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

IN RE: RECALLED ABBOTT INFANT FORMULA LIABILITY LITIGATION	)))	**Case No. 22 C 4148** **MDL 3037**
This Document Relates to All Cases	)	**Hon. Judge Matthew F. Kennelly**

JOINT STATUS REPORT FOR OCTOBER 14, 2022 STATUS CONFERENCE

Pursuant to the Court's order of August 30, 2022 [ECF No. 14], the parties submit this Joint Status Report in advance of the October 14, 2022 status conference. The parties identify below the primary issues they believe merit the Court's attention but will be prepared to discuss other items as the Court desires.

I. PROPOSED DISCOVERY ORDERS.

Pursuant to the Court's order of August 30, 2022 directing the parties to submit "proposals in regard to discovery orders," Dkt. 14, the parties have met and conferred in good faith and reached agreement on three proposed orders governing discovery, which the parties jointly submit for entry by the Court:

(i) Protective Order (attached as Exhibit A);

(ii) Rule 502(d) and Privileged Materials Order (attached as Exhibit B);

(iii) Stipulated Order Regarding the Protocol for Producing Documents and Electronically Stored Information (attached as Exhibit C).

Upon filing this report, the parties will forward Microsoft Word versions of the three proposed orders to the Court, as they are being filed on the docket.

II. PLAN FOR ABBOTT'S FORTHCOMING MOTIONS TO DISMISS.

Current and Forthcoming Complaints. As discussed at the initial conference on August 30, 2022, the MDL features both (i) individual claims seeking recovery for personal injuries allegedly caused by Abbott's formula, and (ii) class claims premised on economic losses

caused by Abbott's conduct. At present, the parties have identified 25 personal injury complaints that have been transferred to (or at likely to be transferred to) this MDL. With respect to the class action/economic loss claims, pursuant to the Court's August 30 order, Plaintiffs will be filing a consolidated complaint regarding those claims on October 14 (the day of the upcoming hearing). [ECF No. 14.] The parties anticipate that the consolidated class action complaint will entail claims brought under the laws of several dozen states.

Agreed-Upon Proposal for Briefing Regarding Economic Loss Complaint. The parties have conferred and reached agreement with regard to a proposal for addressing Plaintiffs' to-be-filed consolidated class action complaint on economic loss claims. Specifically, the parties propose:

(i) Abbott to file its motion to dismiss by December 13, 2022 (60 days from filing of the consolidated class complaint)

(ii) Plaintiffs' response briefs and/or an amended complaint[1] to be filed on February 13, 2023 (62 days from Abbott's motion to dismiss)

(iii) Abbott's reply brief to be filed on March 13, 2023 (30 days from Plaintiffs' response).

The parties propose they meet and confer within 10 days of the filing of Plaintiffs' consolidated class action complaint and submit a proposal regarding page limits for the briefing at that time.

Contested Proposals for Briefing Regarding Personal Injury Complaints. The parties have also met and conferred regarding briefing as to the personal injury complaints, but have been unable to reach agreement and seek guidance from the Court. The parties state their respective positions as follows:

[1] In the event Plaintiffs file an amended complaint rather than oppose Abbott's motion, the parties will meet and confer within 10 days to propose an amended briefing schedule to the Court.

Abbott's Position: Abbott proposes to file a single omnibus motion to dismiss addressing all 25 personal injury complaints filed at present and to do so on the same schedule agreed-to above regarding the economic loss actions.

Abbott believes that a single omnibus motion addressing all pending personal injury cases is not only feasible, it will most efficiently advance the litigation. For one, the cases share a common core of allegations; in fact, although there are 25 separate personal injury complaints at present, many contain substantially identical allegations, likely owing to the fact that most of the cases were filed by a small group of law firms.[2] Abbott believes those core allegations—and any common deficiencies—can be efficiently addressed in an omnibus pleading, and any individual issues related to each Plaintiff (such as different diagnoses or differences in governing state laws) can be addressed in categorical fashion.

Abbott notes that the Court adopted this approach in the lead up to the *In Re: Testosterone Replacement Therapy Products Liability Litigation* MDL. There, prior to formal creation of an MDL in June 2014, the Court (which was then overseeing dozens of cases filed in this district) ordered the various defendants to file consolidated motions to dismiss addressing all then-pending cases before the Court—a number that far exceeded the 25 cases that Abbott proposes to address in its omnibus pleading here.[3] The parties then briefed the dozens of complaints in omnibus fashion and the Court issued an opinion as to the same. While the Court *later* ordered the filing

[2] Twenty (20) of the 25 pending cases were initiated by one of five law firms (all of whom are represented in Plaintiffs' MDL leadership, including the two co-lead counsels' firms). Within the complaints filed by a particular law firm—and even across firms—the complaints often vary as to only a handful of allegations.

[3] *See* Case No. 17-cv-1478, Pretrial Order No. 2 (ECF 31), Apr. 4, 2014 ("To the extent that defendants move to dismiss cases or claims, each defendant is to file a consolidated motion and memorandum addressing all of the cases naming that defendant already transferred and about to be transferred . . . .").

of a master complaint in the MDL (after its formation) and directed *future* Rule 12 motions toward that master complaint, the parties' briefing and the Court's handling of an omnibus Rule 12 motion addressing the dozens of individual pre-MDL complaints in that case signals it can be done again here.

During the August 30, 2022 conference, the Court suggested the possibility of choosing bellwether cases for purposes of the motion to dismiss process. Abbott considered this option, but does not believe it (nor the process Plaintiffs propose below) is optimal for several reasons:

First, an omnibus motion would save unnecessary delay. Rather than address all pending complaints in a single pleading (as Abbott proposes to do), the proposal set forth by Plaintiffs below would defer Rule 12 motions practice until the selection of bellwethers, which itself cannot fairly occur—at the earliest—until Plaintiffs' submission of their Plaintiff Fact Sheets and the associated collection of medical records recently ordered and authorized by the Court in Case Management Order No. 3 (ECF No. 32). Plaintiffs' fact-sheet submissions are not due until late November for the first 24 cases (and even later for the newly-filed 25th case), at which point the parties will first begin reviewing those forms, collecting records, and assessing and conferring over any deficiencies. Given that collection and meet-and-confer process (which is expressly contemplated by CMO #3), Plaintiffs' suggestion that the bellwether selection process could begin in January is not realistic—and, in any event, that would just be the *beginning* of the selection process, which itself is likely to take weeks, if not months, before the initial bellwether cases are finalized and briefing of Rule 12 motions could begin—during which time Abbott believes an omnibus motion to dismiss could be fully (or near fully) briefed. Put simply, if all complaints can be addressed at once now, there is no reason for delay.

Second, Plaintiffs' concern raised below regarding differences in the various individual complaints can and should be handled in the context of the omnibus briefing process. Abbott intends to set forth common grounds for dismissal of various of the complaints in its omnibus brief—including for failure to adequately plead that the subject products caused the complained-of injuries, failure to plead one or more elements of various state-law claims, and failure to plead fraud-based claims with the particularity required by Rule 9(b), among other grounds—in each case setting out (whether in the brief itself and/or in an easy-to-reference appendix) the cases that are subject of each argument. Abbott's approach by no means sacrifices the "separate identities" of individual cases or individual complaints, as Plaintiffs suggest; Abbott understands that the complaints will remain separate and is not asking for the filing of a Master Complaint. However, where Plaintiffs' various separate complaints contain common deficiencies, the best and most efficient way to proceed is for Abbott to point that out at one time *now*—again, making clear which arguments apply to which complaints (and which counts within each complaint). If Plaintiffs do not believe such common arguments apply to one or more of the cases, they can argue as much in their opposition.

Third, and relatedly, the omnibus approach will significantly limit any disputes over the application of the Court's ultimate motion to dismiss order, which Abbott believes will conserve significant party and judicial resources as the MDL progresses. Once again, Abbott proposes to address all 25 pending cases, as appropriate, in its motion, allowing the Court to rule at one time as to at least the cases pending in the MDL today. And while Abbott concedes that future cases may yet be filed and added to this MDL,[4] any new cases can be efficiently addressed in light of

[4] Abbott notes that, to its knowledge, no new cases were filed between August 31 and yesterday, October 6. (Last night — after the parties had exchanged drafts of this joint report— one of

the Court's ruling on Abbott's proposed omnibus motion, perhaps with limited supplemental briefing by the parties to address new cases (whether one by one or at regular junctures if new cases are filed in close succession). Plaintiffs' proposal, by contrast, would kick the can down the road, with the parties addressing only a limited number of complaints under Rule 12 at the outset as part of the bellwether process, and deferring for a later day the inevitable fights over the applicability of the Court's orders on those handful of motions as to both: (i) the majority of the already-pending complaints, *and* (ii) any complaints that are still yet-to-be filed.

Fourth, an early order addressing all pending cases has the prospect of reducing the ultimate discovery burden in the MDL as well as in facilitating potential future mediation or settlement of these matters. Plaintiffs' suggestion that "opinions on representative cases" would achieve the same result is flawed for the same reasons set forth above: such opinions will only spur debate and likely briefing as to the effect of the Court's orders on the not-yet-addressed cases (as opposed to just addressing all cases now, as Abbott proposes to do), and the delay in selecting the supposedly "representative" cases will limit the potential effectiveness of such opinions in governing discovery and/or facilitating potential resolution in the interim.

Finally, Plaintiffs' arguments with respect to the Preterm Infant Nutrition MDL are inapposite. Once again, Abbott is not asking Plaintiffs to file a Master Complaint in this MDL, which was all Judge Pallmeyer was ruling upon in the "Order on ***Request for Master Complaint***" cited by Plaintiffs in their position statement below. All Abbott is asking for here is the ability to address common deficiencies across substantially identical complaints and to do so in an efficient and orderly fashion at one time.

Plaintiffs' co-lead counsels filed a new case (Case #25).) Even counting the newly-filed case, only four new personal injury cases have been filed in the past 2.5 months.

For all these reasons, Abbott believes an omnibus motion to dismiss process is appropriate to address the 25 pending personal injury cases.

Plaintiffs' Position: Plaintiffs disagree with Abbott's proposal regarding a single omnibus motion to dismiss personal injury claims. Plaintiffs propose that Rule 12 motion practice take place in the context of bellwether cases as the Court proposed. Doing so will advance the efficient adjudication of personal injury claims.

