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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA, BAKERSFIELD DIVISION**

11 SHIRLEY BROUSSARD,
12
13 Plaintiff,

14 v.

15 3M COMPANY, AS SUCCESSOR BY
16 MERGER TO MINNESOTA MINING
& MANUFACTURING COMPANY
17 AND/OR ITS PREDECESSORS/
18 SUCCESSORS IN INTEREST,
19 Defendants.

CASE NO. 1:16-cv-00462-LJO-JLT

**ORDER GRANTING IN PART
PROTECTIVE ORDER
CONCERNING 3M DOCUMENTS
AND INFORMATION AS
MODIFIED BY THE COURT**

(Doc. 20)

PROTECTIVE ORDER

20 In order to preserve and maintain the confidentiality of certain documents to
21 be produced in this case by the Parties, it is ORDERED that the following Protective
22 Order be ENTERED:

Definitions

23
24 1. The term “Confidential Information” shall mean any document,
25 including electronic documents, other tangible things or oral testimony that contains
26 or reveals confidential, trade secret, proprietary and competitively sensitive
27 information, which would harm 3M Company’s (“3M”) significant competitive and
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1 business advantage in the marketplace if the information is disclosed. A designating
2 Party shall act in good faith in designating information as “Confidential
3 Information,” but a non-designating Party retains the right to dispute or challenge
4 such designation as described in Paragraph 6 below.

5 2. A “Competitor” of 3M is defined as any company which designs,
6 manufactures, sells, and/or distributes respiratory protection equipment.

7 3. The term “Qualified Person” shall mean:

8 a. The Court and its official personnel, court reporters and
9 translators;

10 b. The Plaintiff and Plaintiff’s counsel retained in connection with
11 the above captioned case, and their clerical, litigation support and paralegal
12 employees. Plaintiff’s counsel may review information deemed confidential
13 under this Protective Order with Plaintiff, and may discuss the contents of
14 such Confidential Information with Plaintiff, provided however, Plaintiff may
15 not obtain possession of any such documents designated as Confidential
16 Information outside the presence of Plaintiff’s counsel and shall not divulge
17 such Confidential Information to any person who is not bound by the
18 provisions of the Protective Order;

19 c. Litigation support service providers, including photocopy or
20 imaging services, graphic or visual aids, and jury consultants, PROVIDED
21 that any such litigation service provider agrees to be bound by the provisions
22 of the Protective Order by signing Exhibit A (“Declaration and Agreement to
23 Be Bound”);

24 d. Testifying or consulting experts engaged by a Party or by
25 Counsel for the Party, to assist in this litigation, PROVIDED that any such
26 testifying or consulting expert agrees to be bound by the provisions of the
27 Protective Order by signing Exhibit A;

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1 e. Defendant's outside Counsel of record retained in connection
2 with the above captioned case, and their clerical, litigation support and
3 paralegal employees;

4 f. An in-house employee of Defendant in this action who is
5 responsible for managing this litigation and who does not have responsibility
6 for any competitive decision-making regarding respiratory protection, and
7 who does not give and will not give, before final adjudication and destruction
8 of all Confidential Information pursuant to Paragraph 18 herein, advice to the
9 management of his or her employer regarding any competitive decision-
10 making about respiratory protection, including but not limited to sales,
11 marketing, pricing, product design, product development or research,
12 PROVIDED that any such in-house employee agrees to be bound by the
13 provisions of the Protective Order by signing Exhibit A;

14 g. Any other person who is designated a "Qualified Person" by
15 order of the Court or by written agreement of the Parties PROVIDED that any
16 such person agrees to be bound by the provisions of the Protective Order by
17 signing Exhibit A.

18 **Confidential Information Designation**

19 4. Any document or other tangible thing that contains or reveals
20 Confidential Information shall be labeled "Confidential" in such a manner so as not
21 to obscure any writing or data appearing on such page. For a document, such
22 marking shall appear on each page of the document that contains Confidential
23 Information. Any document or other tangible thing marked "Confidential" and the
24 information it contains or reveals shall be treated in accordance with the provisions
25 of this Protective Order. Any Confidential Information not reduced to documentary
26 or physical form or which cannot be conveniently labeled shall be so designated by
27 a Party by serving a written notification on the receiving Party.

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1 Further, certain “Confidential Information” such as social security numbers,
2 addresses or any other information that would identify any individual in violation of
3 his or her rights to privacy may be redacted from said Confidential Information.

4 5. A Party may designate information disclosed at any deposition as
5 Confidential Information on the record during the deposition. If information is
6 designated as Confidential Information during the deposition, the following steps
7 shall be taken to identify, and mark the Confidential Information:

8 a. The court reporter shall visibly mark the cover page of the
9 deposition transcript as “Confidential: Subject to Protective Order.” The
10 videographer shall visibly mark any videotapes of such deposition as
11 “Confidential: Subject to Protective Order.”

12 b. If information is designated as confidential on the record at the
13 deposition, all such information shall be treated as Confidential Information
14 until thirty (30) days after a transcript of the deposition is received by counsel
15 for each Party.

