order~~for purposes of this Order~~. Among other documents and information, this protection applies to any declaration submitted by a third party to the Federal Trade Commission during the Commission investigation as well as information that discloses the substance of the contents of any declaration submitted by a third party to the Federal Trade Commission during the course of the Commission Investigation. The identity of a third party submitting such Confidential Information or Highly Confidential Information shall also be treated as Confidential Information for the purposes of this Order where the submitter has requested such confidential treatment. However, defense counsel shall be permitted to disclose the identity of a third-party submitter to an employee of a Defendant after first giving notice to counsel for the Federal Trade Commission that defense counsel intends to make such disclosure for the purpose of preparing the defense, in accordance with Paragraph 5(b)(3) of this Order. This paragraph does not prevent any party from challenging the designation of any document designated as Confidential Information or Highly Confidential Information pursuant to Paragraph 9 of this Order.

20. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each third party of his, her or its rights herein.

21. Any violation of this Order may be deemed a contempt and punished by a fine of up to $250,000. Any imposed fine will be paid by the person who violates this Order. A violator may not seek to be reimbursed or indemnified for payment the violator has made. If the violator is an attorney, the Court may recommend to the appropriate professional disciplinary authority that the attorney be sanctioned, suspended, or disbarred.

Comment [LR32]: The Defendants have already produced a large volume of material to the Plaintiff during the course of the Plaintiff's investigation, and many of those documents are likely to appear as exhibits in this proceeding. This provision effectively preserves the protections that were in place during those prior productions.

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Comment [CC31]: The parties believe that the identities of third parties disclosing materials in this litigation should be kept confidential. Similar language is contained in other protective orders protecting the disclosure of the identities of third parties. *See, e.g., FTC v. Steris*, 15-cv-1030 (N.D. Ohio), Dkt. No. 87, para. 2.

Comment [LR33]: The parties believe this change is necessary given the amount of discovery likely to be taken from third parties.

Comment [CC34]: Plaintiffs' position: Plaintiffs propose this or a similar mechanism for the Court to handle violations of the Order. This is consistent with penalty provisions that Courts have put in place to administer protective orders in merger litigations where competitively sensitive information from third parties could be shared with at least one of Defendants' employees, as is provided here. For example, the Court in *FTC v. Whole Foods*, 2007 WL 2059741 (D.D.C. July 6, 2007) included a nearly identical provision "in an abundance of caution ... as an added incentive against inadvertent misuse of any confidential information that [Defendant's employee] will be privy to." *Id.* at *3, *see also FTC v. Whole Foods*, 07-cv-01021-PLF (D.D.C.), Dkt. No. 100, para. 21. An identical provision was also put in place in *FTC v. Sysco Corp., et al.*, 83 F. Supp. 3d 1 (D.D.C. 2015). *See id.* at *1, 5; *see also FTC v. Sysco Corp., et al.*, 15-cv-00256-APM (D.D.C.), Dkt. No. 87, para. 14.

Comment [LR35]: Defendants' position: Defendants propose that this paragraph not be included in the final Protective Order as the Court is well-equipped to enforce its own orders. The Defendants note that just last month in the case *FTC v. Staples, et al.*, 15-cv-02115-BGS (D.D.C.), Dkt. No. 6, the Plaintiffs proposed a protective order that did not contain such a draconian penalty provision. The Defendants also note that the *Whole Foods* and *Sysco* mergers are not appropriate analogies as in those cases the risk of violation was particularly severe. In fact, the penalty provision was only added to the protective order in *Sysco* as an amendment after violations of the protective order became an active risk. *See FTC v. Sysco Corp., et al.*, 15-cv-00256-APM (D.D.C.), Dkt. No. 75.

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So Ordered.

Dated:

_____
U.S. District Judge
U.S. Magistrate Judge

~~[Delete signature blocks if not wholly by agreement]~~

WE SO MOVE
and agree to abide by the
terms of this Order

_____
Signature

_____
Printed Name

Counsel for:_____

Dated:_____

WE SO MOVE
and agree to abide by the
terms of this Order

_____
Signature

_____
Printed Name

Counsel for:_____

Dated:_____

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ATTACHMENT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Plaintiff	Civil No.
v.	
Defendant	

ACKNOWLEDGMENT
AND
AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Confidentiality Order dated in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Northern District of Illinois in matters relating to the Confidentiality Order and understands that the terms of the Confidentiality Order obligate him/her to use materials designated as Confidential Information or Highly Confidential Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information or Highly Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

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Job Title:_____

Employer:_____

Business
Address:_____

Date:_____ _____
Signature

Adopted 06/29/12

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EXHIBIT D

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, *et al.*, Plaintiffs, v. **STAPLES, INC.** and **OFFICE DEPOT, INC.**, Defendants.	Civil Action No. 1:15-cv-02115-EGS

Defendants' Motion for Entry of Protective Order

Defendants Staples, Inc. and Office Depot, Inc. submit this Motion for Entry of the attached Proposed Protective Order. Plaintiffs do not oppose this Motion.

Dated: January 7, 2016

Respectfully Submitted,

/s/ Carrie Mahan Anderson
Carrie Mahan Anderson
(D.C. Bar 459802)
Weil, Gotshal & Manges LLP
1300 Eye Street, N.W.
Washington, D.C. 20005
Telephone: (202) 682-7000
Facsimile: (202) 857-0940
carrie.anderson@weil.com

Counsel for Staples, Inc.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, *et al.*, v. **STAPLES, INC.** and **OFFICE DEPOT, INC.**,	Civil Action No. 1:15-cv-02115-EGS

[Proposed] Protective Order

For the purposes of protecting the interests of the parties and third parties in the above-captioned matter against the improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all confidential material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or third party. "Commission" shall refer to the Federal Trade Commission

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("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a Defendant or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any confidential materials derived from a document subject to this Order, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment. However, defense counsel shall be permitted to disclose the identity of a third-party submitter to an employee of a Defendant after first giving notice to counsel for Plaintiffs and the third party submitter that defense counsel intends to make such disclosure for the purpose of preparing the defense. Plaintiffs or the third-party submitter may petition the Court for a protective order within three business days after receipt of notice from Defendant's counsel. If no motion is filed within three business days, defense counsel may make the intended disclosure. Defendants' counsel shall instruct any employee to whom disclosure is made that (1) the disclosure is for the limited purpose of preparing the defense, (2) the submitter's identity and the fact that the submitter provided evidence in the investigation shall not be disclosed or used for any

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purpose other than aiding counsel, and (3) that violation of this Protective Order may subject the employee to the sanctions described in Paragraph 7 of this Order.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. Any third party may file objections to any provision of this Order within five calendar days of its entry. Moreover, the parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein. Nothing in this order shall be construed as limiting any rights of a non-party from seeking other or further relief from this Court regarding the disclosure of confidential material.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL—FTC v. Staples Inc. and Office Depot, Inc., Case No. 1:15-cv-02115-EGS (D.D.C.)," or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in

