

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

3M COMPANY,

Plaintiff,

v.

Case No.: No. 8:20-cv-1003-T-35CPT

TAC2 GLOBAL LLC,

Defendant.

_____/

**STIPULATION FOR ENTRY OF ORDER ON CONFIDENTIALITY AND
RELATED CONFIDENTIALITY AGREEMENT**

The following Confidentiality Agreement (“Agreement”) shall govern the production or provision of confidential information, documents, or things in this case for the purpose of responding to discovery requests or inquiries (to include but not be limited to interrogatories, requests for document production, voluntary document production, requests for admissions, responses to subpoenas duces tecum, deposition transcripts, and forensic computer examinations), and preparation for trial. Pursuant to this agreement, the Parties may designate certain information as “Confidential Information.” The Parties further stipulate to the entry of an Order by the United States District Court for the Middle District of Florida, Tampa Division, memorializing the terms of the Agreement and retaining jurisdiction to enforce the Agreement.

“Confidential Information” as herein described and defined as information designated as “Confidential”. The parties shall designate information as “Confidential

Information” in good faith and not as a mechanism to inhibit, obstruct, or complicate discovery.

Definitions

1. “Non-Privileged Information” as used herein shall refer to all information which is not subject to a good faith and justifiable claim of privilege, whether it be the attorney-client privilege, work product privilege, trade secrets, or other confidential research, development, or commercial information.

2. “Confidential Information” as used herein shall mean any type of information which is designated (pursuant to the conditions herein) by the supplying party in good faith as “Confidential” whether it be a document, information contained in a document, information revealed during a deposition (including transcripts and exhibits) from computer forensic analysis, information revealed in an interrogatory answer, or otherwise. “Confidential Information” shall include trade secrets, or other confidential research, development, pricing formulas, product formulations, supply chain and vendor information, commercial information, and shall also include information not generally disseminated or available to the public; information to which free access is not available to the public; information to which only limited access is permitted to employees of the supplying party; and information to which dissemination or disclosure would present a real or potential economic threat to the economic security of the supplying party.

3. “Supplying party,” “designating party,” and “producing party” are used interchangeably herein, and refer to the party making information (confidential and/or

non- privileged) available as part of this litigation.

4. “Qualified Person” as used herein means:

(a) Attorneys of record in this proceeding and any associated counsel, the employees of such attorneys, and in-house counsel to whom it is necessary that the information be disclosed for purposes of this proceeding;

(b) outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party to provide outside computer forensic review, photocopying, graphic production services, litigation support services, or assistance as mock jurors or focus group members or the like.

(c) Any person hired by a party or its attorneys of record in this proceeding as an independent expert who is not a competitor, employed by a competitor, or an agent of a competitor of the supplying party, and who is not employed by or associated with either party (other than for purposes of this litigation), and who agrees in writing to be bound by the terms of this agreement. If a party wishes to have an independent expert view “Confidential Information” designated by the supplying party as “Confidential”, the independent expert must complete and sign a Confidentiality Statement in the form of **Exhibit 1**, attached.

(d) Officers, directors, agents and employees of the parties who are to be given access to “Confidential Information” shall be provided access on a “need to know” basis and only to the extent necessary, and for the limited purpose of use in this litigation and who agree, to be bound by the terms of this agreement. All such persons must be provided

a copy of this Confidentiality Agreement by the parties' attorneys.

(e) The Court and its personnel, court reporters and videographers, and mediators.

(f) Any other person who is designated as a Qualified Person by Order of this Court, after notice to all parties, or who, by agreement of the parties, is designated as a Qualified Person. Any person designated under this subparagraph must complete and sign a Confidentiality Statement in the form of **Exhibit 1**, attached. A copy of that Statement must be served on the other party at least two business days before access is allowed to the Confidential Information.

"CONFIDENTIAL" Designation.

5. Documents and things produced which contain "Confidential Information" may be designated as such by marking each page of the documents or things, and/or any flash drive or related method of transfer or production of any documents or things, at or before the time of production substantially as follows:

"CONFIDENTIAL"

In lieu of marking originals, the party may mark copies of the original documents that are produced or provided.