At the outset, there exists no Rule or procedure that confers on Abbott the right to have its motions to dismiss heard in an "Omnibus" format. This is especially true given that there are no "consolidated" injury complaints in this MDL, only individual complaints involving different plaintiffs and circumstances. Though MDL proceedings may be used to streamline consolidated litigation, cases within an MDL "retain their separate identities." *Gelboim v. Bank of Am. Corp*., 574 U.S. 405, 413 (2015); *see also Bell v. Publix Super Markets, Inc.*, 982 F.3d 468, 489 (7th Cir. 2020) ("[t]he default rule is that separate actions transferred for those pretrial proceedings retain their separate identities"). Abbott's proposal sacrifices the "separate identities" of individual cases by constraining Plaintiffs with individual complaints to respond in "Omnibus" fashion.

A party's rights in one case cannot "be impinged to create efficiencies in the MDL generally." *In re Nat'l Prescription Opiate Litig*., 956 F.3d 838, 845 (6th Cir. 2020). Abbott's proposal prioritizes supposed "efficiencies" above the rights of current and future plaintiffs to respond to Motions to Dismiss as if the cases were filed individually—which they were. Further, as each Plaintiff is the master of their complaint, Abbott must file a motion to dismiss in *each* docket so that the plaintiff may determine whether (and how) to amend their complaint or whether (and how) to respond to Abbott's motion. It is not as easy as Abbott suggests, where the PSC can oppose the "Omnibus" motion to dismiss in a single filing despite individualized facts set forth in

separately filed complaints. The PSC, after all, is not responsive for the "filings . . . related to an individual plaintiff's case or claim." CMO No 2, ECF No. 23. While most complaints on file are plaintiffs represented by PSC members, that does not require a uniformity of response to the individual motions to dismiss, or even reflect that all PSC members agree as to which claims ought to be pursued. *C.f. Stephens v. Abbott Laboratories, Inc.*, 22-cv-04163, ECF. No. 1 (Complaint alleging 11 causes of action including fraud, violation of the Texas Consumer Protection Act, gross negligence and unjust enrichment) vs. *Sanders v. Abbott Laboratories, Inc.,* 22-cv-04352, ECF. No. 1 (Complaint alleging 7 causes of action which does not include fraud, violation of the Texas Consumer Protection Act, gross negligence, and unjust enrichment). Abbott's proposal, then, is as impracticable as it is unsupported by the Rules. Abbott states it is "not asking Plaintiffs to file a Master Complaint." Yet, this is a distinction without a difference given that Abbott's proposal constrains the method and mode of Plaintiffs' responses to its Rule 12 motions. In so doing, Abbott's proposal situates Plaintiffs as if a Master Complaint had been filed.

Abbott also claims that opinions on representative cases would "will only spur debate and likely briefing as to the effect of the Court's orders on the non-yet-addressed cases." Yet, whether the Court adopts Abbott's proposal or not, the parties will still have to evaluate whether and how the Court's ruling applies to future filed cases. Plaintiff's proposal is grounded in the well-tested bellwether concept foundational to multidistrict litigation in which the parties litigate **representative** cases in an effort to advance the prospects of resolution. Abbott's proposal is a rejection of the "representative" concept as it applies to complaint allegations.

For these reasons, Plaintiffs proposed Rule 12 motion practice occur in the context of a negotiated bellwether process. The recent entry of CMO No. 3 regarding submission of the Plaintiffs' Fact Sheet and authorizations enables the parties to engage in timely, informed

discussions regarding a bellwether protocol that can easily incorporate a briefing framework and schedule for Abbott's Rule 12 motions. Abbott offers no compelling reason for a different approach in this matter.

This exact issue was addressed by the parties in MDL 3027: *In re: Abbott Laboratories, et al., Preterm Infant Nutrition Products Liability Litigation*, MDL 3026, 1:22-cv-00071 (N.D. Il. 2022) ("NEC"). In NEC—a case involving Abbott as the principal defendant—Abbott urged the Court to require the PSC to file a Master Complaint on behalf of all plaintiffs. Like here, the PSC opposed the request, contending there was no mechanism within the Rules of Civil Procedure that allowed a court to *compel* plaintiffs to file a Master Complaint. Ultimately, Judge Pallmeyer adopted the PSC's approach that Rule 12 motions practice occur in the context of the Bellwether selections noting,

> Plaintiffs may be correct that the bellwether process will be effective in addressing these concerns. Thus, they assert that if Defendants succeed on an affirmative defense or pleadings challenge in one bellwether case, that will "provide guidance" for all other Plaintiffs. (*See* Pls.' Mem. at 2.) Indeed, if "multiple motions present substantially similar issues," the court may "decid[e] one motion and order the remaining parties to show cause why that ruling should not apply to them as well." Bolch Judicial Institute, *Guidelines and Best Practices for Large and Mass-Tort MDLs*, at 5.3 That means for truly omnibus matters, the court may require all Plaintiffs in this MDL to show cause why a particular bellwether decision does not apply to them. *See* Best Practice 1(B)(iii), *Guidelines and Best Practices* ("The transferee judge should give priority to deciding issues broadly applicable to multiple claimants in the MDL.").

In re: Abbott Laboratories, et al., Preterm Infant Nutrition Products Liability Litigation, MDL 3026, 1:22-cv-00071 (N.D. Il. August 26, 2022), Order on Request for Master Complaint.

In support of their proposal, Abbott cites to the TRT litigation suggesting the Court utilized their omnibus approach. While the Court did first consider a consolidated motion to dismiss pleading, that procedure was put in place while the litigation was an *intra-district consolidation* (IOP13(e)) proceeding in which each case was directly filed in this District. *In re Testosterone*

Replacement Therapy Products Liability Litigation, Case No. 14-1748, Pretrial Order No. 2, April 4, 2014.[5] After creation of the MDL, Plaintiffs *voluntarily* filed a Master Complaint that became the operative complaint within the MDL. Rule 12 motions were then directed toward the Master Complaint. *In re Testosterone Replacement Therapy Products Liability Litigation*, Case No. 14-1748, Minute Entry, March 20, 2015, ECF. No. 709. In short, Abbott's argument misses the point—namely, where a party *voluntarily* agrees to file a Master Complaint, that complaint may become the operative document. *Bell v. Publix Super Markets, Inc.*, 982 F.3d 468, 489 (7th Cir. 2020). But, where, as here, Plaintiffs elect not to voluntarily file a Master Complaint, a Court cannot compel all cases to be subsumed within one operative complaint because the individual complaints retain their individual identities as separate actions.

Using a bellwether framework for the resolution of Rule 12 motions would not create substantial delay. Abbott proposes a schedule where motions will be filed in December with briefing concluding in March. Under CMO No. 3, PFS in this MDL are due in November. Plaintiffs believe bellwether cases could be selected as early as January. This timeline is consistent with Abbott's agreed approach in the NEC MDL, where the parties used a four-page PPF form to select bellwethers two months after the PPF's submission. *In re: Abbott Laboratories, et al., Preterm Infant Nutrition Products Liability Litigation*, MDL 3026, 1:22-cv-00071 (N.D. Il. 2022), Case Management Order No. 7. Under the same timeline, bellwether cases in this matter could be selected in January and Rule 12 motions could be filed shortly thereafter. Under this approach, no

[5] The opinion as to the Rule 12 motions in the early filed TRT cases involved 39 cases filed in the Northern District of Illinois, which is distinguishable from the cases in this MDL that have been transferred from various federal districts and involve a more complex choice of law analysis. Further, recognizing the potential state law issues in various arguments, the Court chose not to address the defendants' state law arguments in that manner. *In re Testosterone Replacement Therapy Products Liability Litigation*, Case No. 14-1748, December 23, 2104, ECF. No. 526, pg. 7.

time or effort is lost in advancing the bellwether and discovery process. Further, the Court and parties are no longer burdened with resolving motions on every case presently within the MDL.

Finally, Abbott suggests early resolution of their omnibus motion for all cases will reduce discovery or facilitate mediation or settlement. It is unclear how an opinion on 25 cases instead of opinions on representative cases will achieve any difference in the outcome on these fronts. Even if Abbott were to prevail on certain claims, it is unlikely Abbott can prevail on complete dismissal of all claims. Plaintiffs fail to see how that reduces discovery in any meaningful way.

III. TIME AND EXPENSE REPORTING.

To ensure fair and efficient administration of time and expenses by various counsel for Plaintiffs in the litigation, Plaintiffs intend to submit for entry by the Court a proposed case management order regarding Common Benefit Time and Expense Submissions.

Dated: October 7, 2022

Respectfully submitted,

/s/ *Stacy K. Hauer, Esq.*

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CERTIFICATE OF SERVICE

I certify that on October 7, 2022, a copy of the foregoing JOINT STATUS REPORT FOR OCTOBER 14, 2022 STATUS CONFERENCE was served electronically through the Court's electronic filing system upon all parties appearing on the Court's ECF service list.

Dated: October 7, 2022

/s/ James F. Hurst, P.C.
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IN RE: RECALLED ABBOTT INFANT FORMULA LIABILITY LITIGATION	)))	**Case No. 22 C 4148** **MDL 3037**
This Document Relates to All Cases	)	**Hon. Judge Matthew F. Kennelly**

[PROPOSED] STIPULATED PROTECTIVE ORDER

To expedite the production of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that protection is afforded only to material so entitled, Co-Lead Counsel on behalf of the Plaintiffs in MDL No. 3037 ("Plaintiffs") and Defendant Abbott Laboratories, Inc. hereby stipulate and agree to the terms of this Stipulated Protective Order as follows:

IT IS HEREBY STIPULATED, subject to the approval of the Court that:

1. **APPLICABILITY OF THE PROTECTIVE ORDER.** This Stipulated Order Governing the Designation and Handling of Confidential Materials (hereinafter "Order") shall govern for pre-trial purposes the handling of documents, depositions, deposition exhibits, interrogatory responses, responses to requests for admissions, responses to requests for production of documents, and all other discovery obtained during the course of this MDL (this information hereinafter referred to as "Discovery Material"). All references to "Party," "Receiving Party," "Producing Party" or "Designating Party" throughout this Order are intended to include Non-parties.

The Parties acknowledge that this Order does not confer blanket protections on all disclosures, responses to discovery, or testimony and that the protection it affords extends only to the information or items that are entitled to protection under the terms of this Order and any other applicable law. Furthermore, the Parties acknowledge that neither this Order—nor the

confidentiality designations thereunder—constitutes a ruling by this Court that any specific information is, in fact, confidential.