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electronic documents may also be designated confidential by placing the designation "CONFIDENTIAL—FTC v. Staples Inc. and Office Depot, Inc., Case No. 1:15-cv-02115-EGS (D.D.C.)," or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Court presiding over this proceeding, personnel assisting the Court, the Plaintiffs, any state or commonwealth that may hereafter join this action as a plaintiff (provided such state or commonwealth has signed an agreement to abide by the terms of this Protective Order), Plaintiffs' employees, and personnel retained by Plaintiffs as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any Defendant, their associated attorneys and other employees of their law firm(s), provided they are not employees of a Defendant; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a Defendant; (e) any witness or deponent who may have authored or received the information in question; and (f) the following in-house counsel of Defendants: Michael T. Williams (Staples); Elisa D. Garcia (Office Depot); Dolly Voorhees Davis (Office Depot); and Heather Stern (Office Depot), or other in-house counsel subsequently identified and agreed to by the Parties or by order of the Court, provided that the number of in-house counsel with access to confidential material shall

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not exceed three per Defendant. The in-house counsel identified in this sub-part (f) may only access declarations produced by Plaintiffs, draft and final versions of pleadings, motions, and other briefs, hearing transcripts and expert reports—including portions of such filings, transcripts, or reports that quote or paraphrase confidential material—but not exhibits to such filings, transcripts or reports or underlying discovery material (other than declarations produced by Plaintiffs), that has been designated as confidential pursuant to Paragraph 6 of this Order. In preparation for trial, the in-house counsel listed in this sub-part (f) may review documents or other discovery material containing confidential material that are included in Plaintiffs' exhibit list or that are proposed by outside counsel for inclusion in Defendants' exhibit lists. Before providing such materials to in-house counsel listed in this sub-part (f), Defendants shall redact all confidential material included in their proposed exhibit lists that is not material to the proposed merger or this litigation. The access designated in-house counsel may have to confidential material is subject to reconsideration for good cause shown. The in-house counsel listed in this sub-part (f) shall have access to such confidential material for the purpose of defending this litigation only. Defendants' in-house counsel identified in this sub-part (f) may only access confidential material in person at the offices of their outside counsel, or using a secure electronic data room or document review platform using individual login identification and passwords. Plaintiffs and Defendants shall promptly report any confirmed or suspected unauthorized use or disclosure of confidential material to the Court and opposing counsel. Any knowing and intentional violation of this Order by Plaintiffs, Defendants, or any persons with access to confidential material pursuant to this Protective Order may be deemed contempt and punished by a fine up of to $250,000.

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An adjudicated violator of this Protective Order may not seek reimbursement or indemnification, or exercise any statutory, regulatory, or collective bargaining indemnification rights, for any fines up to $250,000; however, said violator may seek reimbursement or indemnification for defense costs. If the violator is an attorney, the Court may recommend to the appropriate professional disciplinary authority that the attorney be sanctioned, suspended or disbarred.

8. Upon entry of this Order, Plaintiffs shall serve on all Producing Parties a notice that names the in-house counsel listed in sub-part (f) of Paragraph 7 of this Order within 2 calendar days, and informs the Producing Parties that the named in-house counsel may have access to confidential material. In-house counsel shall not receive access to confidential material earlier than five business days after Plaintiffs serve notice to Producing Parties absent express written consent of the Producing Parties. Before the expiration of that five-day period, a Producing Party (or Plaintiffs on behalf of the Producing Party) may file an objection with the Court, stating the basis for its objection to any disclosure. If any such objection(s) is filed, in-house counsel may not access that Producing Party's confidential material until all applicable objections are resolved. Any objections to the disclosure of confidential material shall be decided on an expedited schedule: Defendants may file a brief responding to any objection within three business days of the filing of any objection. The Producing Party (or Plaintiffs on behalf of the Producing Party) may file a reply within three business days thereafter. All filings shall be limited to four pages, excluding exhibits.

9. Disclosure of confidential material to any person described in Paragraph 2 or 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or

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any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Plaintiffs may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided in the Commission's Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any legal obligation imposed upon a Plaintiff.

10. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall be so informed by the Party filing such papers, and such papers shall be filed under seal. To the extent that such material was originally submitted by a third party, the party including the material in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall remain under seal until further order of the Court, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 9. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

11. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wished *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Court within five days after it receives such notice.

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Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

12. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least ten business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitted of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

13. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda, or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion

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of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 C.F.R. § 4.12.

14. The provision of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Court, continue to be binding after the conclusion of this proceeding.

SO ORDERED:

Dated: January ___, 2016

_____

Judge Emmet G. Sullivan
United States District Court Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2016, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send a notification of such filing to all registered participants.

Dated: January 7, 2016

/s/ S. Nicole Booth

S. Nicole Booth
Paralegal

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EXHIBIT E

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. STERIS CORPORATION, *et al.*, Defendants.	Case No. 1:15-cv-1080-DAP The Hon. Dan A. Polster

JOINT MOTION FOR ENTRY OF A FINAL PROTECTIVE ORDER

Plaintiff Federal Trade Commission, Defendant STERIS Corporation, and Defendant Synergy Health plc, by their designated attorneys, respectfully move this Court to enter a Protective Order in this case. In accordance with Fed. R. Civ. P. 26(c)(1)(G) and Local Civil Rule 7, all parties met and conferred regarding the subject of this joint motion.

The proposed Protective Order is attached.

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Dated: June 23, 2015

Respectfully submitted,

/s/ John M. Majoras
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Counsel for Defendant STERIS Corporation

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Counsel for Plaintiff Federal Trade Commission

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2015, a copy of the foregoing was filed electronically with the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, using the CM/ECF system, causing it to be served on all registered users to be noticed in this matter, including:

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Tara Reinhart
Daniel K. Zach
Peter Colwell
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Counsel for Plaintiff Federal Trade Commission

/s/ John M. Majoras
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Counsel for Defendant STERIS Corporation

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. STERIS CORPORATION, *et al.*, Defendants.	Case No. 1:15-cv-1080-DAP The Hon. Dan A. Polster

[PROPOSED] PROTECTIVE ORDER

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all Protected material, as hereafter defined.

1. As used in this Protective Order, "Confidential" material shall refer to any document or portion thereof that contains privileged information, competitively sensitive

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information, or sensitive personal information that is not otherwise designated "Highly Confidential" material. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial information, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Competitively sensitive information" shall refer to, but is not limited to, trade secrets or other confidential research, development, commercial, and financial information, as such terms are used in Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and in the cases so construing that rule. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party.

2. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding. "Producing Party" shall mean any defendant or non-party to this matter, or in a Commission investigation or administrative proceeding.

3. "Highly Confidential" material shall refer to material that contains any of the following categories of competitively sensitive information that has not otherwise been disclosed: (1) specific cost, pricing, sales, revenue, or margin information relating to a Producing Party or a customer of a Producing Party; (2) specific current or future pricing plans; (3) specific information on capacity or plans for capacity expansion; (4) proprietary technology and know-how; or (5) current or future Strategies or Policies Related to Competition. "Strategies or Policies Related to Competition" means information relating to a company's approach to

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negotiating with specific customers, targeting specific customers, identifying or in any other manner attempting to win specific customers, retaining specific customers, or risk of loss of specific customers, including, but not limited to, all sales personnel call reports, market studies, forecasts, and surveys which contain such information."

4. "Protected" material shall refer to any information designated, in proper accordance with this Order, as "Confidential" or "Highly Confidential."