6. Information disclosed at a deposition (as well as through resulting deposition transcripts and exhibits) of a party, the present or former officers, directors, employees, agents, or independent experts retained by a party for purposes of this proceeding, or a third party in possession of "Confidential Information" of a party, may be designated as "Confidential" by: (a) indicating on the record at the deposition that the

testimony is “Confidential” and subject to the provisions of this agreement; or (b) following the procedure set forth in paragraph 13 below.

Provisions Applicable to Confidential Information

7. Except as set forth herein, documents produced which are subject to claims that they are “Confidential” pursuant to this Agreement shall be so designated at the time of furnishing to prevent dissemination or disclosure.

8. A designating party shall use the “Confidential” designation only when the designating party in good faith believes that the documents or information so designated contains “Confidential Information.” A designation of “Confidential Information” shall not give rise to any presumption by the Court that such documents or information is in fact “Confidential Information” or contains “Confidential Information.”

9. In the event that the party receiving information designated as “Confidential” objects to such designation, that party shall notify the designating party in writing as to the specific objections, itemizing them with particularity, along with the basis (both factual and legal) for the objection. The parties shall then confer in a good faith effort to resolve their differences and shall, if necessary, agree to the implementation of any additional procedures to orderly advance and promote discovery while maintaining each parties' proprietary interest. A challenging party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first, or establishes that the designating party is unwilling or unable to promptly schedule or participate in the meet and confer process within three (3) days after the challenging party has given written notice of its objection. If the parties are not able to reach an agreement under this

provision, the documents or information in question shall remain as designated unless and until the party challenging the designation obtains a Court Order requiring a different designation or different treatment of the documents or information.

10. Nothing shall prevent disclosure beyond the terms of this Agreement if based upon the agreement of the parties or by Court order.

11. Subject to the provisions of Paragraph 12, no party shall be responsible to another party for any use made of information produced and not designated as “Confidential Information.”

12. **ANY INFORMATION DESIGNATED AS “CONFIDENTIAL INFORMATION,” i.e., “CONFIDENTIAL” SHALL NOT BE USED BY THE OTHER PARTY FOR ANY PURPOSE OTHER THAN IN CONNECTION WITH THIS PROCEEDING UNLESS SUCH INFORMATION IS USED AFTER ENTRY OF A COURT ORDER PURSUANT TO PARAGRAPH 9 OF THIS AGREEMENT THAT SUCH INFORMATION IS NOT APPROPRIATELY IDENTIFIED AS “CONFIDENTIAL INFORMATION.”**

13. In addition to previous provisions herein relating to “Confidential Information” disclosed at a deposition, all depositions shall be treated as “Confidential Information” for a period of two weeks after a full complete transcript of said deposition is made available to counsel of record, during which period counsel for any party believing the deposition to contain or disclose “Confidential Information” not already designated on the record, shall so designate such portions, by page and line numbers, in a writing served upon counsel for the opposing party. Such designated portions shall be

treated in accordance with the provisions herein for said “Confidential Information.” The time period set forth in this paragraph may be shortened or enlarged by written consent of the parties.

14. The inadvertent or unintentional disclosure by a supplying party to the receiving party of “Confidential Information,” regardless of whether the information was so designated at the time, will not be deemed a waiver in whole or in part of a party’s claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter. However, a party who inadvertently or unintentionally discloses “Confidential Information” shall, within five (5) business days from the date of discovery of such inadvertent or unintentional disclosure, designate such “Confidential Information” appropriately, notifying the opposing party of the same in writing. The designated information shall thereafter be treated subject to its designation, unless such designated information is determined to not be appropriately identified as “Confidential Information” by a Court Order pursuant to section 9 of this Agreement.

15. A party shall not be obligated to challenge the propriety of a “Confidential Information” designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto.