2. **OTHER DEFINITIONS**

a. **Action**: The above-captioned action (this Action) includes all cases that are transferred or reassigned into MDL No. 3037.

b. **Party**: any party to this Action.

c. **Non-party**: any individual, corporation, association, or other natural person or entity that is not a Party to this Action.

d. **Receiving Party**: a Party or Non-party that receives Discovery Material from a Producing Party.

e. **Producing Party**: a Party or Non-party that produces Discovery Material in this Action.

f. **Designating Party**: a Party or Non-party that designates information or items that it produces in disclosures or in responses to discovery or provides in the form of deposition testimony as Covered Information (as defined below). The Designating Party bears the burden of establishing good cause for the protection of all such information or items.

g. **Challenging Party**: a Party that elects to initiate a challenge to a Designating Party's confidentiality designation.

h. **TIFF**: A widely used and supported graphic file format for storing bit-mapped images, with many different compression formats and resolutions.

i. **Native Format**: An electronic document's associated file structure defined by the original creating application. For example, the native format of an Excel workbook is a .xls or .xslx file.

3. **DESIGNATION OF MATERIAL AS "CONFIDENTIAL".** Any Producing Party may designate Discovery Material as "Confidential" under the terms of this Order if the Producing Party in good faith reasonably believes that such Discovery Material contains non-public, confidential, personal, proprietary or commercially sensitive information that requires protections provided in this Order (hereinafter referred to as "Confidential Material" or "Covered Information").

a. **"Confidential Material."** "Confidential Material" means material or information that constitutes, reflects, discloses or contains:

(i) information protected from disclosure by any applicable State or federal statute or regulation;

(ii) Trade Secrets, Research, and/or Design: Documents and/or information reflecting a party's product-related research or design or which otherwise consist of or include trade secrets not generally known or readily ascertainable by the public (including competitors) are competitively sensitive and public availability of these documents could affect business operations and market share;

(iii) Technical/Manufacturing: Documents and/or information reflecting technical or manufacturing-related procedures and/or practices are competitively sensitive and not generally known or

readily ascertainable by the public, including competitors. Public availability of these documents could allow competitors to replicate such procedures or practices, thereby affecting business operations and market share;

(iv) Financial/Planning: Documents or information reflecting short- or long-term planning and/or financial information implicates strategy, including competition and market trends. Such information, including but not limited to related to product pricing, business plans, compensation, and other information that Defendants do not publish to the public, is competitively and commercially sensitive and the public disclosure of such information risks competitive harm to operations and market share;

(v) Marketing/Commercial: Documents and information reflecting marketing and/or commercial strategy, including commercial business terms, are competitively and commercially sensitive as they relate to Defendants' sale of product to the market, and public availability of these documents could impact business operations and market share;

(vi) Medical records/Protected Health Information: For the avoidance of doubt, all medical records produced in this case shall be designated Confidential and treated as personal health information ("PHI") in accordance with the HIPAA Qualified Protective

Order;

(vii) Confidential Material shall also include any Protected Data (defined below).

(viii) Confidential Information shall not include any information that is or was at any time in the public domain as a result of publication not in violation of this Order.

b. **"Protected Data."** Protected Data shall refer to any information that a Party believes in good faith to be subject to federal, state, or foreign Data Protection Laws or other regulatory privacy obligations, including but not limited to Personal Health Information ("PHI") and Personally Identifiable Information ("PII"). Protected Data constitutes highly sensitive materials requiring special protection. Examples of such Data Protection Laws include, without limitation, The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (financial information); The Health Insurance Portability and Accountability Act and the regulations thereunder, 45 CFR Part 160 and Subparts A and E of Part 164 (medical information); and the *General Data Protection Regulation (GDPR):* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1. Certain Protected Data may compel alternative or additional protections beyond those afforded Confidential Material, in which event the Parties shall meet and confer in good faith, and, if unsuccessful, shall move the Court for appropriate relief.

4. **MARKING OF DOCUMENTS.** The designation of Discovery Material as Confidential Material for purposes of this Order shall be made in the following manner:

a. **TIFF or PDF Documents.** In the case of documents or other materials containing Covered Information produced in TIFF or PDF format (apart from depositions, pre-trial testimony or medical records), the Producing Party shall affix the legend "Confidential" to all pages in each document containing any Confidential Material.

b. **Native Documents.** With respect to documents or materials containing Covered Information produced in Native Format, the Designating Party shall include the confidentiality designation in the file name and/or on a slip sheet placeholder produced along with the native document.

c. **Designating Depositions.** With respect to any deposition, confidential treatment may be invoked on the record (before the deposition or proceeding is concluded) or within 30 days following receipt of the transcript by identifying the specific portions of the testimony as to which protection is sought. Irrespective of when the right is invoked, the Designating Party must identify by page and line number the portions of the deposition or transcript that include Covered Information within 21 days of receipt of the transcript. After the expiration of that period, the transcript shall be treated as Covered Information only as to the specific portions that are actually designated.

d. **Non-Written Materials.** Any non-text Covered Information (e.g., videotape, audio tape, computer disk, etc.) may be designated as such by labeling the outside of such material as "Confidential". In the event a Receiving Party

generates any "hard copy" transcription or printout from any such designated non-written materials, the person who generates such "hard copy" transcription or printout shall take reasonable steps to maintain the confidentiality of such materials and properly identify and stamp each page of such material as "Confidential" consistent with the original designation by the Producing Party.

5. **ADVERSE EVENT PROTECTIONS**. To protect against unauthorized disclosure of Confidential Information, and to comply with all applicable state and federal laws and regulations, the producing party will redact from produced documents, materials and other things, the following items, except to the extent they relate to a plaintiff or any individual on whose behalf a plaintiff is suing: the names, street addresses, Social Security numbers, tax identification numbers, and other personal identifying information of patients and individuals in clinical studies or adverse event reports (unless the above-referenced information relates to named plaintiffs in these Actions). Other general identifying information, however, such as patient or health provider numbers, health provider names, and adverse event reporter names, may not be redacted unless required by state or federal law. Nothing in this paragraph shall require any Party to produce personal identifying information or personal health information in a manner that does not comply with federal or state law. Further, nothing in this agreement prevents either party from moving this Court to compel the production of redacted information. Pursuant to 21 C.F.R. §§ 314.430(e) & (f) and 20.63(f), the names and other information which would identify any patients who were reported as experiencing adverse events that are not redacted shall be treated as Confidential, regardless of whether the document containing such names is designated as Confidential.

6. **DISCLOSURE OF COVERED INFORMATION.** The failure to designate Covered Information does not constitute a waiver of such claim and may be remedied by prompt

supplemental written notice upon discovery of the disclosure, with the effect that such Covered Information will be subject to the protections of this Order. The Receiving Party shall exercise good faith efforts to ensure that copies made of Covered Information produced to it, and copies made by others who obtained such Covered Information directly or indirectly from the Receiving Party, include the appropriate confidentiality legend, to the same extent that the Covered Information has been marked with the appropriate confidentiality legend by the Producing Party.

7. **MATERIALS PREPARED BASED UPON COVERED INFORMATION.** Any notes, lists, memoranda, indices, compilations, or other materials prepared or based on an examination of Covered Information, that quote from or paraphrase Covered Information with such specificity that the Covered Information can be identified shall be accorded the same status of confidentiality as the underlying Covered Information from which they are made, and to the extent those materials are disclosed to other Parties or Non-parties, or produced or filed in this matter, shall be designated with the appropriate confidentiality legend, and shall be subject to all of the terms of this Protective Order.

8. **NOTICE TO NON-PARTIES.** Any Party issuing a subpoena to a Non-party shall include a reference to this Protective Order with an offer to provide a copy to the Non-party upon request. Any Third Party from whom discovery is sought by the Parties may avail itself upon the protections and limitations of disclosure provided for in this Order by signing this order prior to production. The Third Party shall identify any Confidential Information produced in accordance with this Order. By so availing itself of the protections and limitations provided for in this Order, any such Third Party shall submit to the jurisdiction of the Court for all matters relating to or arising out of this Order.

9. **GOOD-FAITH BELIEF.** For purposes of this Order, the Designating Party bears the burden of establishing the appropriate designation of all such Discovery Material. The designation of any Discovery Material as "Confidential" pursuant to this Order shall constitute the verification by the Designating Party and its counsel that the material constitutes "Confidential" as defined above.

10. If at any time prior to the trial of this Action, or the trial of any bifurcated or severed plaintiff or claim joined as part of this Action, a Designating Party realizes that previously produced Discovery Material should be designated as "Confidential" the Designating Party may so designate by advising all other Parties in writing and by producing replacement documents or material with the appropriate "Confidential" designation as described above. The procedures and deadlines provided by Case Management Order No. __ - Rule 502(d) and Privileged Materials Order, shall govern any such produced Discovery Material.

11. **PERSONS AUTHORIZED TO RECEIVE CONFIDENTIAL MATERIAL.** Confidential Material may be disclosed only to the following "Qualified Persons":

a. The Court, including attorneys, employees, judges, magistrates, secretaries, special masters, stenographic reporters, staff, transcribers and all other personnel necessary to assist the Court in its function, and the jury (and any appellate court or other court (and their personnel) before which the Parties appear in this Action);

b. Mediators or other individuals engaged or consulted in settlement of all or part of this Action;

c. Court reporters, stenographers, and videographers retained to record testimony taken in this Action and those persons, if any, specifically engaged for the

limited purpose of making photocopies of documents or otherwise assisting in e-discovery;

d. Counsel for the Parties other than in-house counsel, and such counsel's employees who have responsibility for the preparation and trial of the Action;

e. In-house counsel for the Parties, and such in-house counsel's employees who have responsibility for the preparation and trial of the Action;

f. Parties and employees of a Party to this Order but only to the extent that the specifically named individual Party or employee's assistance or testimony is necessary to conduct the litigation in which the information is disclosed;

g. Litigation support services, including outside copying services, court reporters, videographers, stenographers or companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, retained by a Party or its counsel, provided that they execute Exhibit A as described in Paragraph 13 of this Order;

h. Any individual expert, consultant, investigator, or expert consulting firm retained by counsel of record in connection with this Action to the extent necessary for the individual expert, consultant, investigator, or expert consulting firm to prepare a written opinion, to prepare to testify, or to assist counsel of record in the prosecution or defense of this Action, provided, however, that: (i) the disclosure shall be made only to an individual expert, or to members, partners, employees or agents of an expert consulting firm as the expert consulting firm shall designate as the persons who will undertake the engagement on behalf of the expert consulting firm (the "Designated Expert