5. Any document or portion thereof submitted by a Defendant or a third party during an FTC investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any Confidential materials derived from a document subject to this Protective Order, shall be treated as Confidential material for purposes of this Protective Order. The identity of a third party submitting such Confidential material shall also be treated as Confidential material for the purposes of this Protective Order where the submitter has requested such confidential treatment. However, defense counsel shall be permitted to disclose the identity of a third-party submitter to an employee of a Defendant after first giving notice to counsel for the FTC that defense counsel intends to make such disclosure for the purpose of preparing the defense. If a Producing Party wishes to designate a document, or portion thereof, or category of documents previously submitted by it during a Commission investigation as Highly Confidential, it shall notify the parties in this matter within seven (7) business days of entry of this Order, specifying each such document, or portion thereof, or category of documents. During this notification period, such designated material previously submitted to the Commission shall be treated by the parties as Highly Confidential.

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6. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as Protected material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

7. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Protective Order so as to inform each third party of his, her, or its rights herein.

8. A designation of material as "Confidential" shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Confidential material as defined in Paragraph 1 of this Order.

9. A designation of material as "Highly Confidential" shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Highly Confidential material as defined in Paragraph 3 of this Order.

10. Material may be designated as "Confidential" by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or, if an entire folder or box of documents is confidential, by placing or affixing to that folder or box, a designation that identifies the document as being Confidential. Confidential information contained in electronic documents may also be designated as "Confidential" by placing a designation that identifies the information as Confidential on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged

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material, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

11. Material may be designated as "Highly Confidential" by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or, if an entire folder or box of documents is confidential, by placing or affixing to that folder or box, a designation that identifies the document as being Highly Confidential. Highly Confidential information contained in electronic documents may also be designated as "Highly Confidential" by placing a designation that identifies the information as Highly Confidential on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged material, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

12. Nothing in this Order precludes any submitter of Protected material from re-classifying its own material previously designated "Highly Confidential" as "Confidential" at any time.

13. If reasonably segregable material designated Highly Confidential appears in a document that is otherwise Confidential or non-protected, the Producing Party shall produce along with the Highly Confidential version of the document a separate document that visibly redacts the Highly Confidential material, noting the redaction, and the redacted document may be treated as Confidential or unprotected, respectively.

14. Confidential material shall be disclosed only to: (a) the Court presiding over this proceeding, personnel assisting the Court, the Plaintiff, Plaintiff's employees, and personnel retained by Plaintiff as experts or consultants for this proceeding; (b) judges and other court

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personnel of any court having jurisdiction of any appellate proceeding involving this matter; (c) outside counsel of record for any Defendant, their associated attorneys, and other employees of their law firm(s), provided they are not employees of a Defendant; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a Defendant and have signed an agreement to abide by the terms of this Protective Order; (e) any witness or deponent who may have authored or received the information in question; and (f) Defendant STERIS Corporation's employee identified on Exhibit A hereto, and his secretaries and paralegals. Defendant STERIS Corporation's employee identified on Exhibit A hereto and his secretaries and paralegals may only access Confidential material in person at the offices of their outside counsel, or using a secure electronic data room or document review platform using individual login identifications and passwords.

15. Highly Confidential material shall be disclosed only to: (a) the Court presiding over this proceeding, personnel assisting the Court, the Plaintiff, Plaintiff's employees, and personnel retained by Plaintiff as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction of any appellate proceeding involving this matter; (c) outside counsel of record for any Defendant, their associated attorneys, and other employees of their law firm(s), provided they are not employees of a Defendant; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a Defendant and have signed an agreement to abide by the terms of this Protective Order; and (e) any witness or deponent who may have authored or received the information in question. The parties shall promptly report any confirmed or suspected unauthorized use or disclosure of Protected material to the Court and to the other parties.

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16. Disclosure of Protected material to any person described in Paragraphs 14 and 15 of this Protective Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose Protected material as provided by its Rules of Practice, sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

17. In the event that any Protected material is contained in any pleading, motion, exhibit or other paper filed, or to be filed, with the Court, the Court shall be so informed by the party filing such papers, and such papers shall be filed under seal and/or *in camera* as appropriate. Protected material contained in the papers shall continue to have sealed and/or *in camera* treatment, provided, however, that such papers may be furnished to persons or entities who may receive Protected material pursuant to Paragraphs 14 or 15. Upon or after filing any paper containing Protected material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal Protected material. Further, if the protection for any such material expires or is waived, a party may file on the public record a duplicate copy which also contains the formerly Protected material.

18. Counsel for all parties to this action shall use their best efforts to avoid the need to disclose the contents of any Protected materials when questioning witnesses or making arguments during the hearing.

19. Where it is not possible to avoid disclosing the contents of Protected materials during witness examinations, counsel for all parties shall use their best efforts to consolidate their questioning regarding Protected materials to a single portion of their examination of that

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witness, such as at the beginning or end of the examination, and shall notify the Court and counsel for the other parties before proceeding with such questioning. For that portion of the witness examination, the Court shall close the courtroom to the public and any employee representatives of the Defendants who are not authorized to view the Protected material.

20. If Protected materials are used during the hearing by counsel for any party, such materials shall be displayed in Court in a manner that shows them only to the testifying witness, counsel, and the Court.

21. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of Protected material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of the receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Protective Order to challenge or appeal any order requiring production of Protected material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of Protected material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

22. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to

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counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda, or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, or shall certify to the submitters that such documents have been destroyed, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 C.F.R. § 4.12.

23. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Court, continue to be binding after the conclusion of this proceeding.

ISSUED this ___ day of _____, 2015, at _____ a.m./p.m.

ORDERED:

_____
United States District Judge

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Exhibit A

1. J. Adam Zangerle, Vice President, General Counsel, and Secretary, STERIS Corporation

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EXHIBIT F

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

The Valspar Corporation and
Valspar Sourcing, Inc.,

Plaintiffs,

vs. PROTECTIVE ORDER

Kronos Worldwide, Inc., and
Millennium Inorganic Chemicals, Inc.,

Defendants. Court File No. 13-3214 (RHK/LIB)

Upon consideration of the Stipulation of the parties [Docket No. 113] as modified by this Court in accordance with Fed. R. Civ. P. 26(c), it is --

HEREBY ORDERED that:

1. This Protective Order ("Order") shall apply to all documents, records, tangible materials and other information produced, served, or disclosed in this action from the inception of the case until its conclusion, including all appeals. Material designated as "Confidential" or "Attorneys Eyes Only" shall remain "Confidential" or "Attorneys Eyes Only" thereafter, and the Parties agree that the Court shall retain continuing jurisdiction during the balance of this action and after its conclusion to enforce this Order.

