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NOTE CHANGES MADE BY THE COURT

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 HONDA TRADING AMERICA CORPORATION, a California corporation,

22 Plaintiff,

23 v.

24 BASF CORPORATION, a Delaware corporation, and DOES 1 through 50, inclusive,

25 Defendants.

CASE NO. 2:20-cv-04375 JWH (AGR)

~~PROPOSED~~ PROTECTIVE ORDER

NOTE CHANGES MADE BY THE COURT

Honorable Alicia G Rosenberg

United States Magistrate Judge

Courtroom 550

Action Filed: May 14, 2020

1 Having reviewed the Stipulation and Proposed Protective Order signed by the
2 parties to this action and filed with the Court on February 26, 2021, the Court hereby
3 enters the terms of the Stipulation as an Order of this Court, as follows:

4 1. Definitions: In this Stipulation and Protective Order (or “Order”), the
5 words set forth below shall have the following meanings:

6 a. “Proceeding” means the above-entitled proceeding Case No. 2:20-cv-
7 04375 JWH (AGR).

8 b. “Court” means the Honorable John W. Holcomb, or any other judge
9 to which this Proceeding may be assigned, including Court staff participating in such
10 proceedings.

11 c. “CONFIDENTIAL information” means information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for protection
13 under Federal Rule of Civil Procedure 26(c), provided by or on behalf of a Designating
14 Party, which is believed in good faith by the Designating Party or the Designating
15 Party’s counsel, to contain non-public material and: (a) constitute or contain material or
16 information concerning which the Designating Party has an obligation of confidentiality
17 to a Non-Party; or (b) the Designating Party believes constitutes or contains confidential
18 research, personal or commercial information.

19 d. “Designating Party” means a Party or Non-party that designates
20 information or items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

22 e. “Disclosure” or “Discovery Material” means all items or
23 information, regardless of the medium or manner in which it is generated, stored, or
24 maintained (including, among other things, testimony, transcripts, and tangible things),
25 that are produced or generated in disclosures or responses to discovery in this matter.

26 f. “Experts” means a person with specialized knowledge or experience
27 in a matter pertinent to the litigation who has been retained by a Party or its counsel to
28 serve as an expert witness or as a consultant in this Proceeding.

1 g. “HIGHLY CONFIDENTIAL information” means any
2 CONFIDENTIAL information that the Designating Party believes, in good faith, is so
3 sensitive that its disclosure, even if limited by the restrictions placed on
4 CONFIDENTIAL information in this Protective Order, could cause competitive harm or
5 injury to the Designating Party. For the avoidance of doubt, HIGHLY
6 CONFIDENTIAL information includes documents reflecting negotiations with
7 suppliers and others relating to catalytic converter materials and platinum group metals,
8 terms of agreements relating to catalytic converter materials and platinum group metals,
9 pricing of products and materials, competitive strategy, and purchasing strategy.

10 h. “Non-Party” means any natural person, partnership, corporation,
11 association, or other legal entity not named as a Party to this Proceeding.

12 i. “Party or Parties” means any party to this Proceeding, including all
13 of its officers, directors, employees, consultants, retained experts, and in-house counsel.

14 j. “Producing Party” means a Party or Non-Party that produces
15 Disclosures or Discovery Material in this Proceeding.

16 k. “Professional Vendors” means persons or entities that provide
17 litigation support services (e.g., photocopying, videotaping, translating, preparing
18 exhibits or demonstrations, and organizing, storing, or retrieving data in any form or
19 medium) and their employees and subcontractors.

20 l. “Protected Material” means any Disclosure or Discovery Material
21 that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

22 m. “Receiving Party” means a Party that receives Disclosures or
23 Discovery Material from a Producing Party.