Personnel"); (ii) the individual expert or Designated Expert Personnel use the information solely in connection with this Action; (iii) the individual and/or a representative of each expert consulting firm sign the written assurance attached on Exhibit A on behalf of any Designated Expert Personnel associated with that firm; (iv) absent notice and consent of the Defendants or on application to and order of the Court, the individual expert and each of the Designated Expert Personnel is not a current employee, consultant, independent contractor, or any other type of affiliate of the Defendants or any entity that makes or sells infant nutrition products; and (v) the terms of Paragraph 16 of this Order are satisfied;

i. Any person (i) who created, authored, received or reviewed such Covered Information; (ii) is or was a custodian of the Covered Information; (iii) is identified on such Covered Information; or (iv) is or was an employee of the Producing Party and is reasonably believed to have knowledge of the matters in the Covered Information.

j. Any employees of Defendants who are involved with the receipt, review, evaluation, and/or reporting of adverse event reports and other patient-related information to governmental and regulatory agencies to whom Defendants are legally obligated to report such information, and the governmental and regulatory agencies to whom Defendants report such information.

k. Witnesses at depositions or who are noticed for depositions to whom disclosure is in good faith reasonably necessary to conduct the Action, with the limitations that witnesses shall not retain a copy of documents containing Confidential Information, witnesses noticed for depositions who are shown Confidential

Information in advance of their deposition must agree to be bound by the provisions of the Order by signing a copy of Exhibit A prior to being shown Confidential Information and witnesses at depositions must either sign a copy of Exhibit A or, if they refuse, receive an admonition that he or she will be subject to sanction, including contempt, for violating the terms of the Protective Order. However, a Plaintiff's current or former healthcare provider who has agreed on the record at deposition to maintain the confidentiality of any document intended to be used at the deposition may be shown or questioned about Confidential Discovery Material at the deposition, provided that no copies of the Confidential Discovery Material shall be left in the possession of the healthcare provider witness and copies of that Confidential Discovery Material shall not be attached to or included with any original or copy of the transcript of that deposition provided to the healthcare provider. Counsel present at the deposition should make a good faith effort to obtain the healthcare provider's agreement on the record to maintaining confidentiality, and no counsel shall make efforts to dissuade the healthcare provider from refusing to agree on the record to maintaining the confidentiality of any such documents. Regardless of whether any deponent signs the Endorsement of Protective Order attached as Exhibit A, this Order will apply to any deponent who is shown or examined about Confidential Discovery Material, and the deponent cannot take any exhibits with them or reveal any information the learned from the confidential materials shown to them;

l. Mock jurors who have agreed to be bound by the provisions of the Order by

signing a copy of Exhibit A;

m. Auditors and insurers of the Parties; and

n. Any other person as may be designated by written agreement by the Producing Party or by order of this Court.

12. **EXECUTING THE NON-DISCLOSURE AGREEMENT.** Each person as identified in Paragraphs 11(b), (c), (g), (h), and (k) to whom Covered Information is disclosed shall execute a non-disclosure agreement in the form annexed hereto as Exhibit A before receiving Covered Information. Copies of the executed Exhibit A shall be retained by counsel disclosing Covered Information to such person. Consistent with Paragraph 17 and Supreme Court Rule 201(b)(3), a non-disclosure agreement executed by a consultant shall not be available to any other Party except on a court order following a showing of exceptional circumstances.

13. **CHALLENGING CONFIDENTIALITY DESIGNATIONS.** A Party objecting in good faith to the designation of any material as Confidential shall give written notice including a brief statement of the basis for the objection to the Designating Party after receiving such material. Upon receipt of the written objection, counsel for the Designating Party shall, within 10 days, provide a written response to the objecting Party explaining the basis and supporting authority for the designation. The Parties shall meet and confer in good faith to attempt to resolve the dispute without resort to Court intervention. If the objecting Party and the Designating Party cannot resolve their dispute through such meet and confer discussions, within 14 days after the Parties have reached an impasse after meet and confer efforts, the Challenging Party shall move the Court for an order modifying or removing such designation. The Designating Party shall have 14 days to file a response. The challenging party shall have 7 days to file a reply. The Designating Party has the burden of establishing that the document is entitled to protection. Any material so

designated shall remain Confidential, and shall be subject to all restrictions on its disclosure and use set forth in this Order until one of the following occurs: (1) the Designating Party withdraws such designation in writing; or (2) the Court rules that the challenged material should be re-designated. In either event, the Designating Party shall reproduce copies of the re-designated material with the appropriate confidentiality designations at the Designating Party's expense within 10 days.

14. **SUBPOENA FOR COVERED INFORMATION.** If any Party has obtained Covered Information under the terms of this Order and receives a request to produce such Covered Information by subpoena or other compulsory process commanding the production of such Covered Information, such Party shall promptly notify the Designating Party, including in such notice the date set for the production of such subpoenaed information. The Designating Party shall respond to the Party receiving the subpoena within 21 calendar days of receiving written notice of any intent to seek a protective order. During this time period, the Party or person receiving the subpoena shall inform the person seeking the protected discovery material that such information is subject to the foregoing Order. No production or other disclosure of such information pursuant to the subpoena or other process shall occur until the deadline for the Designating Party to respond to written notice of the subpoena.

If the Designating Party informs the Party served with the subpoena that it has filed a motion seeking a protective order from the court where the subpoena or order issued, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by that court, 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.

15. **USE OF DISCOVERY MATERIAL.** Covered Information shall be used solely for purposes of prosecuting, defending or attempting to resolve this Action, including any appeal (subject to any coordination order that is entered).

16. **REDACTIONS ALLOWED**.

a. Any Producing Party may redact from documents (i) matter that the Producing Party claims is Privileged Information; or (ii) any Protected Data. The Producing Party shall mark each redaction with a solid black redaction box, and specify the basis for the redaction as appropriate, consistent with the privilege logging provisions of the stipulated order regarding the disclosure of privileged information. Where a document consists of more than one page, at least each page on which information has been redacted shall be so marked. If counsel for the Producing Party agrees or if the Court orders that documents initially redacted shall not be subject to redaction or shall receive alternative treatment, and the documents are subsequently produced in unredacted form, then those unredacted documents shall continue to receive the protections and treatment afforded to documents bearing the confidentiality designation assigned to it by the producing Party.

b. In addition to the foregoing, the following shall apply to redactions of Protected Data:

(1) Any Party may redact Protected Data that it claims, in good faith, requires protections under the terms of this Order. Protected Data,

however, shall not be redacted from documents to the extent it directly relates to or identifies an individual named as a Party in connection with the subject matter of this Action. Protected Data of an individual named as a Party shall otherwise receive the same protections and treatment afforded to other Protected Data under this Protective Order.

(2) Protected Data shall be redacted from any public filing not filed under seal.

c. The right to challenge and process for challenging the designation of redactions shall be the same as the right to challenge and process for challenging the designation of Covered Information as set forth in Case Management Order No. __ - Rule 502(d) and Privileged Materials Order.

d. Nothing herein precludes any Party from seeking the other Parties' consent or an order allowing the Party to redact nonresponsive matter from otherwise responsive documents on a case-by-case basis.

17. **PRIVILEGED MATERIALS.** Privileged materials shall be logged consistent with the privilege logging provisions of the stipulated order regarding the disclosure of privileged information.

18. **EXCLUSION OF INDIVIDUALS FROM DEPOSITIONS.** Counsel shall have the right to exclude any person who is not authorized by this Order to receive documents or information designated as Covered Information from any deposition where testimony regarding Covered Information or the use of Covered Information is likely to arise.

19. **SECURITY OF COVERED INFORMATION.** Any person in possession of

another Party's Covered Information shall exercise the same care with regard to the storage, custody, or use of Covered Information as they would apply to their own material of the same or comparable sensitivity. Receiving Parties must take reasonable precautions to protect Covered Information from loss, misuse and unauthorized access, disclosure, alteration and destruction, including but not limited to:

a. Covered Information in electronic format shall be maintained in a secure litigation support site(s) that applies standard industry practices regarding data security, including but not limited to application of access control rights to those persons entitled to access Covered Information under this Order;

b. To whatever extent the software tracks user access, an audit trail of use and access to litigation support site(s), to the extent the litigation support software tracks user access, shall be maintained while this Action, including any appeals, is pending;

c. Any Covered Information downloaded from the litigation support site(s) in electronic format shall be stored only on device(s) (e.g. laptop, tablet, smartphone, thumb drive, portable hard drive) that are password protected and/or encrypted with access limited to persons entitled to access Covered Information under this Order. If the user is unable to password protect and/or encrypt the device, then the Covered Information shall be password protected and/or encrypted at the file level;

d. Covered Information in paper format is to be maintained in a secure location with access limited to persons entitled to access Covered Information under this Order;

e. Summaries of Covered Information, including any lists, memoranda, indices or compilations prepared or based on an examination of Covered Information, that quote from or paraphrase Covered Information in a manner that enables it to be identified shall be accorded the same status of confidentiality as the underlying Covered Information; and

f. If the Receiving Party learns at any time that the Covered Information has been retrieved or viewed by unauthorized parties during shipment, it will immediately notify the Producing Party and take all reasonable measures to retrieve the improperly disclosed materials. If the Receiving Party discovers a breach of security[1] relating to the Covered Information of a Producing Party, the Receiving Party shall: (1) provide written notice to the Producing Party of the breach within 48 hours of the Receiving Party's discovery of the breach; (2) investigate the effects of the breach, undertake reasonable, industry-standard actions to remediate the effects of the breach, and provide the Producing Party with assurance reasonably satisfactory to the Receiving Party that the breach shall not recur; and (3) provide sufficient information about the breach that the Producing Party can ascertain the size and scope of the breach. The Receiving Party agrees to cooperate with the Producing Party or law enforcement in investigating any such security incident.

20. **FILING COVERED INFORMATION.** All Covered Material included as part of any pleading or memorandum shall be filed in accordance with N.D. Ill. Local Rule 5.8. Any

[1] Breach is defined to include, but is not limited to, the confirmed or suspected: (i) disclosure or use of Covered Information by or to an unauthorized person; and/or (ii) the loss, theft or hacking of a device containing Covered Information.

Party may provisionally file pleadings and supporting documents containing Confidential with the Clerk's Office "under seal." The Clerk's Office shall maintain the seal on those documents for a period of 14 days. Before the expiration of the 14-day period, a party seeking to maintain the documents under seal or redactions of any part thereof must file a motion to that effect demonstrating that sealing or redactions are appropriate under the Protective Order; upon filing of such a motion, the party that provisionally filed the documents will have 7 days to respond. The filing will remain sealed until the Court resolves the motion. If no motion is filed within 14 days, the Clerk's Office shall remove the seal on the filed pleading and supporting documents.