2. As used in this Order, these terms have the following meanings:

a. "Attorneys" means counsel of record;

b. "Attorneys Eyes Only" Information or Items means information that consists of or documents that contain:

(1) highly sensitive financial, sales, pricing, marketing and/or strategic business planning

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information for the period January, 2011 through the date of trial in this action, including, but not limited to, raw material pricing and supplier negotiations and communications, purchasing strategies, non-public customer communications, pricing, and information, non-public company financial information, forecasts, strategy or similar information; or

(2) paint formulas.

c. "Confidential" documents are documents designated pursuant to paragraph 3;

d. "Documents" are all materials produced in the course of discovery, all Answers to Interrogatories, all Answers to Requests for Admission, all Responses to Requests for Production of Documents, all deposition testimony and deposition exhibits, all expert reports and exhibits thereto, and filings and pleadings;

e. "Minnesota Action" means the above-captioned matter styled *The Valspar Corporation et al. v. Kronos Worldwide, Inc., et al.*, Case No. 13-3214 (RHK/LIB).

f. "Texas Action" means the case styled as *The Valspar Corporation et al. v. Huntsman International LLC*, Case No. 4:14-cv-01130, venued in the United States District Court for the Southern District of Texas.

g. "Delaware Action" means the case styled as *The Valspar Corporation et al. v. E. I. DuPont de Nemours*, Case No. 1:14-cv-00527, venued in the United Stated District Court for the District of Delaware.

h. "Outside Vendors" means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys;

i. "Related Action" means the Texas Action, the Delaware Action, and any subsequent cases or proceedings that the Parties agree should be treated as "Related Actions" for the purposes of this Protective Order.

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j. "Written Assurance" means an executed document in the form attached as **Exhibit A**.

3. A Party may designate a document "Confidential" to protect Documents that a Party or third party believes in good faith to contain confidential commercial, proprietary, financial or business information, trade secrets, private or personal information, or other confidential research, development, regulatory or commercial information which is, by its nature, confidential.

4. Documents shall be designated as "Confidential" by placing or affixing on the document, in a manner which shall not interfere with its legibility, the notation "CONFIDENTIAL." Documents bearing the notation "CONFIDENTIAL 13-3214 (RHK/LIB)" or similar notations are deemed notated as "CONFIDENTIAL" for the purposes of this Order. Electronic or native documents or data shall be similarly marked where practicable, and where not practicable, written notification by a producing party that it is producing Documents designated as "Confidential" shall suffice. Solely for the purposes of the efficient and timely production of documents, and to avoid the need for a detailed and expensive confidentiality examination of documents the disclosure of which is not likely to become an issue, a producing party may initially designate as "Confidential" any Document that is not publicly available.

5. All "Confidential" or "Attorneys Eyes Only" documents, along with the information contained in the documents, shall be used solely for the purpose of the Minnesota Action or any Related Action, and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media. No person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the

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documents or their contents to any person other than those specified in paragraph 6 and 7. Any other use or communication is prohibited.

6. Access to any "Confidential" document shall be limited to:

a. outside counsel, including any attorney of a law firm designated as attorneys of record in the Minnesota Action, as well as paralegals, secretaries, and clerical staff working with such attorneys, and Outside Vendors providing services to such attorneys, such as copying services;

b. in-house litigation attorneys and paralegals for any Party;

c. independent (i.e., non-employee) persons retained by a Party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense or settlement of this action, such as independent experts, consultants, investigators, mock jurors, focus groups, or consultants, but only in accordance with the provisions of paragraph 10 hereof;

d. the Court, the Court's staff attorney(s), and judicial assistants of the Court;

e. court reporters and videographers;

f. any person identified within a specific document, including the author, addressee, or recipient of the document, or any other person who has or would have had access to the information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or director, such person must agree to be bound by the terms of this Order;

g. any former employee of a party may see documents produced by his or her former employer.

h. Two employees of a party required in good faith to provide material assistance in the conduct of the litigation of the Minnesota Action or a Related Action. Each party will provide advance notice to all parties of the identity of those employees. If a producing party objects, the employees at issue may not view that producing party's

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"Confidential" information, provided that the designating party may seek relief from the Court following a good faith meet and confer effort with the producing party to resolve the objection. In the event that any party desires to designate additional employees to provide material assistance in the conduct of the litigation of the Minnesota Action or a Related Action, the parties shall meet and confer regarding the designation of additional employees. If, following a good faith meet and confer effort, the parties cannot agree that additional employees may be designated, the requesting party may seek a subsequent order of this Court;

i. any other person designated by written agreement between the Parties or by subsequent order of this Court after reasonable notice to all Parties.

7. Access to any "Attorneys Eyes Only" document shall be limited to:

a. outside counsel, including any attorney of a law firm designated as attorneys of record in the Minnesota Action, as well as paralegals, secretaries and clerical staff working with such attorneys, and Outside Vendors providing services to such attorneys, such as copying services;

b. in-house litigation attorneys and paralegals for the parties;

c. independent (i.e., non-employee) persons retained by a Party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense or settlement of this action, such as independent experts, consultants, investigators, mock jurors, focus groups, or consultants, but only in accordance with the provisions of paragraph 10 hereof;

d. the Court, the Court's staff attorney(s), and judicial assistants of the Court;

e. court reporters and videographers;

f. any person identified within a specific document, including the author, addressee, or recipient of the document, or any other person who has or would have had access to the information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or

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director, such person must agree to be bound by the terms of this Order;

g. any former employee of a party may see documents produced by his or her former employer;

h. any other person designated by written agreement between the Parties or by subsequent order of this Court after reasonable notice to all Parties.

8. Third parties producing documents in the course of this action may also designate documents as "Confidential," or "Attorneys Eyes Only," subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as "Confidential" or "Attorneys Eyes Only" for a period of fourteen (14) business days from the date of their production, and during that period any party may designate such documents as "Confidential" or "Attorneys Eyes Only" pursuant to the terms of the Protective Order.

9. A Party that has previously produced information to another party in connection with this action may designate such information as "Confidential." Such designation shall be made within fourteen (14) business days of the entry of this Order, and in the meantime, Parties shall treat all material as designated. The previous disclosure of materials not previously designated as "Confidential" shall not be actionable, provided that no additional disclosure of those materials occurs in violation of this Order.

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10. Each person appropriately designated pursuant to paragraphs 6(c), (f), (g), (h), or (i) and/or paragraphs 7(c), (f), (g), or (h) to receive "Confidential" or "Attorneys Eyes Only" information shall execute a "Written Assurance" in the form attached as **Exhibit A**.

11. All depositions or portions of depositions taken in this action that contain Confidential or Attorneys Eyes Only information may be designated "Confidential" or "Attorneys Eyes Only" and thereby obtain the protections accorded other "Confidential" or "Attorneys Eyes Only" documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within fourteen (14) business days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as "Confidential" or "Attorneys Eyes Only" during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses "Confidential" or "Attorneys Eyes Only" information shall be taken only in the presence of persons who are qualified to have access to such information. To the extent a party believes it is reasonably necessary for a noticed deponent or a person designated pursuant to Fed. R. Civ. P. 30(b)(6) to review documents or information marked "Confidential" to which that witness would not otherwise be permitted access in accordance with this Order in order to prepare testimony in connection with the Minnesota Action, the requesting party shall give notice to all parties 14 business days in advance of disclosure of the Confidential information and the name of the witness to whom the disclosure is sought to be made. The producing party has seven (7) business days in which to object in writing to the request. Absent objection, and upon execution by the witness of Exhibit A, the witness may review the "Confidential" documents and information identified in the notice for the limited purpose of

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preparing testimony for deposition. If the producing party objects to the disclosure, the parties shall meet and confer regarding the request for disclosure. If, following a good faith meet and confer effort, the parties cannot agree, the requesting party may seek a subsequent order of this Court.

