

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:21-md-3015-SINGHAL/Valle

IN RE:

MDL CASE NO.: 3015

JOHNSON & JOHNSON AEROSOL SUNSCREEN  
MARKETING, SALES PRACTICES AND  
PRODUCTS LIABILITY LITIGATION

Order No. 19

\_\_\_\_\_/

THIS DOCUMENT RELATES TO: ALL CASES

\_\_\_\_\_

**CORRECTED STIPULATED PROTECTIVE ORDER**

**THIS CAUSE** is before the Court on the parties' Joint Motion for Court Approval of Stipulated Protective Order (DE [69]), filed April 14, 2022, by Plaintiffs and Defendants, who, by and through their undersigned counsel, hereby stipulate as follows:<sup>1</sup>

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

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<sup>1</sup> The document is accepted and approved as provided by counsel with only minor style edits.

## 2. **DEFINITIONS**

2.1 **Challenging Party**: a Party that challenges the designation of information or items under this Order.

2.2 **“CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” Information or Items**: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 **Designating Party**: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.”

2.5 **Disclosure or Discovery Material**: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 **Expert**: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 **House Counsel**: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 **Non-Party**: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Plaintiffs: persons who are named plaintiffs to this action.

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### **3. SCOPE**

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their

Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

#### **4. DURATION**

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

#### **5. DESIGNATING PROTECTED MATERIAL**

5.1 Designation of Protected Material. A Designating Party may designate as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” any documents or information produced in this action that the Designating Party’s Counsel reasonably and in good faith believes to qualify for protection under Federal Rule of Civil Procedure 26(c).

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings and documents produced in “native” format), that the Producing Party affix the legend “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” legend to each page that contains Protected Material. If only a portion or portions of the material on

a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for documents produced in “native” format (“Native-Format Documents”), a Producing Party may designate the Native-Format Document as Protected Material by placing a stamp or marking on an associated slip sheet stating the following: “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” and by renaming the Native-Format Document to include, at the end of the file name and prior to the file extension, the following language: “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.” Native-Format Documents may have to be copied or duplicated for use in a litigation-support review application. Any such copy or duplicate shall retain the full file name as originally produced. For use outside a litigation-support review application, the Receiving Party may make copies of native-format copies or duplicates of a Native-Format Document solely (a) for use by Experts or Counsel, or (b) for use as exhibits. Any such copy or duplicate shall retain the full file name as originally produced. All other copies or duplicates of Confidential Native-Format Documents (e.g., TIFF-image, PDF, hardcopy) and all extracts, summaries, or descriptions of Confidential Native-Format Documents shall contain a stamp or marking on each page of the Document stating “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.” Such markings shall not obscure, alter, or interfere with the legibility of the original document.

(c) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition,

hearing, or other proceeding, all protected testimony. Alternatively, the Designating Party may, within twenty-one (21) days after receipt of a final transcript, identify the specific portions of testimony as to which protection is sought by notifying the court reporter and all Parties, in writing. A Designating Party may specify, at the deposition or up to twenty-one (21) days after receipt of a final transcript if that period is properly invoked, that the entire transcript shall be Protected Material. Prior to expiration of the 21-day period, the Receiving Party shall treat all testimony as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.”

(d) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

5.4 Inadvertent Designation. If it comes to a Designating Party’s attention that information or items that it designated as “CONFIDENTIAL, SUBJECT TO PROTECTIVE

ORDER” do not qualify for protection under this Protective Order, the Designating Party shall promptly notify all other Parties that it is withdrawing the mistaken designation.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. 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 circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party may file a motion to retain a confidentiality designation



within 21 days of the initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer process will not resolve their dispute, whichever is later. Absent good cause or prior agreement by the Designating and Challenging Parties, failure of the Designating Party to move to retain confidentiality within the time frame set forth above shall waive the confidentiality designation(s) in dispute. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. All parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (13. FINAL DISPOSITION).

Protected Material must be stored and maintained at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER"

Information or Items. Unless otherwise ordered by the Court or permitted in writing, Protected Material may be disclosed only to:

- (a) Counsel, as well as employees and contractors of Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;
- (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- (c) the Court and its personnel;
- (d) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- (e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

- (f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Filing Protected Material. Unless otherwise ordered by the Court or with the prior consent of the Designating Party, Protected Material may not be filed publicly on the docket in this or any other action. Pursuant to the Court's authority under Local Rule 5.4(a), a Party or Non-Party may file Protected Material under seal in this action without further motion or order. Where a filing contains both Protected Material and non-Protected Material, a Party or Non-Party shall file the complete document under seal and a copy publicly, with those portions of the document that reflect Protected Material redacted.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER" that Party must:

- (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – 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.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(i) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

- (ii) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
  - (iii) make the information requested available for inspection by the Non-Party.
- (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

**10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such

person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order.

**12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to the use of any of the material covered by this Protective Order as evidence.

**13. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies,

abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (4. DURATION). At no point, either before or after Final Disposition, may a Receiving Party or Counsel use Protected Material, or any information gleaned from Protected Material, for any purpose other than the prosecution or defense of this action.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 14, 2022

By: /s/ R. Jason Richards

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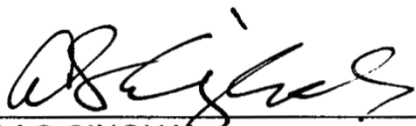


DATED: April 14, 2022

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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

**DONE AND ORDERED** in Chambers, Fort Lauderdale, Florida, this 18th day of  
May 2022.

  
\_\_\_\_\_  
RAAG SINGHAL  
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record via CM/ECF

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:21-md-3015-SINGHAL/Valle

IN RE:

MDL CASE NO.: 3015  
Order No. 16

**JOHNSON & JOHNSON AEROSOL SUNSCREEN  
MARKETING, SALES PRACTICES AND  
PRODUCTS LIABILITY LITIGATION**

**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 Stipulated Protective Order that was issued by the United States District Court for the Southern District of Florida on \_\_\_\_\_ [date] in the case of **IN RE: JOHNSON & JOHNSON AEROSOL SUNSCREEN MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION, CASE NO. 0:21-md-03015, MDL CASE NO. 3015**. 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 for the Southern District of Florida for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_

\_\_\_\_\_ [print or type full address and telephone number] as my Florida agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_