21. **IMPROPER DISCLOSURE OF COVERED INFORMATION.** Disclosure of Covered Information other than in accordance with the terms of this Order may subject a Party to such sanctions and remedies as the Court may deem appropriate.

22. **FINAL TERMINATION.** Upon termination of the Action, including, for example, a voluntary dismissal or an exhaustion of any and all appeals, counsel for each Party shall, upon request of the Producing Party, return all Covered Information, including any copies, excerpts and summaries thereof, or shall destroy the same at the option of the Receiving Party and provide written confirmation of destruction, and shall purge all such information from all machine-readable media on which the Covered Information resides. Notwithstanding the foregoing, counsel for each Party and the in-house counsel of each Defendant designated under Paragraph 12(a) may retain all pleadings, briefs, memoranda, exhibits to any pleading, discovery responses, deposition transcripts, deposition exhibits, expert reports, motions, trial exhibits, and other documents filed with the Court that refer to or incorporate Covered Information, and will continue to be bound by this Order with respect to all such retained information. Further, attorney work-product materials that contain Covered Information need not be destroyed, but, if they are

not destroyed, the person in possession of the attorney work-product will continue to be bound by this Order with respect to all such retained information.

23. **PROTECTIVE ORDER REMAINS IN FORCE.** This Protective Order shall remain in force and effect until modified, superseded, or terminated by consent of the Parties or by order of the Court made upon reasonable written notice. Unless otherwise ordered or agreed upon by the Parties, this Protective Order shall survive the termination of this Action. The Court retains jurisdiction even after termination of this Action to enforce this Protective Order and to make such amendments, modifications, deletions and additions to this Protective Order as the Court may from time to time deem appropriate.

24. **MODIFYING THIS ORDER.** Nothing in this Order shall be construed to prohibit the Parties from agreeing to modify any provision of this Order or seeking relief from the Court. Nor shall anything in this Order or any Party's compliance herewith be construed as a waiver of any Party's rights under applicable law.

SO ORDERED

Dated: _____

_____

Hon. Matthew F. Kennelly
U.S. District Court for the Northern District of Illinois.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [*print or type full name*], of _____ _____ [print or type full address], have read and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of Illinois (the "MDL Court") on [*insert date*] in the case of *In re: Recalled Abbott Infant Formula Products Liability Litigation* (MDL 3037). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order. In compliance with this Order, 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 MDL Court for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I declare under penalty of perjury that the foregoing is true and correct. Signed this ____ day of _____, 20___, at _____ [*insert city and state where sworn and signed*].

Signature: _____

EXHIBIT B

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

IN RE: RECALLED ABBOTT INFANT FORMULA LIABILITY LITIGATION	)))	**Case No. 22 C 4148** **MDL 3037**
This Document Relates to All Cases	)	**Hon. Judge Matthew F. Kennelly**

[PROPOSED] CASE MANAGEMENT ORDER NO. __
Rule 502(d) And Privileged Materials Order

The Plaintiffs and Defendants to this multi-district litigation, by and through their respective counsel, have jointly stipulated to the terms of the Rule 502(d) and Privileged Materials Order, and with the Court being fully advised as to the same, it is hereby ORDERED:

A. Applicability.

1. This Order shall be applicable to any privileged or otherwise protected or exempted information contained in deposition transcripts and/or videotapes, and documents produced in response to requests for production of documents, answers to interrogatories, responses to requests for admissions, affidavits, declarations and all other information or material produced, made available for inspection, or otherwise submitted by any of the parties in this litigation pursuant to the Federal Rules of Civil Procedure, as well as testimony adduced at trial or during any hearing (collectively "Information").

B. Production of Discovery Materials Containing Potentially Privileged Information.

2. Pursuant to Federal Rule of Evidence 502(d), the production of any privileged or otherwise protected or exempted information in this case or in any other federal or state proceeding shall not be deemed a waiver or impairment of any claim of privilege or protection in this case or in any other federal or state proceeding, including, but not limited to, the attorney-client privilege,

the protection afforded to work product materials, statutory privileges and protections, or the subject matter thereof, as to the produced document and any related material.

3. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for responsiveness and/or segregation of privileged and/or protected information before production.

4. The producing party must notify the receiving party promptly, in writing, upon discovery that a document has been produced for which the producing party asserts privilege and/or other protection. This "Clawback Notice" shall include (i) the Bates range of the produced materials, (ii) a new copy of the material (utilizing the same Bates number as the original material with a "R" suffix to indicate the revised image) with the privileged or protected material redacted (if the producing party claims that only a portion of the document contains privilege or other protected). If the producing party claims that the entire document is privileged or protected, then the producing party shall provide a slip sheet also containing an "R" suffix and noting that the document has been withheld. After the producing party provides the receiving party with a Clawback Notice, the producing party must provide a corresponding privilege log within ten days.

5. Upon receipt of a Clawback Notice, all such information, and all copies thereof, shall be sequestered and the receiving party shall not use such information for any purpose, except as provided in paragraphs 6 and 7, until further Order of the Court. The receiving party shall also retrieve and sequester all copies of the documents (including any excerpts used in analyses, memoranda or notes or portions thereof) in electronic format.

6. The receiving party may contest the producing party's assertion of privilege or other protection in the Clawback Notice. In that instance, within seven (7) days from receipt of the privilege log relating to the Clawback Notice, the receiving party shall give the producing party

written "Notice of Clawback Challenge" providing the reason for said disagreement. The producing party will have seven (7) days to respond to the Notice of Clawback Challenge, in writing, by either: (i) agreeing to withdraw the claim of privilege or other protection; or (ii) stating the reasons for such claim. If the producing party's response to the Notice of Clawback Challenge does not resolve the issue, the parties shall meet and confer within five (5) days of the response. If the conference does not resolve the dispute, within five (5) days of the conference, the parties shall submit the dispute to the MDL Court for resolution. The producing party retains the burden of establishing the applicability of the privilege or other protection as to any inadvertently produced materials. If the receiving party does not serve a Notice of Clawback Challenge, then, upon expiration of the seven (7) day period, all copies of the disputed material shall be returned or destroyed.

7. Nothing in this Stipulation prevents a receiving party from submitting the item(s) listed in the Clawback Notice to the Court for review or using the content of the item(s) in briefing submitted in connection with any challenge to such notice that is raised in accordance with paragraph 6. The challenge to the Clawback Notice must be filed under seal, and the receiving party must not assert as a ground for compelling disclosure the fact or circumstances of the disclosure. If any information is found to be privileged or protected in accordance with the procedures described herein, all copies of the information shall be returned or destroyed.

8. Any analyses, memoranda, notes or portions thereof that were internally generated and contain or were based upon the item(s) listed in the Clawback Notice shall immediately be sequestered, and shall be destroyed in the event that (a) the receiving party does not contest that the information is privileged or subject to other protection pursuant to paragraph 6 above, or (b) the Court rules that the information is privileged or otherwise protected. Such analyses,

memoranda, notes, or portions thereof may only be removed from sequestration and returned to its intended purpose in the event that (a) the producing party agrees in writing that the information is not privileged or otherwise protected, or (b) the Court rules that the information is not privileged or otherwise protected.

9. If, during a deposition, a producing party claims that a document being used in the deposition (e.g., marked as an exhibit, shown to the witness, or made the subject of examination) contains material that is subject to the attorney-client privilege, the attorney work-product doctrine, or other protection, the producing party may (a) allow the document to be used during the deposition without waiver of any claim of privilege or other protection; (b) instruct the witness not to answer questions concerning the parts of the document containing privileged or protected material; or (c) object to the use of the document at the deposition to the extent the entire document is privilege or protected, in which case no testimony may be taken relating to the document during the deposition until the matter is resolved by agreement or by the court. If the producing party allows the examination concerning the document to proceed consistent with this paragraph, all parties shall sequester all copies of the inadvertently produced document. As to any testimony subject to a claim of privilege or other protection, the producing party shall serve a Clawback Notice within five (5) days of the deposition's conclusion, after which the parties shall follow the procedures set forth in paragraphs 5 and 6. With respect to any document or testimony that is the subject of a Clawback Notice that is sent more than twenty-one (21) days after the conclusion of the deposition, the asserted privilege or protection will be deemed as waived, subject to paragraph 2. Pending determination of the clawback dispute, all parties with access to the deposition transcript shall treat the relevant testimony in accordance with paragraph 5.

10. If the producing party instructs the witness not to answer or provide testimony in accordance with 9(b) or (c), which is later determined not to be privileged, the producing party will remedy the lost opportunity to obtain discovery, by way of reopened deposition or such other means to which the parties may agree, following meet-and-confer efforts. At the meet and confer, the parties must discuss whether another deposition is genuinely necessary and (if so) what the proper scope, length, and subject matter of the resumed deposition is. Any resumed deposition must be proportional to the improperly invoked privilege. If the parties cannot come to an agreement, they will submit that dispute to the court.

11. If a receiving party uses produced material in a brief or at a hearing, and the producing party has not served a Clawback Notice in advance of the briefing event or hearing, the producing party shall serve a Clawback Notice within five (5) days of the briefing event or hearing and may request to seal those portions of the public record reflecting the produced material. Thereafter, the procedures set forth in paragraphs 5 and 6 shall apply. With respect to any produced material used in a brief or at a hearing that is the subject of a Clawback Notice that is sent more than twenty-one (21) days after the filing of the brief or conclusion of the hearing, the asserted privilege or protection will be deemed as waived, subject to paragraph 2.

12. This Stipulation does not preclude a party from voluntarily waiving any claims of privilege or protection. The provisions of Fed. R. Evid. 502(a) apply when a party uses privileged or other protected information to support a claim or defense.

13. When the producing party has asserted a Clawback Notice regarding privilege in a document, the producing party shall use best efforts to identify substantively duplicative privileged evidence in other produced documents and notify all other parties of those documents within 14 days.

C. Privilege Logging.

14. Unless otherwise provided in this Order, any document falling within the scope of any request for production or subpoena that is withheld on the basis of a claim of attorney-client privilege, work-product privilege, or any other claim of privilege or immunity from discovery is to be identified by the producing party on a privilege log, which the producing party shall produce in Excel format.