12. Any party who inadvertently fails to identify documents as "Confidential" or "Attorneys Eyes Only" shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

13. Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" under this Order, shall not be copied or otherwise reproduced except to the extent such copying or reproduction is reasonably necessary for permitted uses in the Minnesota Action or Related Actions. The protections conferred by this Order cover not only Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only," but also any information copied or extracted there from, as well as all copies, excerpts, summaries, or compilations thereof (hereinafter referred to collectively as "copies"), testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal the contents of Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only." However, reports of statistical experts that rely upon data that has been designated as "Confidential" or "Attorneys Eyes Only," but that do not reveal an individual party's data, are not deemed to contain "Confidential" or "Attorneys Eyes Only" information if aggregated with two or

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more other parties' data. All copies of documents or information designated as "Confidential" or "Attorneys Eyes Only" under this Order or any portion thereof, shall be affixed with the notation "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" if that notation does not already appear.

14. No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by this Order unless the party claiming a need for greater protection first makes a formal motion and establishes good cause for an Order providing such greater protections pursuant to Fed. R. Civ. P. 26(c).

15. If a party files documents with the Court containing information designated as protected pursuant to the terms of this Order, the filings must be in compliance with the Electronic Case Filing Procedures for the District of Minnesota. The parties are advised that designation by a party of a document as protected pursuant to the terms of this Order cannot be used as the sole basis for filing the document under seal in connection with either trial or a nondispositive, dispositive, or trial related motion. Only those documents and portions of a party's submission, or any part thereof, which otherwise meets requirements for protection from public filing (including, but not limited to, a statute, rule or regulation prohibiting public disclosure, or protection under the attorney-client privilege or work product doctrine, or the standards for protection set forth in Fed. R. Civ. P. 26(c)), as first determined by the Court upon motion and a showing of good cause, shall be filed under seal. If a party intends to file with the Court a document designated by another party as protected pursuant to the terms of this Order, then that filing party shall provide reasonable advance notice to the designating party of such intent so that the designating party may determine whether or not they should bring a motion before the Court which seeks to require the protected

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documents to be filed under seal. Any party which seeks to assert that a document should be filed with the Court under seal shall have the burden of demonstrating that the document should be filed under seal.

16. Any party may challenge the designation of any information designated "Confidential" or "Attorneys Eyes Only." The challenging party shall identify in writing and with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to easily locate such materials) the document(s) for which it seeks to challenge the "Confidential" or "Attorneys Eyes Only" designation. A designation challenge will trigger an obligation on the part of the producing party to make a good faith determination of whether the designation is justified. Except in the case of a designation challenge for more than 20 documents or more than 25 pages of deposition testimony, within ten (10) business days the producing party shall respond in writing to the designation challenge either agreeing to de-designate the "Confidential" or "Attorneys Eyes Only" document at issue or provide the challenging party an explanation for the designation. If a designation challenge entails more than 20 documents or more than 25 pages of deposition testimony, the challenging party and the producing party shall meet and confer, in good faith, to establish a reasonable timeframe for designation and response.

If the challenging party disagrees with a producing party's designation of material as "Confidential" or "Attorneys Eyes Only" following a designation challenge, it may move the Court for relief from the Protective Order as to the contested designation(s), providing notice to any third party whose designation of produced documents as "Confidential" or "Attorneys Eyes Only" in the action may be affected. The party asserting that the material is "Confidential" or "Attorneys Eyes

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Only" shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c). No presumption or weight will attach to the initial designation of a document as "Confidential" or "Attorneys Eyes Only."

Pending a ruling, the challenged material shall continue to be treated as "Confidential" or "Attorneys Eyes Only" under the terms of this Protective Order. With respect to material the parties agree is not "Confidential" or "Attorneys Eyes Only" or which the Court orders not to be treated as "Confidential" or "Attorneys Eyes Only" within ten (10) business days of such agreement or order, the producing party shall produce a new version with the confidentiality notation redacted.

Nothing in this Protective Order shall be deemed to prevent a producing party from arguing during the determination process for limits on the use or manner of dissemination of material that is found to no longer to be "Confidential" or "Attorneys Eyes Only."

A Party shall not be obligated to challenge the propriety of a designation by another party of material as "Confidential" or "Attorneys Eyes Only" at the time such designation is made, and a failure to make any such challenge shall not preclude a subsequent challenge by such Party to such designation.

17. Within sixty (60) days of the termination of this action in its entirety, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential" or "Attorneys Eyes Only," and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. Notwithstanding this provision, Attorneys are entitled to retain an archival copy of all pleadings, motion papers,

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transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain "Confidential" information. Any such archival copies that contain or constitute Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" remain subject to this Order.

18. Any party may apply to the Court for a modification of the Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

19. The stipulation to the terms of this Protective Order or any action taken in accordance with the Protective Order shall not be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

20. Nothing in this Order shall require disclosure of any document that a Party contends are protected from disclosure by the attorney-client privilege, joint defense privilege, work-product doctrine, or any other legally recognized privilege ("Privileged Document"). The inadvertent production of any Privileged Document shall be without prejudice to any claim that such material is privileged under the attorney-client privilege, joint defense privilege, work-product doctrine or any other legally recognized privilege, and no Party shall be held to have waived any rights by such inadvertent production. Any Privileged Document that the producing party deems to have been inadvertently disclosed shall be, upon written request, returned to the producing party within five (5) business days, or destroyed, at that party's option. If the producing party demands that the inadvertently disclosed Privileged Document also be destroyed from the original media in which it was produced, the producing party will provide duplicate media not containing the inadvertently

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disclosed Privileged Document and a revised privilege log within seven (7) business days of return or notice of destruction. If the claim that the material qualifies as Privileged Document is disputed, the party disputing the assertion may maintain a single copy of the materials pending a judicial determination of the matter pursuant to Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502.

21. Nothing shall prevent disclosure beyond the terms of this Order if the Party designating the material as "Confidential" or "Attorneys Eyes Only" consents in writing to such disclosure or if this Court, after notice to all affected parties, orders such disclosure.

22. If any person receiving documents covered by this Order: (a) is subpoenaed in another action or proceeding; (b) is served with a demand in another action or proceeding to which the person or entity is a party or is otherwise involved; (c) received an open records or public information request; or (d) is served with any other process by one not a party to this litigation, which seeks material designated as "Confidential" or "Attorneys Eyes Only" by someone other than the receiving party, then the receiving party shall give actual written notice within five (5) business days of receipt of such subpoena, demand or process, to those who designated the material "Confidential" or "Attorneys Eyes Only." The receiving party shall not produce any of the "Confidential" or "Attorneys Eyes Only" information for a period of at least fourteen (14) business days, or within such lesser time period as set forth in the subpoena, demand or process or as ordered by a court (the "Response Period"), after providing the required notice to the designating party. If, within the Response Period, the designating party gives notice to the receiving party that the designating party opposes production, the receiving party shall not thereafter produce such information except pursuant to a court order requiring compliance with the subpoena, demand or

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other process. The designating party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the receiving party or anyone else covered by this Order to appeal any order requiring production of "Confidential" or "Attorneys Eyes Only" information covered by this Order, or to subject himself, herself, or itself to any penalties for non compliance with any legal process order or to seek any relief from the Court.