24 2. Scope: The protections conferred by this Order cover not only Protected
25 Material (as defined above), but also (1) any information copied or extracted from
26 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
27 Material; and (3) any deposition testimony, conversations, or presentations by Parties or
28 their Counsel that might reveal Protected Material, other than during a court hearing or

1 at trial. Any use of Protected Material during a court hearing or at trial shall be
2 governed by the orders of the presiding judge. This Order does not govern the use of
3 Protected Material during a court hearing or at trial. The entry of this Stipulation and
4 Protective Order does not alter, waive, modify, or abridge any right, privilege or
5 protection otherwise available to any Party with respect to the discovery of matters,
6 including but not limited to any Party's right to assert the attorney-client privilege,
7 the attorney work product doctrine, or other privileges, or any Party's right to contest
8 any such assertion.

9 4. Designating Protected Material: Each Designating Party under this Order
10 must take care to designate Protected Material in good faith and shall limit any such
11 designation to specific material that qualifies under the appropriate standards. If it
12 comes to a Designating Party's attention that information or items that it designated for
13 protection do not qualify for protection, that Designating Party must promptly notify the
14 Receiving Party that it is withdrawing the inapplicable designation. Further, nothing
15 herein waives or limits Receiving Party's rights to object to designations to such
16 materials. Except as otherwise provided in this Order, or as otherwise stipulated or
17 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
18 must be clearly so designated before the material is disclosed or produced. Designation
19 in conformity with this Order requires:

20 a. For information in documentary form (e.g., paper or electronic
21 documents, but excluding transcripts of depositions), that the Producing Party affix at a
22 minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," to each
23 page that contains protected material.

24 b. For testimony given in depositions, that the Designating Party
25 identifies on the record the Protected Material before the close of the deposition. The
26 Designating Party may designate the entirety of the deposition testimony as
27 CONFIDENTIAL or HIGHLY CONFIDENTIAL with the right to identify more
28 specific portions of the deposition testimony as to which protection is sought within 30

1 days following receipt of the final deposition transcript. In circumstances where
2 portions of the deposition testimony are designated as Protected Material, the transcript
3 pages containing Protected Material may be separately bound by the court reporter, who
4 must affix to the top of each page a “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL” legend, as instructed by the Designating Party.

6 c. For information produced in some form other than documents, and
7 for any other tangible items, including, without limitation, compact discs or DVDs,
8 the Producing Party must affix in a prominent place on the exterior of the container or
9 containers in which the information or item is stored the legend “CONFIDENTIAL” or
10 “HIGHLY CONFIDENTIAL.” If only a portion or portions of the information
11 warrants protection, the Producing Party, to the extent practicable, shall identify the
12 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL portions.

13 5. Inadvertent Failures to Designate: If timely corrected, an inadvertent
14 failure to designate qualified Disclosure or Discovery Material does not, standing alone,
15 waive the Designating Party’s right to secure protection under this Order for such
16 material. Upon timely correction of a designation, the Receiving Party must make
17 reasonable efforts to assure that the material is treated in accordance with the provisions
18 of this Order.

19 6. Challenging Confidentiality Designations: In the event that counsel for a
20 Party receiving information in discovery designated as “CONFIDENTIAL” or
21 “HIGHLY CONFIDENTIAL” objects to such designation with respect to any or all of
22 such items, said counsel shall advise counsel for the Designating Party, in writing, of
23 such objections, the specific information to which each objection pertains, and the
24 specific reasons and support for such objections. Any Party or Non-Party may
25 challenge a HIGHLY CONFIDENTIAL or CONFIDENTIAL designation at any time
26 that is consistent with the Court’s scheduling order. The burden of persuasion in any
27 such challenge proceeding shall be on the Designating Party. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, or the Court otherwise

1 ruled that designation(s) are not appropriate, all Parties shall continue to afford the
2 Disclosure or Discovery Material in question the level of protection to which it is
3 entitled under the Producing Party's designation until the Court rules on the challenge.