16. To the extent it becomes necessary to file any discovery and/or any other material with the Court including, *inter alia*, transcripts of depositions, exhibits, briefs and memoranda, which include or incorporate “Confidential Information,” the filing party shall file a motion for leave to file such materials under seal consistent with the Federal

Rules of Civil Procedure, local rules, and the Court's procedures and not file any such information or documents unless and until appropriate measures are in place consistent with this Agreement's restrictions to protect the "Confidential Information" from disclosure.

17. Within two months after the conclusion of the trial and any appeals taken in this proceeding, all originals or reproductions of any documents produced by a party containing "Confidential Information" shall be returned to the producing party, except that work product copies may be destroyed. A verified statement regarding the destruction of "Confidential Information" must be provided to the producing party by counsel of the party who destroys the same. Outside attorneys shall be entitled to retain, however, a set of all documents filed with the Court and all correspondence generated in connection with the action.

18. The designation of any material in accordance with this Agreement as constituting or containing "Confidential Information" is intended solely to facilitate discovery and the preparation of this action for trial of this action, is not entitled to any presumption that such information or material is "Confidential Information," and treatment of such material by counsel for the parties in conformity with such designation will not be construed in any way as an admission or agreement by any party that the designated material constitutes or contains any such confidential or proprietary information.

19. An action for relief and/or contempt arising out of any violation of this Agreement may be brought in the United States District Court for the Middle District of Florida, Tampa Division.

20. If counsel for either party becomes aware of any accidental or inadvertent disclosure of any material or information in a manner prohibited by the Agreement, counsel shall promptly take reasonable steps to limit such disclosure, and to retrieve or have recipients destroy the information received, and shall promptly advise opposing counsel of the circumstances of the inadvertent disclosure and the remediation steps taken.

21. If a producing party inadvertently discloses to a receiving party information that is privileged or otherwise immune from discovery, the producing party shall within ten (10) business days of discovery of such disclosure so advise the receiving party in writing and request that the item or items of information be returned or destroyed, and no party to this action shall thereafter assert that such disclosure waived any privilege or immunity. The receiving party will immediately return the item or items requested (including all copies thereof as well as any notes or other materials reflecting the content of any such item) and refrain from any use of such information. Provided, however, that the receiving party, having returned such inadvertently produced item or items of information, may thereafter, without asserting waiver because of inadvertent production, challenge the privileged designation of the item(s) and seek production of any such documents in accordance with the Federal Rules of Civil Procedure and this Agreement.

22. Entering into this Agreement, producing or receiving Confidential Information, or otherwise complying with the terms of this Agreement shall not prejudice in any way the rights of a producing party to object to the production of information on any other grounds.

23. The disclosure of a document or its production for inspection in this action shall not constitute an admission of its authenticity or of its admissibility into evidence of this action.

24. Each of the Parties named above and their counsel of record undertakes to abide by and be bound by its provisions and to use due care to see that its provisions are known and adhered to by those under its supervision or control.

25. This Agreement shall be entered without prejudice to the right of any person to apply to the Court for such further protective orders under the provisions of the Federal Rules of Civil Procedure or applicable law as justice may require, or to seek any modification of this agreement for good cause shown.

APPROVED:

By signing this Agreement, all counsel for the parties warrant that they are authorized by their respective clients to sign on behalf of and to bind each client to the terms hereof.

SIGNATURES

Dated: May 21, 2020.

/s/ Amy E. Stoll

Amy E. Stoll, Esquire
Florida Bar No. 150959
Richard C. Alvarez, Esquire
Florida Bar No. 031615
OLDER LUNDY & ALVAREZ
1000 West Cass Street
Tampa, Florida 33606
T: 813-254-8998
triallawyers@olalaw.com
astoll@olalaw.com
Counsel to Defendant

/s/ Michael W. Weaver

Joseph M. Wasserkrug
Florida Bar No. 112274
333 SE 2nd Avenue, Suite 4500
Miami Florida, 33131-4336
T: 305-347-6501
jwasserkrug@mwe.com

Michael W. Weaver
Illinois Bar No. 6291021
444 W. Lake Street, Suite 4000
Chicago, IL 60606-0029
T: 312-984-5820
mweaver@mwe.com
Counsel for Plaintiffs