23. In the event that any Party is served with a court order, and/or administrative or regulatory order to compel production or disclosure of any documents, materials, papers, or things that have been designated "Confidential" or "Attorneys Eyes Only," that Party shall notify, in writing, counsel of record for the other Parties to this Order within five (5) business days of the receipt of such process or order.

24. Nothing contained herein shall prevent any party from using "Confidential" or "Attorneys Eyes Only" information for a trial in this Action. The Parties agree to meet and confer prior to the filing of final exhibit lists to evaluate which of the proposed exhibits require confidential treatment for purposes of trial, if any. The confidentiality notation may be redacted by the producing party prior to trial for any use of the material at trial by any party. The parties further agree to meet and confer with any third party whose documents will or may be used at trial concerning their appropriate treatment and to afford such third parties sufficient advance notice of any such use such that they can move to have the materials received under seal. Should any material furnished by a third party and received under seal be the subject of a motion to unseal, the parties shall give sufficient notice to the third party so that it may oppose the motion.

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25. The parties agree that any disclosure of "Confidential" or "Attorneys Eyes Only" information contrary to the terms of this Order by a party or anyone acting on its, his or her behalf constitutes a violation of the Order remediable by this Court, regardless of where the disclosure occurs.

26. Any subsequent party to the litigation will be bound by this Order.

27. The obligations imposed by the Protective Order shall survive the termination of this action.

BY THE COURT:

DATED: July 7, 2014

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of Minnesota on _____ in the case of *THE VALSPAR CORPORATION, et al., v. KRONOS WORLDWIDE, INC., et al.*, Case No. 13-3214 (RHK/LIB). I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I acknowledge that I am to retain all copies of any of the materials that I receive that have been designated as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" in a matter consistent with this Order, and that all such copies are to be returned or destroyed as specified in this Order on the termination of this litigation or the completion of my dues in connection with this litigation.

I have provided in the form below either (i) my current home address and phone number, or (ii) in lieu of providing my address and phone number, I hereby appoint

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_____ [print or type full name] as my Minnesota agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date: _____, 2014

City and State where sworn and signed: _____

Printed name: _____
[print name]

Signature: _____
[signature]

Signatory's or appointed agent's address:

_____

_____

_____

Signatory's or appointed agent's phone number: _____

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EXHIBIT G

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

IN RE TITANIUM DIOXIDE ANTITRUST LITIGATION	Master Docket No. 10-CV-00318 (RDB)
THIS DOCUMENT RELATES TO: ALL ACTIONS	

STIPULATED
PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DISCOVERY MATERIAL AND INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL
(Local Rule 104.13)

WHEREAS, Plaintiffs Haley Paint Company and Isaac Industries, Inc. on behalf of themselves and all others similarly situated, and Defendants E.I. DuPont de Nemours and Company, Huntsman International LLC, Kronos Worldwide, Inc., and Millennium Inorganic Chemicals Inc. are parties in the above-styled action (the "Action");

WHEREAS, the preparation for trial of the Action may require the discovery and use of documents and other information which constitute or contain commercial or technical trade secrets, or other confidential information the disclosure of which would be competitively harmful to the producing party;

WHEREAS, the parties anticipate that the Action will involve the production of a significant volume of documents among and between actual and potential competitors and their customers;

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WHEREAS, a number of third parties will or may become the subject of document and deposition discovery in these actions; and

WHEREAS, the parties and their counsel agree that their interests, the interests of the customers of the corporate parties and of other third parties that may be requested to provide discovery, and the public interest can be accommodated by a stipulation and order facilitating a timely production and appropriately limiting the use and dissemination of proprietary and competitively sensitive non-public discovery information entitled to confidential treatment.

Accordingly, it is this 21st day of September, 2011, by the United States District Court for the District of Maryland, **ORDERED**:

1. Use of Discovery Material. All documents produced in the course of discovery, all Answers to Interrogatories, all Answers to Requests for Admission, all Responses to Requests for Production of Documents, and all deposition testimony and deposition exhibits (hereinafter "Discovery Material") shall be subject to this Order, including, without limitation, its provisions concerning Confidential Information, as set forth below. Discovery Material designated as Confidential Information under this Order shall be used solely for purposes of the Action in accordance with this Order, and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media.

2. Confidential Information. "Confidential Information" shall mean sensitive personal information, trade secrets or other current confidential research, development, or commercial information which is in fact confidential.

3. Designation of Discovery Materials as Confidential Information.

a) The designation of Discovery Material as Confidential Information shall be made by placing or affixing on the document, in a manner which will not interfere with its

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legibility, the notation "CONFIDENTIAL – 1:10-cv-00318-RDB." By agreeing to this Order, no party waives the right to challenge any other party's designation. Electronic or native documents or data shall be similarly marked where practicable, and where not practicable, written notification by a producing party that it is producing Discovery Material as Confidential Information shall suffice. Solely for the purposes of the efficient and timely production of documents, and to avoid the need for a detailed and expensive confidentiality examination of documents the disclosure of which is not likely to become an issue, a producing party may initially designate as Confidential Information any Discovery Material that is not publicly available. This designation shall control unless and until a challenge is made by a receiving party under Paragraph 6.

b) Portions of depositions of a party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed confidential only if they are designated as such when the deposition is taken or within seven (7) business days after receipt of the transcript. Any testimony which describes a document which has been designated as Confidential Information as described above shall also be deemed to be designated as Confidential Information.

c) If it comes to a party's attention that information or items that it designated as Confidential Information under this Order do not qualify for that protection, that party must promptly notify all other parties that it is withdrawing the mistaken designation.

d) The parties and counsel for the parties in this Action shall not disclose or permit the disclosure of Confidential Information under this Order to any person or entity, except that,solel y for purposes of this Action, disclosures may be made in the following circumstances:

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i. Disclosure may be made to outside counsel and employees of outside counsel for the parties who have direct functional responsibility for the preparation and trial of the Action.

ii. Disclosure may be made to the Court and its personnel.

iii. Disclosure may be made to Court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary. Prior to disclosure to any such court reporter, staff, or professional vendor, such person must agree to be bound by the terms of this Order.

iv. Disclosure may be made to consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the Action. Prior to disclosure to any expert, the expert must be informed of and agree in writing to be subject to the provisions of this Order by executing a copy of Exhibit A. Further, any expert receiving Confidential Information shall:

(A) Maintain such Confidential Information in a manner calculated to prevent its public disclosure;

(B) Return such Confidential Information to counsel for the party that retained such expert within ninety (90) days of the conclusion of the expert's assignment or retention, but in no event shall the expert retain documents beyond the period set out in Paragraph 9 herein;

(C) Not disclose such Confidential Information to anyone, or use such Confidential Information, except as permitted by the Protective Order;

(D) Submit to the jurisdiction of this Court for purposes of enforcing the Protective Order; and

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(E) Use such Confidential Information and the information contained therein solely for the purpose of rendering consulting services to a party to this Action, including providing testimony in this Action.

v. Disclosure may be made to in-house litigation counsel.

vi. Disclosure may be made to one employee of a party required in good faith to provide material assistance in the conduct of the litigation of the Action. Each party will provide advance notice to all parties of that employee's identity. If a producing party objects, the employee at issue may not view that producing party's Confidential Information, provided that the designating party may seek relief from the Court following a good faith meet and confer effort with the producing party to resolve the objection.