4 7. Access to and Use of Discovery Material: A Receiving Party may use
5 Discovery Material (including without limitation Protected Material) that is disclosed or
6 produced by another Party or by a Non-Party in connection with this Proceeding only
7 for prosecuting, defending, or attempting to settle this Proceeding. Such Discovery
8 Material shall be used by the Receiving Party only for the purposes of preparing for,
9 conducting, participating in the conduct of, and/or prosecuting and/or defending the
10 Proceeding, and not for any business or other purpose whatsoever. Further, such
11 Discovery Material may be disclosed only to the categories of persons and under the
12 conditions described in this Order. When the Proceeding has been terminated, a
13 Receiving Party must comply with the provisions of Section 14(g) below. Discovery
14 Material must be stored and maintained by a Receiving Party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this
16 Order.

17 7.1. Disclosure of HIGHLY CONFIDENTIAL Information. Unless otherwise
18 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
19 may disclose any information or item designated HIGHLY CONFIDENTIAL only to:

20 a. the Receiving Party's outside counsel of record in this Proceeding
21 and regular and temporary employees of such counsel to whom it is necessary that the
22 information be shown for the purposes of this litigation;

23 b. from BASF and from HTA, in-house counsel who is assisting in the
24 prosecution or defense of this Proceeding, whose job responsibilities are focused on
25 litigation management, who are not involved in competitive decision-making
26 ("Litigation In House Counsel"), subject to the following:

27 i. Discovery Material designated as HIGHLY CONFIDENTIAL shall
28 not be disclosed to Litigation In House Counsel unless and until such person has

1 executed an “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 ii. the Parties shall take all necessary steps required to segregate any
3 files or materials thereof containing HIGHLY CONFIDENTIAL information in a
4 manner that protects the information from disclosure, whether intentional or inadvertent,
5 to any individual and/or entity not designated in this Order as having access to HIGHLY
6 CONFIDENTIAL information, including but not limited to all other employees and in-
7 house counsel (other than Litigation In House Counsel) of BASF and HTA.

8 iii. In the event of any change in the role of a Party’s Litigation In
9 House Counsel as of the date of the counsel’s “Acknowledgment and Agreement to Be
10 Bound” that would materially alter that agreement, the affected Party shall (a) suspend
11 all access to HIGHLY CONFIDENTIAL information by such Litigation In House
12 Counsel, and (b) within five business days, notify the other Party of the changed
13 circumstances, and either cause the Litigation In House Counsel to execute a new
14 “Acknowledgment and Agreement to Be Bound” or propose substitute Litigation In
15 House Counsel consistent with the terms of this Order. For the purposes of this Order, a
16 change in the Litigation In House Counsel’s role shall be deemed to be material if it
17 includes responsibility relating to competitive decision-making. The parties shall
18 engage in good faith discussions to resolve any situation set forth in this Paragraph, but
19 may present any disagreements to the Court for resolution.

20 c. Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this Proceeding and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 d. the Court and its personnel;

24 e. court reporters and their staff;

25 f. the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information;

27 g. professional jury or trial consultants, mock jurors, and Professional
28 Vendors to whom disclosure is reasonably necessary for this Proceeding and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 h. any mediator or settlement officer, and their supporting personnel,
3 mutually agreed upon by any of the Parties engaged in settlement discussions.

4 7.2. Disclosure of CONFIDENTIAL Information. Unless otherwise ordered by
5 the Court or permitted in writing by the Designating Party, a Receiving Party may
6 disclose any information or item designated “CONFIDENTIAL” only to:

7 a. any persons who may receive HIGHLY CONFIDENTIAL
8 information as specified above in Section 7.1; and

9 b. the officers, directors, and employees of the Receiving Party to
10 whom disclosure is reasonably necessary for this Proceeding, upon signing the
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

12 8. Relief from Protective Order: Any Party to the Proceeding (or other
13 person subject to the terms of this Stipulation and Protective Order) may ask the Court,
14 after appropriate notice to the other Parties to the Proceeding, to modify or grant relief
15 from any provision of this Stipulation and Protective Order.