15. Within forty-five (45) days of each production of documents or ESI, the producing party shall provide a privilege log or logs concerning any information that has been redacted or withheld in whole or in part from that production. The following documents presumptively need not be included on a privilege log:

a. Attorney-client privileged communications between a party and its counsel on or after February 18, 2022 (in the case of Abbott communications) or the date of the filing of an individual Plaintiff's lawsuit (in the case of Plaintiff communications) ; or

16. Attorney work product created by, for, or at the direction of counsel on or after February 18, 2022 (in the case of Abbott work product) or the date of the filing of an individual Plaintiff's lawsuit (in the case of Plaintiff work product) .The privilege log shall set forth the privilege or protection relied upon and specify separately for each document the following to the extent such information is available from the metadata of the document:

a. Bates-number range, or if no Bates-number range, a unique identifier;

b. Family relationship, if applicable (i.e. identification of parent emails and all attachments);

c. A description of the document, including a description of the basis of the claimed privilege sufficient to support the claim that the document is privileged and/or protected;

d. The names of the author(s);

e. The names of all addressees and recipients, including copies ("ccs") and blind copies ("bccs");

f. The document date;

g. An indication of whether the document has been produced in redacted form or withheld in its entirety; and

h. The privilege designation (attorney-client; attorney work-product; joint defense and/or common interest, etc.).

17. Attachments to emails shall be logged as separate documents on the log, with family relationships identified. A party shall only be required to include one entry on the privilege log to identify each family of non-email files that are withheld in their entirety for privileged (parent document that has embedded objects or attachments).

18. Attorneys or their staff must be identified on the log with an asterisk (or similar notation).

19. Where multiple email messages are part of a single chain or "thread," a party is only required to include on a privilege log the most inclusive message ("Last In Time Email") and need not log earlier, less inclusive email messages or "thread members" that are fully contained within the thread, provided that the log entry includes the names of the authors, addressees, and recipients (including copies and blind copies) for all thread members (i.e., not limited to the last message in the thread), that the description of the thread include the factual bases sufficient to support the claim of privilege for each thread member over which privilege is asserted, and that the log entry include the privilege designations applicable to any thread members. This inclusive email and any unique attachments found in the thread which a party claims is entirely privileged may be logged in a single entry. For the avoidance of doubt, an email chain will only be treated

as a single thread if it consists of the same participants throughout the message; if participants are added or removed in the course of a chain, the emails resulting from that addition or removal will be treated as separate threads and would be the subject of a separate log entry.

20. Subject to the parties' good faith meet and confer discussions regarding the specifics as to the proposed categories to be logged as such, documents withheld on the basis of privilege and/or work-product protection may be grouped in categories based on content, and a categorical privilege log prepared, including a description of the basis of the claimed privilege for each category sufficient to support the claim that the documents within the category are privileged and/or protected. The categorical log shall also include the number of records for each category broken down by family relationship and the metadata listed in paragraphs 14 (d)-(g) for each document within the category. Notwithstanding the forgoing, the decision to log documents on a categorical basis does not waive party's right to adjudicate any challenge(s) to privilege on a document-by-document basis.

21. After the receipt of a privilege log, any Party may dispute a claim of privilege. Prior to seeking Court intervention, the Party disputing, questioning, or otherwise objecting to a claim of privilege shall provide in writing the identification of the documents or category of documents for which it questions the claim of privilege and the reasons for disputing, questioning, or otherwise objecting to the privilege designation. Within fourteen (14) days, the Party that designated the documents as privileged will provide a written response explaining the basis for its claim or privilege, or if applicable, de-designating documents as privilege and producing such documents in accordance with this Order. Thereafter, if the Parties continue to disagree, they will then meet and confer in good faith as to the claims of privilege. If agreement has not been reached after fourteen (14) days, the parties shall submit the dispute to the MDL Court for resolution.

SO ORDERED:

Dated: _____

_____

Hon. Matthew F. Kennelly
U.S. District Court for the Northern District of Illinois.

EXHIBIT C

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

IN RE: RECALLED ABBOTT INFANT FORMULA LIABILITY LITIGATION	)	**Case No. 22 C 4148**
	)	**MDL 3037**
	)	
This Document Relates to All Cases	)	**Hon. Judge Matthew F. Kennelly**

[PROPOSED] CASE MANAGEMENT ORDER NO. ___
The Parties' Joint Proposed Stipulated Order Regarding The Protocol For Producing Documents And Electronically Stored Information ("ESI")

To expedite the production of discovery material and to facilitate the consistency in the format of the documents to be produced by the Parties in this case, Plaintiffs and Defendants (collectively "Parties"), by and through their respective counsel hereby stipulate and agree to the terms of this Stipulated Order Regarding the Protocol for Producing Documents and Electronically Stored Information ("ESI"):

IT IS HEREBY STIPULATED, subject to the approval of the MDL Court that:

1. This Stipulated Protocol for Producing Documents and Electronically Stored Information (The "ESI Protocol") shall govern the production of documents and ESI by the Parties in the above captioned litigation ("this Action").

2. The Parties shall preserve documents and ESI relevant to the claims and defenses in the matter, and proportional to the needs of this Action.

3. A Party that issues a non-Party subpoena (the "Issuing Party") shall include a copy of this Order and a copy of the Protective Order with such subpoena and state that the Parties in the litigation have requested that non-Parties produce documents in accordance with the specifications set forth herein, including, specifically as to such non-Party productions:

a. The Issuing Party shall produce a copy to all other parties of any documents and ESI (including any metadata) obtained under subpoena to a non-Party.

b. If the non-Party production is not Bates-stamped by the Non-Party

Producer, prior to any Party reproducing the Non-Party Documents, the Parties will meet and confer to agree upon a format for designating the documents with a unique Bates prefix and numbering scheme.

4. The production of Documents and ESI also shall be subject to the provisions of orders concerning confidentiality and privilege as agreed to among the Parties and/or entered by the MDL Court [Dkt. __].

5. Nothing in this Order shall be interpreted to require disclosure of information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The Parties do not waive any objections to the discoverability, admissibility, or confidentiality of Documents or ESI. The Parties reserve all objections under the Federal Rules of Civil Procedure and applicable decisional authority other than concerning matters that are addressed in this Order.

6. The production specifications in this Order apply to paper records and ESI that are produced after the date of entry of this Order. To the extent any documents, ESI, or other materials produced in a related action or proceeding, prior to the entering of this Order, are re-produced in this litigation, the Defendants are not under any obligation to produce those materials in a manner different from how they were originally produced. This paragraph does not, however, bar reasonable requests from Plaintiffs for data fields identified in this Order that are missing from any ESI materials produced in related actions (to the extent they exist), or to the extent that a document is illegible and needs to be reproduced to be readable. The producing party shall not unreasonably refuse such requests.

7. To the extent additional obligations or rights not addressed in this Protocol arise under Federal Rules of Civil Procedure 26, 33, and 34, local rules, or applicable state and federal statutes, those rules and/or statutes shall control.

A. Definitions

1. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rules of Civil Procedure 26 and 34.

2. "Electronically stored information" or "ESI," as used herein has the same meaning as in the Federal Rules of Civil Procedure 26 and 34.

3. "Family" means email and all related attachments which shall include data contained within Calendars and files sent via OneDrive, ShareFile, or a similar hyperlink that are in the parties' possession, control, or custody.

4. "Paper Records" or "Hard Copy Documents" means Documents existing in paper form at the time of collection.

5. "Native Format" means and refers to an electronic document's associated file structure defined by the original creating application. For example, the native format of an Excel workbook is a .xls or .xslx file.

6. "Metadata" means information describing characteristics of a file, generated by the application that created or modified it or generated automatically by a computer or network operating system on which the file is located.

7. "Optical Character Recognition" or "OCR" means the process of recognizing, and creating a file containing, visible text within an image.

8. "Extracted Full Text" means the full text that is extracted electronically from native electronic files, and includes all header, footer, and document body information.

9. "Hash Value" is a unique numerical identifier that can be assigned to a file, a group of files, or a portion of a file, based on a standard mathematical algorithm applied to the characteristics of the data set.

10. "Confidentiality Designation" means the legend affixed to "Confidential"

Discovery Material as defined by, and subject to, the terms of the Stipulated Protective Order entered in this Action. [Dkt. __].

11. "Searchable Text" means the native text extracted from ESI and any Optical Character Recognition text ("OCR text") generated from a Hard-Copy Document or electronic image.

B. Paper Records

1. Paper records will be scanned or otherwise converted into electronic form from paper documents in the following format:

a. TIFFs. All documents shall be scanned to single page Group 4, TIFF format, at least 300 dpi and 8 ½ X 11-inch page size, except for documents requiring higher resolution or different page size.

b. In scanning paper documents, distinct documents should not be merged into a single record, and single documents should not be split into multiple records (i.e., paper documents should be logically unitized). The Parties will make their best efforts to have their vendors unitize documents correctly and will commit to address situations where there are improperly unitized documents.

c. Productions of the images shall be made using an image load file (.OPT or .LFP) and a delimited database/metadata load file (.DAT). Each image file should have a unique file name which shall be the Bates number of the page.

d. Objective Coding Fields. The following objective coding fields should be provided, if applicable: (1) beginning Bates number; (2) ending Bates number; (3) beginning attachment Bates number; (4) ending attachment Bates number; (5) page count; (6) custodian; and (7) RecordType (which is

used to indicate that the original document is a paper record).

e. OCR Text Files. Document level OCR should be provided as a separate text file. The file name of each text file should correspond to the file name of the first image file of the document with which it is associated. The text files will not contain the redacted portions of the documents.

f. For Hard-Copy Documents, the Parties need only populate the following metadata fields: "BEGDOC," "ENDDOC," "PROD VOLUME," "CUSTODIAN "CONFIDENTIAL," "BOX NUMBER" "REDACTION," fields, as well as "BEGATTACH" and "ENDATTACH" fields where applicable. Any bates numbers previously assigned to a document as a result of a legal, regulatory, or governmental production shall be included. The beginning and end Bates numbers from the production in another matter shall be added as distinct metadata fields for these documents and be included in the production file.

g. Black-and-white ("B&W") hard-copy documents shall be produced as single-page, B&W group IV TIFFs imaged at 300 dpi. To the extent that a static image has been created of any hard copy document containing color and/or grayscale, such static image containing color and/or grayscale shall be produced, except for documents requiring higher resolution or different page size. If not previously imaged in color or grayscale, the parties will use reasonable efforts to produce hard copy documents containing color and/or grayscale as static images with grayscale and color, respectively. A receiving party may request that documents be re-produced with the coloration of the original document by providing a list of the Bates numbers

of documents it requests to be produced in color format. In the event the producing party objects to re-producing the documents, the parties shall meet and confer within three (3) business days, or longer for good cause shown.

h. If, in the ordinary course of business, responsive documents are maintained in a file, folder, envelope, binder, notebook or similar container used to store documents, all contents therein shall be reviewed for production and privilege.

i. Nothing herein shall preclude a party from, at its discretion, producing for inspection hard copy documents for which there are no electronic images or other tangible things in hard copy or tangible form. However, to the extent that a party elects to produce for inspection hard copy documents in tangible form, the producing party shall also make available to the requesting party any existing indices, inventories, lists, catalogs, or other data or documents that exist in the normal course of business that identify or describe the documents produced. Nothing in this paragraph, however, prevents a party from asserting undue burden in response to a request for such documents, and nothing in this paragraph waives or dilutes such an objection.

j. Upon notice from the requesting party that a document or portion thereof is illegible, the producing party shall, if possible, produce a legible copy in the form of either a new TIFF, static image, or hard copy, or, if not possible, explain why a more legible copy of the document cannot be produced. The document's original orientation should be maintained (i.e., portrait to portrait, landscape to landscape). No producing party shall be required to

alter or re-create any document for which no grayscale or color version is in the party's possession or control or for which the original hard copy document is illegible.

k. If any original hard copy document has any note or attachment affixed to it, the producing party shall scan and produce copies of the original hard-copy document along with all notes and attachments to it in the same manner as other documents to the extent the note or attachment is required to understand the content of the document. If any such note or attachment obscures any information on the original hard copy document, the producing party shall also produce a copy of the original hard-copy document without the note or attachment affixed in order to make the underlying information visible.