vii. Disclosure may be made to any person identified within a specific document, including the author, addressee, or recipient of the document, or any other person who would have had access to the information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or director, such person must agree to be bound by the terms of this Order.

viii. Disclosure of a producing party's document may be made to (a) current employees of that producing party, and (b) former employees of that producing party, so long as the former employee is not a current employee of another party or a competitor, but may not be made to other persons, unless one or more of the foregoing paragraphs permit disclosure to the person. If such person is not the

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producing party's current employee, such person must agree to be bound by the terms of this Order.

ix. Disclosure may be made to any other person as the parties may agree to in writing or as the Court may order.

e) Except as provided in subparagraph 3(d) above, counsel for the parties shall keep all Discovery Material, including, without limitation, documents designated as Confidential Information under this Order, secure within their exclusive possession and shall take reasonable efforts to place such documents in a secure area.

f) Discovery Material, including, without limitation, Confidential Information under this Order, shall not be copied or otherwise reproduced except to the extent such copying or reproduction is reasonably necessary for permitted uses in this Action. The protections conferred by this Order cover not only Discovery Material, including, without limitation, Confidential Information, but also any information copied or extracted there from, as well as all copies, excerpts, summaries, or compilations thereof (hereinafter referred to collectively as "copies"), plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Discovery Material, including, without limitation, Confidential Information. However, reports of statistical experts that rely upon data that has been designated as Confidential Information, but that do not reveal an individual party's data, are not deemed to contain Confidential Information if aggregated with two or more other parties' data. All copies of documents or information designated as Confidential under this Order or any portion thereof, shall be immediately affixed with the notation "CONFIDENTIAL – 1:10-cv-00318-RDB" if that notation does not already appear.

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4. Confidential Information Filed with Court.

a) To the extent that any Confidential Information (or any pleading, motion or memorandum disclosing Confidential Information) are proposed to be filed or are filed with the Court, those materials and papers, or any portion thereof which discloses Confidential Information, shall be filed under seal (by the filing party) with the Clerk of the Court in an envelope marked "SEALED PURSUANT TO ORDER OF COURT DATED _____," together with a simultaneous motion pursuant to L.R. 105.11 (hereinafter the "Interim Sealing Motion"). If the Confidential Information was that of someone other than that filing party, the filing party shall serve copies of the Interim Sealing Motion on that designating party, and within seven (7) days thereafter, the designating party may either withdraw the designation of confidentiality or file a L.R. 105.11 motion with the Court. If the designating party does not file its L.R. 105.11 motion, the document or proposed filing will be made part of the public record. The filing party shall have seven (7) days to respond to a L.R. 105.11 motion filed by the designating party.

b) The obligation to file an Interim Sealing Motion shall be wholly without prejudice to the filing party's rights under Paragraph 6 of this Protective Order.

5. Party Seeking Greater Protection Must Obtain Further Order. No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by this Order unless the party claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c).

6. Challenging Designation of Confidentiality. Should a party wish to challenge a designation of Discovery Material as Confidential Information, the following procedure shall apply:

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a) Designation Challenges. The challenging party shall identify in writing and with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to easily locate such materials) the Discovery Material for which it seeks to challenge the Confidential Information designation. A designation challenge will trigger an obligation on the part of the producing party to make a good faith determination of whether the designation is justified. Except in the case of a designation challenge for more than 20 documents or more than 25 pages of deposition testimony, within ten (10) days the producing party shall respond in writing to the designation challenge either agreeing to de-designate the Discovery Material at issue or provide the challenging party an explanation for the designation. If a designation challenge entails more than 20 documents or more than 25 pages of deposition testimony, the challenging party and the producing party shall meet and confer, in good faith, to establish a reasonable timeframe for designation and response.

b) Court Determination. If the challenging party disagrees with a producing party's designation of material as Confidential Information, following a designation challenge, it may move the Court for relief from the Protective Order as to the contested designation(s).

c) As required by Local Rule 104.13, the producing party bears the burden to demonstrate that the designation(s) are justified under Fed. R. Civ. P. 26(c). No presumption or weight will attach to the initial designation of Discovery Material as Confidential Information.

d) Pending a ruling, the Discovery Material shall continue to be treated as Confidential Information under the terms of this Protective Order.

e) With respect to Discovery Material the parties agree does not constitute Confidential Information, or which the Court orders not to be treated as Confidential

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Information, within ten (10) days of such agreement or order, the producing party shall produce a new version with the confidentiality notation redacted.

f) Nothing in this Protective Order shall be deemed to prevent a producing party from arguing during the determination process for limits on the use or manner of dissemination of Discovery Material that is found to no longer constitute Confidential Information.

7. Third Party Discovery. To the extent that any party seeks discovery from a person or entity who is not a party to this Action, and in the event such third party or any of the parties hereto contend the Discovery Material sought from the third party by a requesting party involves Confidential Information, then such third party will agree to be bound by this Order and to produce documents in compliance with this Order, and to so notify all parties to this litigation in writing. In the event such third party agrees to be bound by this Order, then the provisions of this Order are to apply to that third party.

8. Trial Materials. Nothing contained herein shall prevent any party from using Confidential Information for a trial in this Action. The Parties agree to meet and confer prior to the filing of final exhibit lists to evaluate which of the proposed exhibits require confidential treatment for purposes of trial, if any. The confidentiality notation may be redacted by the producing party prior to trial for any use of the material at trial by any party. The parties further agree to meet and confer with any third party whose documents will or may be used at trial concerning their appropriate treatment and to afford such third parties sufficient advance notice of any such use such that they can move to have the materials received under seal. Should any material furnished by a third party and received under seal be the subject of a motion to unseal, the parties shall give sufficient notice to the third party so that it may oppose the motion.

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9. Return of Discovery Material at Conclusion of Litigation. Within one hundred twenty (120) days of the conclusion of the Action, all material designated as Confidential Information under this Order and not received in evidence shall be returned to the originating party. If the parties so stipulate, the material may be destroyed instead of being returned. The Clerk of the Court may return to counsel for the parties, or destroy, any sealed Confidential Information at the end of the litigation, including any appeals. Pursuant to Local Rule 113.3, within thirty (30) days of the final termination of the Action, counsel may request the return of any sealed materials other than trial and hearing exhibits or request that the materials be unsealed. If counsel fails to request the return or unsealing of any sealed Confidential Information, the Court may direct the return, destruction, or other disposition of the materials. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain Confidential Information. Any such archival copies that contain or constitute Discovery Material, including, without limitation, Confidential Information, remain subject to this Order.

10. Non-waiver of Privilege for Inadvertently Disclosed Materials. The Parties acknowledge the intent and desire to avoid inadvertent production of materials protected by the attorney-client privilege, work product protection and potentially other protections recognized under state, federal or international law (hereinafter "Protected Information"). Pursuant to Fed. R. Evid. 502(d), the inadvertent disclosure of any material that qualifies as Protected Information not waive the protection or the privilege for either that material or for the subject matter of that material.

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11. Return of Inadvertently Disclosed Protected Information. Any Protected Information that the producing party deems to have been inadvertently disclosed shall be, upon written request, returned to the producing party within five (5) days, or destroyed, at that party's option. If the producing party demands that the inadvertently disclosed Protected Information also be destroyed from the original media in which it was produced, the producing party will provide duplicate media not containing the inadvertently disclosed Protected Information and a revised privilege log within seven (7) days of return or notice of destruction. If the claim that the material qualifies as Protected Information is disputed, the party disputing the assertion may maintain a single copy of the materials pending a judicial determination of the matter pursuant to Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502.