16 9. Reservation of Parties’ Rights: Entering into, agreeing to, and/or
17 complying with the terms of this Stipulation and Protective Order shall not:

18 a. operate as an admission by any person that any particular Document,
19 Testimony or Information marked CONFIDENTIAL or HIGHLY CONFIDENTIAL
20 contains or reflects trade secrets, proprietary, confidential or competitively sensitive
21 business, commercial, financial or personal information; or

22 b. prejudice in any way the right of any Party (or any other person
23 subject to the terms of this Stipulation and Protective Order):

24 i. to seek a determination by the Court of whether any particular
25 Protected Material should be subject to protection as CONFIDENTIAL
26 or HIGHLY CONFIDENTIAL under the terms of this Stipulation and
27 Protective Order; or

28 ii. to seek relief from the Court on appropriate notice to all other

1 Parties to the Proceeding from any provision(s) of this Stipulation and
2 Protective Order, either generally or as to any particular document,
3 material, or information.

4 10. Non-Party's Protected Material Sought to Be Produced in This Litigation:

5 Any information that may be produced by a Non-party witness in discovery in the
6 Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
7 CONFIDENTIAL or HIGHLY CONFIDENTIAL under the terms of this Stipulation
8 and Protective Order, and any such designation by a Non-party shall have the same
9 force and effect, and create the same duties and obligations, as if made by one of the
10 undersigned Parties hereto. Any such designation shall also function as a consent by
11 such producing Non-party to the authority of the Court in the Proceeding to resolve and
12 conclusively determine any motion or other application made by any person or Party
13 with respect to such designation, or any other matter otherwise arising under this
14 Stipulation and Protective Order.

15 11. Protected Material Subpoenaed or Ordered Produced in Other Litigation:

16 If any person subject to this Stipulation and Protective Order who has custody of any
17 Protected Materials receives a subpoena or other process ("Subpoena") from any
18 government or other person or entity demanding production of Protected Materials, the
19 recipient of the Subpoena shall promptly give notice of the same by electronic mail
20 transmission, followed by either express mail or overnight delivery to counsel of record
21 for the Designating Party, and shall furnish such counsel with a copy of the Subpoena.
22 Upon receipt of this notice, the Designating Party may, in its sole discretion and at its
23 own cost, move to quash or limit the Subpoena, otherwise oppose production of the
24 Protected Material, and/or seek to obtain confidential treatment of such Protected
25 Material from the subpoenaing person or entity to the fullest extent available under
26 law. The recipient of the Subpoena may not produce any information pursuant to the
27 Subpoena prior to the date specified for production on the Subpoena.

28 12. Unauthorized Disclosure of Protected Material: If a Receiving Party learns

1 that, by inadvertence or otherwise, it has disclosed Protected Material to any person or
2 in any circumstance not authorized under this Protective Order, the Receiving Party
3 must immediately (a) notify in writing the Designating Party of the unauthorized
4 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
5 Material, (c) inform the person or persons to whom unauthorized disclosures were made
6 of all the terms of this Order, and (d) request such person or persons to execute the
7 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

8 13. Inadvertent Production of Privileged or Otherwise Protected Material:

9 When a Producing Party gives notice to the Receiving Party that certain produced
10 Discovery Material is subject to a claim of privilege or other protection, the obligations
11 of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
12 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
13 established in an e-discovery order that provides for production without prior privilege
14 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the Parties
15 reach an agreement on the effect of disclosure of a communication or information
16 covered by the attorney-client privilege or work product protection, the Parties may
17 incorporate their agreement into this Protective Order.

18 14. Miscellaneous:

19 a. Nothing in this Stipulation and Protective Order shall be construed
20 to preclude either Party from asserting in good faith that certain Protected Material
21 require additional protection. The Parties shall meet and confer to agree upon the terms
22 of such additional protection.

23 b. This Stipulation and Protective Order is entered into without
24 prejudice to the right of any Party to knowingly waive the applicability of this
25 Stipulation and Protective Order to any Protected Material designated by that Party.
26 If the Designating Party uses Protected Material in a non-confidential manner, then the
27 Designating Party shall advise that the designation no longer applies.

28 c. A Party that seeks to file under seal any Protected Material must

1 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
2 pursuant to a court order authorizing the sealing of the specific Protected Material at
3 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
4 establishing that the Protected Material at issue are privileged, protectable as a trade
5 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
6 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the
7 Court, then the Receiving Party may file the information in the public record pursuant to
8 Civil Local Rule 79-5(e) unless otherwise instructed by the court.