C. Electronically Stored Information

1. The Parties will produce responsive, complete families of electronically stored information ("ESI") in TIFF format according to the following specifications:

a. All TIFF formatted documents will be single page, Group 4 TIFF at 300 X 300 dpi resolution and 8½ X 11-inch page size, except for documents requiring different resolution or page size.

b. An image load file, in standard Opticon format, showing the Bates number endorsed onto the lower right corner of each page but not obscuring the content on any page and the appropriate unitization of the documents, will accompany all document images. All Bates numbers will consist of an Alpha Prefix, followed by a numeric page index. If a member of a document family that has otherwise been determined to be responsive cannot be

technically processed (e.g., unsupported file format, file corruption, inaccessible password-protected document), those technical problems shall be identified and disclosed to the Receiving Party by production of a Bates-labeled slip sheet that states "Technical issue—file cannot be processed,"; the associated metadata for the file with the technical problem shall be produced if possible. A Receiving Party thereafter may raise with the Producing Party any questions or concerns, and the Parties shall meet and confer to attempt to resolve any issues.

c. Each imaged version of an electronic document will be created directly from the original electronic document.

d. TIFFs shall be produced as black & white, single-page TIFF images in accordance with the technical specifications set out above, unless agreed with the opposing party or ordered by a court. Additionally, the Producing Party shall make a reasonable attempt using automated processes to identify marketing materials and advertisements and produce those in color. The Producing Party shall also produce PowerPoint files in color (to the extent they are not produced natively). Upon written request that identifies a reasonable number of individual documents at issue by Bates number, a party shall produce color images for those documents. Documents produced in color shall be produced as single page, 300 DPI, color JPG images with the quality setting of 75% or higher. To the extent there is metadata that identifies a document as containing comments, tracked changes, or other hidden text, or to the extent that Plaintiff identifies by Bates number such a document, and that document is not produced in native format pursuant to

this Protocol, such document should be produced in color with all comments, tracked changes, speaker's notes, or other hidden text, and any other hidden content made visible in the first instance.

e. All TIFF files are to be provided with an accompanying searchable text (.TXT) file extracted from the native, electronic file (not generated as an OCR file from the TIFF image(s)), and such text files shall contain the full text extraction. To the extent reasonably feasible, extracted text shall provide all comments, tracked changes, speaker's notes, and text from hidden worksheets, slides, columns and rows. If a producing party identifies document types where it cannot provide such information as part of the extracted text file, it shall inform the requesting party. In the case of files with redacted text, OCR'd text of the non-redacted portion of the documents may be provided in lieu of extracted text. OCR software should be set to the highest quality setting during processing. For documents in foreign languages, the OCR shall be performed using an OCR tool and settings suitable for the particular byte or multi-byte languages.

f. Each text file shall be named according to the Bates number of the first page of the corresponding image files (e.g., BATES00000l.TXT).

g. In the case of email, the corresponding text file shall include, where reasonably available: (1) the individual(s) to whom the communication was directed ("To"); (2) the author(s) of the email communication ("From"); (3) who was copied and blind copied on such email ("CC" and "BCC"); (4) the subject line of the email ("RE" or "Subject"); (5) the names of any attachments; and (6) the text (body) of the email.

h. Hard-copy documents and ESI that contains languages other than English, in whole or in part, shall be produced in the original language(s), along with all existing translations of the searchable text. However, no party shall be obligated to create a translation of any document.

2. The following metadata fields associated with each electronic document will be produced, to the extent they are available. This list of metadata fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of the ESI or that do not exist as part of the original Metadata of the Document, unless it is from a field name related to a social media platform.

Field Name	**Field Description**	**Required For E-mail**	**Required For Non-E-mail ESI**
Custodians	Name of custodian(s) of email(s) or file(s) produced and any de-duped file(s) not produced	X	X
BegBates	Beginning Bates# (including Prefix)	X	X
EndBates	Ending Bates# (including Prefix)	X	X
BegAttach	Beginning Bates number of the first document in an attachment range (only in emails with attachments)	X	X
EndAttach	Ending Bates number of the last document in attachment range (only in emails with attachments)	X	X
Attachnames	Names of each individual Attachment, separated by semi-colons	X	
From	From field extracted from an email message	X	
Author	Author field extracted from the metadata of a non-email document		X
To	To or Recipient extracted from an email message	X	
Cc	Carbon Copy (“Cc”) field extracted from an email message	X	
Bcc	Blind Carbon Copy (“Bcc”) field extracted from an email message	X	

Field Name	Field Description	Required For E-mail	Required For Non-E-mail ESI
Subject	Subject line extracted from an email message	X	
Filename	File name - Original name of file as appeared in original location		X
Filepath	File/path of the location where the item was located at the time of collection.	X	X
Duplicate_FilePath	File path of the location where the item was located at the time of collection from custodians that were identified as duplicates.	X	X
SentOnDate	Sent date of an email message (mm/dd/yyyy hh:mm:ss a format) (a given email will have either a Date Sent or Date Recvd, but not both)	X	
ReceivedDate	Received date of an email message (mm/dd/yyyy hh:mm:ss a format) (a given email will have either a DateSent or Date Recvd, but not both)	X	
CreationDate	Date that a non-email file was created (mm/dd/yyyy hh:mm:ss a format)		X
ModifiedDate	The application recorded time on which the document was last modified (mm/dd/yyyy hh:mm:ss a format)		X
Filesize	Size or volume of individual file	X	X
Pgcount	Number of pages of document produced	X	X
NativeLink	Relative path to any files produced in native format	X	X
Text Path	Relative path to any OCR/extracted text files in the production set	X	X
Parentmsgid	Where the item is an email which is a REPLY or FORWARD, the MSGID of the original email which was REPLIED to or FORWARDED	X	
HashValue	MD5 or SHA-1 hash value used to deduplicate the data	X	X
Confidentiality Designation	Confidentiality Designation for produced documents	X	X
Redaction	Identifies if a document has been redacted	X	X

Field Name	Field Description	Required For E-mail	Required For Non-E-mail ESI
HasRevisions	Y if a Word document with revisions, otherwise N or empty		X
HasComments	Y if a Word or Excel document with comments, otherwise N or empty		X
HasHiddenText	Y if a Word document with hidden text, otherwise N or empty		X
HasHidden Slides	Y if a Power Point document with hidden slides, otherwise N or empty		X
HasHiddenRows	Y if an Excel document with hidden rows, otherwise N or empty		X
HasHiddenColumns	Y if an Excel document with hidden columns, otherwise N or empty		X
HasHidden Worksheets	Y if an Excel document with very hidden worksheets, otherwise Nor empty		X
File extension	The suffix at the end of a filename that indicates what type of file it is (e.g., .ppt, .doc, .pdf)	X	X
Box Number	The box number associated with archived documents.		X
Other Legal Matter1 BegBates	Beginning Bates number (including Prefix) used when produced in the other legal matter	X	X
Other Legal Matter EndBates	Ending Bates number (including Prefix) used when produced in the other legal matter	X	X
Other Legal Matter BegAttach	Beginning Bates number of the first document in an attachment range (only in emails with attachments) used when produced in the other legal matter	X	X
Other Legal Matter EndAttach	Ending Bates number of the last document in attachment range (only in emails with attachments) used when produced in the other legal matter	X	X
RecordType	Distinguishes paper from non-paper productions.	X	X
Email Importance	Importance field in email headings.	X	

[1] "Other Legal Matter" metadata shall only be provided for litigation or investigations specifically agreed to, subject to a discovery request.

D. Native Format Production of Documents

1. The Parties will produce the following ESI types in native file format:

   a. Excel spreadsheets

   b. Audio/video files

   c. Animations

   d. PowerPoint presentations

2. A Receiving Party may request that documents (identified by Bates number) be produced in native format. The producing party shall accommodate reasonable requests.

3. Any document produced in native format, will be produced according to the following specifications:

   a. A unique Bates number and confidentiality designation shall be used as the file name and the original file name and file extension shall be preserved in the corresponding load file. An example of this convention would be: "[Party]_MDL_00000l_Confidential.xls"

   b. The native format documents shall be accompanied by reference information that sets forth for each document, sufficient information to allow the Parties to track and authenticate the native format documents produced, including: (1) the name of the custodian from whose files the electronic file is produced; (2) an appropriately calculated "MD-5 Hash Value"; (3) the original name of the file; and (4) a Bates number.

   c. Any file produced in native format need not be imaged. Instead, a single page placeholder image shall be provided that indicates the file was produced in native format and contains the Bates number and Confidential designation of the corresponding file.

E. Redacted Files

1. The Parties reserve the right to redact any information covered by the attorney-client privilege, attorney-work product doctrine, or any other applicable privilege, prior to producing documents in this Action.

2. For Native Files requiring redactions:

a. Native Excel files will be redacted by blacking out the data contained in a particular cell, row, column or tab. These documents will be identified as redacted within the "REDACTED" field in the .DAT. If the producing party deems it necessary to produce redacted Excel (or other spreadsheet formats) in any format other than Native, the parties should meet and confer before such a production is made.

b. Native PowerPoint presentations that require redactions shall be produced as TIFF images, which shall include speaker notes and "hidden" slides as extracted by the software used to process the documents. Color PowerPoint presentations requiring redactions shall be converted to color images as set forth in Section D.1.iv., and black and white PowerPoint presentations requiring redactions shall be converted to black and white TIFF images, provided that proper grayscale printing is enabled to ensure that any dark colored text is not hidden by dark objects/drawings around the text. If the PowerPoint or slide program contains video or audio components, the video or audio will be produced as native files with the appropriate attachment relationships.