12. Requests for Discovery Material, including, without limitation, Confidential Information,b y Other Entities. If another court, any U.S., state or foreign governmental agency, or any other non-party should request, subpoena, or order the production of Discovery Material, including, without limitation, Confidential Information, that has been produced by any party or third party and is subject to this Order, the party receiving such a request shall promptly notify the producing party. Should the producing party object to the release of Confidential Information, it may seek appropriate relief from the appropriate court or agency, and pending such a request, if necessary, seek the entry of an appropriate stay order, and the party receiving the request shall not disclose the material in dispute so long as it may lawfully refuse.

14. Remedies for Non-Compliance. The parties agree that any disclosure of Confidential Information contrary to the terms of this Order by a party or anyone acting on its, his or her behalf constitutes a violation of the Order remediable by this Court, regardless of where the Disclosure occurs.

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15. Application to Subsequent Parties. Any subsequent party to the litigation will be bound by this Order.

Dated: September 21, 2011

GOLD BENNETT CERA & SIDENER LLP

/s/ Solomon B. Cera

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Dated: September 21, 2011

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Dated: September 21, 2011

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PUBLIC

Dated: September 21, 2011

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IT IS SO ORDERED.

Richard D. Bennett
United States District Judge

September 21, 2011

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CERTIFICATE OF SERVICE

I hereby certify that, on the 21st day if September, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The Court or the CM/ECF system will send notification of such filings to all CM/ECF participants. I further certify that a true and correct copy of this document was sent via U.S. first-class mail, postage paid, to all non-CM/ECF participants.

/s/ Robert B. Levin
Robert B. Levin

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EXHIBIT A

CERTIFICATION AND CONFIDENTIALITY AGREEMENT

I, _____, certify and declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court of Maryland (Northern Division) on _____ in the case of *In re Titanium Dioxide Antitrust Litigation*, Master Docket No. 10-CV-00318 (RDB). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court of Maryland for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I acknowledge that I am to retain all copies of any of the materials that I receive that have been designated as "CONFIDENTIAL" in a manner consistent with this Order, and that all such copies are to be returned or destroyed as specified in this Order on the termination of this litigation or the completion of my duties in connection with this litigation.

_____	_____
Date	Signature
_____	_____
City and State where sworn and signed	Printed Name
	_____
	Address
	_____
	Phone Number

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EXHIBIT H

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al., **Plaintiffs,** **v.** **ANTHEM, INC., et al.,** **Defendants.**	**Civil Action No. 16-1493 (JDB)**
UNITED STATES OF AMERICA, et al., **Plaintiffs,** **v.** **AETNA INC., et al.,** **Defendants.**	**Civil Action No. 16-1494 (JDB)**

ORDER

In these cases, the United States seeks to enjoin two mergers in the health insurance industry: one between Anthem and Cigna, and another between Aetna and Humana. Believing that the cases involved common issues of fact, the government filed them as "related cases." Both cases were then assigned to this judge. Late last week, the Court requested written submissions from the parties explaining their views on the relationship of the cases, the timing of proceedings, and the extent to which the proceedings in both cases should be conducted jointly. On August 4, 2016, the Court held a joint status conference to discuss these issues. After hearing from all parties both in writing and orally, the Court has decided to refer the Anthem-Cigna case (No. 16-1493) back to the calendar committee for random reassignment to a new judge.

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As a starting point, all the parties agree that the two cases should be tried separately. The parties disagree, however, about the proper timing of those trials. The various defendants urge extreme expedition, based in part on the contractual deadlines in their merger agreements. The Anthem-Cigna merger can be terminated by either party on April 30, 2017, if it has not yet been consummated. Anthem contends that it needs a decision in its case by the end of 2016, so that it will have four months to secure some outstanding approvals from state insurance regulators.[1] Aetna and Humana, in turn, argue that their case is even more time-sensitive because their contractual deadline arrives four months earlier, on December 31, 2016. Based on their deadlines, Anthem and Aetna both request trial dates in the fall of 2016. The government resists this degree of expedition, arguing that more time is necessary to prepare these cases for trial and that defendants' self-imposed deadlines should not drive the timing of the proceedings. The government suggests setting both cases for trial commencing in mid-February 2017, then trying them successively.

While the Court declines to embrace the specifics of defendants' scheduling proposals, it acknowledges their need for expedition and is inclined to accommodate their contractual deadlines to the extent reasonable. But doing so would require a decision on the merits in Aetna's case before the year's end and another in Anthem's case not long thereafter. Given the complexity and importance of these cases, the Court cannot feasibly try and decide both in that timeframe. Ultimately, it will be fairer to the parties and better for the public if one of the cases is randomly reassigned to another judge in this district, who can give it prompt and full attention while this judge does the same with the other.

[1] Based on the information provided to this Court to date, the allocation of four months for a few state insurance approvals after a trial and court approval of the merger seems excessive given all the circumstances.

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In the Court's view, Anthem's case is the better candidate for reassignment. If both mergers' contractual deadlines are given equal consideration, it is apparent that Aetna's case must proceed on the shorter timeline. That counsels in favor of this judge retaining the Aetna matter—both in order to avoid further delay and out of consideration for the transferee judge. Anthem urges the Court to retain its case instead, on the ground that it was filed first and randomly assigned here. But these considerations are not dispositive. According to the government, Anthem's case was filed first (and hence given the lower case number) as a result of pure happenstance.[2] And just as the initial assignment of Anthem's case was random, its re-assignment will be as well.

Decoupling these cases and sending one back to the calendar committee for reassignment is also consistent with the court's Local Rules. Under Local Rule 40.5(a)(3), civil cases are related if they "involve common issues of fact." But as all parties agree, these cases are quite different: they involve different parties, different product and geographic markets, and raise very different factual issues. That is not to say there is no overlap between the cases. For example, the parties in both cases may seek discovery from some of the same third parties. Such limited commonalities, however, do not make these cases "related" under Local Rule 40.5 because any common issues are dwarfed by divergent ones. Further, any risk of duplicative discovery can be accommodated through the discovery process, even if the same judge is not presiding over both cases. To that end, the Court thinks it advisable to appoint a Special Master to facilitate efficient discovery in these cases. All the parties, this judge, and presumably the judge to whom Anthem's case is reassigned can coordinate their efforts in selecting the Special Master and getting discovery underway. The parties to the Aetna case are thus directed to submit their recommendations, if any, regarding the appointment of a Special Master by not later than 5:00 p.m. on August 8, 2016.

[2] Indeed, the Aetna-Humana merger was actually entered, and notice provided to the Antitrust Division, well before the Anthem-Cigna merger.

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Since each case may be impacted, the Court will accept any recommendation from Anthem and Cigna as well.

SO ORDERED.

/s/
JOHN D. BATES
United States District Judge

Dated: August 5, 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 of January 2018, that I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filings to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
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I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via electronic mail:

The Honorable D. Michael Chappell
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Dated: January 19, 2018

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CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: January 19, 2018

/s/ Albert Teng
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