9 d. The Parties shall meet and confer regarding the procedures for use
10 of Protected Material at trial and shall move the Court for entry of an appropriate order.

11 e. Nothing in this Stipulation and Protective Order shall affect the
12 admissibility into evidence of Protected Material, or abridge the rights of any person to
13 seek judicial review or to pursue other appropriate judicial action with respect to any
14 ruling made by the Court concerning the issue of the status of Protected Material.

15 f. This Stipulation and Protective Order shall continue to be binding
16 after the conclusion of this Proceeding and all subsequent proceedings arising from
17 this Proceeding, except that a Party may seek the written permission of the
18 Designating Party or may move the Court for relief from the provisions of this
19 Stipulation and Protective Order. ~~To the extent permitted by law, the Court shall~~
20 ~~retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective~~
21 ~~Order, even after the Proceeding is terminated.~~

22 g. Upon written request made within thirty (30) days after the
23 settlement or other termination of the Proceeding, the undersigned Parties shall
24 have thirty (30) days to either (a) promptly return to counsel for each Designating
25 Party all Confidential Materials and all copies thereof (except that counsel for each
26 Party may maintain in its files, in continuing compliance with the terms of this
27 Stipulation and Protective Order, all work product, including pleading files and
28 deposition transcripts together with the exhibits marked at the deposition), (b) agree

1 with counsel for the Designating Party upon appropriate methods and certification
2 of destruction or other disposition of such Protected Material, or (c) as to any
3 documents, testimony or other information not addressed by sub-paragraphs (a) and
4 (b), file a motion seeking a Court order regarding proper preservation of such
5 Protected Material. To the extent permitted by law the Court shall retain continuing
6 jurisdiction to review and rule upon the motion referred to in sub-paragraph (c) herein.

7 h. After this Stipulation and Protective Order has been signed by
8 counsel for all Parties, it shall be presented to the Court for entry. Counsel agree to be
9 bound by the terms set forth herein with regard to any Protected Material that have
10 been produced before the Court signs this Stipulation and Protective Order.

11 i. The Parties and all signatories to the Certification attached hereto as
12 Exhibit A agree to be bound by this Stipulation and Protective Order pending its
13 approval and entry by the Court. In the event that the Court modifies this Stipulation
14 and Protective Order, or in the event that the Court enters a different protective order,
15 the Parties agree to be bound by this Stipulation and Protective Order until such time
16 as the Court may enter such a different order. It is the Parties' intent to be bound by
17 the terms of this Stipulation and Protective Order pending its entry so as to allow for
18 immediate production of Protected Material under the terms herein.

19
20 **It is so ORDERED this 1st day of March, 2021**

21 

22 _____
23 **Honorable Alicia G Rosenberg**
24 **United States Magistrate Judge**

EXHIBIT A ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1

2

3 I, _____ [print or type full name], of

4 _____ [print or type full address], declare under penalty of perjury that I

5 have read in its entirety and understand the Stipulated Protective Order that was issued

6 by the United States District Court for the Central District of California in the case of

7 *Honda Trading America Corporation v. BASF Corporation*, CASE NO. 2:20-cv-04375

8 JWH (AGR), I agree to comply with and to be bound by all the terms of this Stipulated

9 Protective Order and I understand and acknowledge that failure to so comply could

10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise

11 that I will not disclose in any manner any information or item that is subject to this

12 Stipulated Protective Order to any person or entity except in strict compliance with the

13 provisions of this Order. I further agree to submit to the jurisdiction of the United States

14 District Court for the Central District of California for the purpose of enforcing the

15 terms of this Stipulated Protective Order, even if such enforcement proceedings occur

16 after termination of this action. I hereby appoint _____ [print

17 or type full name] of _____ [print or type full

18 address and telephone number] as my California agent for service of process in

19 connection with this action or any proceedings related to enforcement of this Stipulated

20 Protective Order.

21

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____