3. Extracted text that has been redacted on the produced TIFF will not be provided. Documents that do not render in a readable format to TIFF, such as Excel spreadsheets, may be

redacted in native form as long as the producing party keeps a pristine, unredacted copy of the native file and identifies the natively redacted documents to the receiving party in the production cover letter or by way of a native redaction field.

F. Data Load Files/Cross-Reference Files

Fielded data should be exchanged via a document-level-database load file in one of two delimited formats. Either standard Concordance (DAT) or comma delimited (CSV). All image data should be delivered with a corresponding image load file in one of three formats; standard IPro (LFP), Opticon (OPT) or Summation (DII). The total number of image files referenced in the image load file should match the total number of images in the production delivery. This section is subject to the Parties' vendors being able to process the data; if not, the Parties will meet and confer.

G. Deduping Documents and De-NISTing Documents

1. Each Party will dedupe ESI globally for exact duplicate documents (based on MD5 or SHA-1 hash values at the parent document level). This will result in the Producing Party producing only a single copy of responsive Duplicate ESI, provided that all other custodians of the Duplicate ESI are listed in the "Duplicate Custodians" (or similar name) field. De-duplication shall not break apart families.

2. Common system and program files as defined by the NIST library need not be processed, reviewed or produced.

3. Email thread analysis2 may be used to reduce the volume of emails reviewed and produced, provided that the produced emails include all responsive information from a thread,

[2] Where multiple email messages are part of a single email chain or "thread", a party is only required to produce the most inclusive messages ("Last in Time Email") and need not produce earlier, or less inclusive email messages or "thread messages" that are fully contained, including attachments and including identical senders and recipients, including the Last In Time Email. Only email messages for which the parent document and all attachments are contained in the Last In Time Email will be considered less inclusive email messages that need not be produced.

including attachments (regardless of their placement in the email thread). Nothing in this paragraph shall permit a Party to separate or break email threads in favor of reducing volume. The Producing Party will provide that all other custodians of the email thread are listed in the "Duplicate Custodians" (or similar name) field and all additional metadata is maintained and provided in the load file in "Duplicate [insert metadata]". In the event that any one of the Duplicate Custodians is a deponent, the Receiving Party may request the Producing Party to produce a copy of a reasonable number of specific unthreaded emails from that custodian/deponent's files within a reasonable time before the deposition. The Producing Party shall promptly produce the unthreaded email from that custodian/deponent's files in advance of the deposition. Emails should be imaged and produced in such a way that indicates not only that a file was attached to a specific email within an email thread, but also so that the file name of the attachment is visible in the email heading for the specific email within the thread in which a file was sent as an attachment.

4. If documents contain embedded objects, the Producing Party shall extract the embedded objects as separate documents and treat them like attachments to the document to the extent reasonably possible and consistent with how the data is processed. To the extent reasonably possible, images embedded in emails shall not be extracted and produced separately.

H. Proprietary or Third-Party Software

To the extent that information produced pursuant to this Protocol cannot be rendered or viewed without the use of proprietary or third-party software, the Parties shall meet and confer to discuss the production formats that are available within the software or directly from the software's database. During the meet and confers, the Producing Party shall have available a person who will be able to answer questions regarding the capabilities and formats that production can be made in. If production is not feasible, the Producing Party shall provide the Receiving Party written notice of the reason why the production is not feasible. The Parties shall meet and confer within seven

(7) days of the date of the written notice.

I. Production Media

The Parties shall produce documents electronically via a secure File Transfer Protocol ("FTP") rather than through physical media (e.g. CD, DVD, or hard drive), unless such electronic transmission is impracticable, or the Parties agree on a different method of transmission. The produced documents shall be password protected and/or encrypted. Each piece of Production Media shall be encrypted and assigned a production number or other unique identifying label ("Production Volume Number") corresponding to the sequence of the material in that production and shall include (a) the name of the litigation and the case number; (b) the identity of the Producing Party; (c) the Bates Number range of the materials contained on such Production Media item; and (d) the Production Volume Number of the Production Media. However, the Parties expressly recognize that this section may be superseded by the anticipated agreement to create a document production repository.

J. Defendants' Identification and Classification of Documents

1. Within fourteen (14) calendar after the Defendant has served its responses and/or objections to a party's Requests for Production of Documents served in accordance with Federal Rule of Civil Procedure 34 ("RFPs") in which it agrees to produce documents, the Parties agree to meet and confer to discuss Defendants' ESI, including (i) custodians, including the names, titles and departments of custodians; (ii) identification of the custodial and noncustodial data sources and repositories containing documents and ESI responsive to the request; (iii) additional parameters for scoping the review and production efforts (e.g., application of date ranges, etc.); (iv) potential use and identification of search terms, tools, or techniques; and (v) the identification and production of Documents and ESI from custodial and non-custodial sources that do not require the use of search terms, tools, or techniques.

2. Defendants have a continuing obligation to identify any other custodial and non-custodial data sources that may contain information relevant to this litigation and preserve them. Plaintiffs reserve the right to request, at any time prior to the close of discovery, inclusion of additional custodians or non-custodial data sources whose relevance was discovered after the initial designations, or for other good cause shown. If the Defendants object to the inclusion of such non-custodial or custodial sources, the Parties will meet and confer to resolve the matter; if the Parties cannot reach resolution, the MDL Court or its designee will determine the matter. To the extent a response to discovery requires production of discoverable ESI contained in a structured database, the Parties shall meet and confer on a production format.

3. Before a Producing Party uses search terms, the Producing Party shall describe the search protocol they intend to use and shall include: (a) the criteria to be used to identify the universe of documents to which search terms will be applied (e.g., custodians and date ranges), and (b) proposed search terms to be applied to that universe of documents, subject to revision based on, for example, meet and confer of the Parties. A Requesting Party may also suggest search terms to be applied. If there is a dispute between the Parties regarding the search term protocol described by the Producing Party, the Parties will meet and confer to resolve the matter; if the Parties cannot reach resolution, the MDL Court or its designee will determine the matter.

4. Before a Producing Party uses technology assisted review ("TAR"), to identify relevant and responsive documents for production, the Parties agree to meet and confer regarding a protocol for doing so and submit any unresolved disputes to the MDL Court for resolution.

5. The Parties intend to proceed with depositions as expeditiously as possible. The Parties agree to work together in good faith in accordance with the Joint Coordination Order and the Deposition Protocol to prioritize and sequence productions that may pertain to the deponents and that are relevant, responsive and proportional to the case. The Parties agree to take any

unresolved disputes on same promptly to the MDL Court.

6. Nothing in this Order shall be deemed to be a waiver of any Party's right to reasonably seek agreement from the other Parties, or a Court ruling, to modify proposed or previously agreed-to search terms, techniques, or tools (including any proposed as supplements).

7. To the extent the producing party knows of documents and data in its custody or control that are discoverable or responsive to a request for production that is from a source or custodian that has been agreed to for production, then the fact that negotiated search terms did not identify those documents and data shall not relieve it of its obligation to produce that information.

K. Foreign Language Documents

Hard-copy documents and ESI that contains languages other than English, in whole or in part, shall be produced in the original language(s), along with all identified translations of the searchable text. No party shall be obligated to create a translation of any document, however.

L. Social Media

The Parties recognize that there is no tool that can capture all potentially related social media ESI, therefore the parties may satisfy discovery obligations in different manners which will include but not be limited exporting using the platforms' export tools or meet and confer as to other methods of collection. The Producing Party shall provide document level OCR text files to accompany any TIFF or other image format production. The minimum data that must be provided for information produced from a social media platform will be BEGBATES, ENDBATES, CUSTODIAN(S), SOCIAL MEDIA PLATFORM, SOCIAL MEDIA USERNAME, and TEXT, indicating the beginning and ending Bates numbers, the custodian information, and the OCR or Optical Character Recognition text.

M. Other Documents and Data

1. The Parties shall meet and confer to address the collection and production format

of any responsive documents and data contained on any mobile or handheld device.

2. The parties agree to meet and confer to discuss whether and how to produce in-office communicator platforms as well as collaboration programs such as Microsoft Teams and Slack.

N. Inability to Produce Metadata

1. At this time, the parties do not represent that any or all metadata described in this Order exists. During the course of collection, review, and production of documents and ESI, the parties shall determine what metadata exists. If metadata does not exist for any production document, the required production field will be blank

2. If data is encrypted when it is produced, the Producing Party shall transmit the credentials necessary to decrypt the data subsequent to the production.

3. If the Producing Party becomes aware of responsive data that is encrypted and are unable to unencrypt it, the Producing Party shall let the Receiving Party know and will explain the steps taken to attempt to unencrypt the data.

O. Production of Deposition Transcripts from Related Actions

The Parties acknowledge that depositions may be taken in other matters that could be relevant in this Action. If those transcripts are to be produced by a Party in this action, they are to be produced with their exhibits. Should a need arise for a centralized repository, the parties shall meet and confer within (7) days of the request for creating a centralized repository to discuss the organization of any such repository.

P. Archive File Types

Archive file types (e.g., .zip, .rar) shall be uncompressed for processing. Each file contained within an archive file shall be produced, and the reference to the parent archive file will be provided in the child file name. If the archive file is itself an attachment, that parent/child relationship shall

also be preserved.

Q. Plaintiff Production

This Order presumptively governs all discovery from Plaintiffs. Nevertheless, the parties agree to meet and confer in good faith to determine an appropriate method and/or format of production of Plaintiff ESI according to the ESI in Plaintiffs' possession. In the event Defendant agrees to accept production of materials for one or more Plaintiffs in a manner that does not strictly comply with the requirements of this Order, Defendant reserves the right to make reasonable request for those Plaintiffs to provide additional metadata or information.

R. General Provisions

1. Any practice or procedure set forth herein may be varied by agreement of the Parties or Court order.

2. Should any Party subsequently determine in good faith that it cannot proceed as required by this Order or that the Order requires modification, the Parties will meet and confer to resolve any dispute at least fourteen days before seeking Court intervention.

SO ORDERED:

Dated: _____

_____

Hon. Matthew F. Kennelly
U.S. District Court for the Northern District of Illinois.