16 c. The designating Party shall serve within thirty (30) days of
17 receiving the transcript a written notification identifying the specific pages
18 and lines of the transcript that contain Confidential Information, or stating
19 that no Confidential Information is contained herein. This written notification
20 shall be served on the other Party, the court reporter, and the videographer. If
21 the designating Party fails to provide such written notification within thirty
22 (30) days, the information from the deposition initially will not be considered
23 Confidential. However, if a designating Party fails to provide written
24 notification within thirty (30) days, that ability to designate information as
25 Confidential is not waived. The designating Party can later provide written
26 notification concerning Confidential Information.

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1 d. Any person in the possession, custody, or control of such
2 deposition transcript shall attach a copy of such written notification to the
3 face of the transcript.

4 **Challenges to Confidential Information Designation**

5 6. If a Party disputes or challenges the designation of any information as
6 Confidential Information, either after the production of documents in response to
7 discovery requests or during depositions as stated in paragraph 5 above, the Party
8 may seek a Court Order that removes or alters the protections afforded such
9 information under the provisions of this Order. Such information shall nevertheless
10 be treated as Confidential Information in accordance with the provisions of this
11 Protective Order until such designation is removed by order of the Court or by
12 written consent of the designating Party. The Party challenging the designation
13 must identify the challenged documents by Bates numbers. If the number of
14 challenged documents is large, the designating Party may require additional time for
15 review, and either by agreement of the parties or from the Court, seek additional
16 time.

17 **Use and Disclosure of Confidential Information**

18 7. Documents shall be produced to the other Party, regardless of whether
19 they are marked Confidential. Documents marked Confidential shall be treated as
20 such under the terms of this Protective Order, but are not otherwise shielded from
21 production. Confidential Information shall not be shown, disseminated, or disclosed
22 to any person other than a Qualified Person or to the Party who designated such
23 Confidential Information, except as otherwise provided in this Protective Order.

24 8. Confidential Information or information therein may not be disclosed
25 (a) to anyone other than the Qualified Persons in paragraph 3 (b)-(g) who have
26 signed Exhibit A in accordance with this Protective Order, or (b) in any case other
27 than *Shirley Broussard vs. 3M Company*, United States District Court, Eastern
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1 District of California, Case No. 1:16-cv-00462-LJO-JLT without approval of the
2 Party producing the Confidential Information.

3 Notwithstanding the provisions above, should a Party wish to disclose a
4 document identified as Confidential to a person, other than a Qualified Person, who
5 may be employed by any present or potential Competitor, or a person who is
6 consulting with any present or potential Competitor, as defined above, that Party
7 shall first request, in writing, the Party producing the confidential documents for its
8 consent for the requesting Party to disclose the confidential documents to the
9 requesting Party's identified employee, employees, consultant or consultants. Such
10 a request shall list the document for which disclosure is requested by Bates number.
11 If no such consent is given within fourteen (14) days of the request, the requesting
12 Party, with notice to the producing Party, may approach the Court, in camera, with
13 copies of the documents to be disclosed and the curriculum vitae of the person to
14 whom the documents are to be disclosed and obtain a ruling on whether the
15 documents may be disclosed to that person.

16 9. Confidential Information shall be used solely for the purpose of this
17 action and shall not be used for any competitive purpose.

18 10. No copies of materials designated Confidential shall be made except by
19 or on behalf of counsel of record for the Parties.

20 11. Notwithstanding the other provisions of this Protective Order, the
21 Parties may use Confidential Information at any deposition in this action pursuant to
22 the following:

23 a. The Confidential Information may only be disclosed to the
24 deponent in the presence of Qualified Persons.

25 b. Confidential Information may be disclosed by outside Counsel of
26 the Parties, including Competitors, to corporate representatives or other
27 witnesses of the Parties in order to prepare the corporate representative or
28 witness for deposition or trial, provided such corporate representative or

1 witness agrees to be bound by the provisions of the Protective Order by
2 signing Exhibit A.

3 c. The Party using Confidential Information at the deposition shall
4 notify the court reporter of this Protective Order.

5 d. After time for correction of the deposition has expired, the court
6 reporter shall not retain a copy of any Confidential Information, or material
7 containing Confidential Information, but shall return such information to the
8 designating Party within seven (7) days. The Party using the Confidential
9 Information has the responsibility of ensuring the reporter acts in accordance
10 with this provision.

11 12. (a) A document that contains or reveals Confidential Information may
12 be shown at a deposition or otherwise to any person, including a current or former,
13 employee of a Competitor, indicated in such document to be the originator, author,
14 or recipient of the document or of the Confidential Information contained therein; or
15 who is identified or discussed in the document; or any person who is an officer,
16 director, or employee of the Party who designated such Confidential Information.
17 Any witness to whom Confidential Information is disclosed under this subparagraph
18 12(a) shall be bound by the terms of this Protective Order and shall sign a copy of
19 Exhibit A.

20 (b) Should a document that contains or reveals Confidential
21 Information be shown to a person at a deposition that is not the originator, author,
22 recipient, officer, director, or employee of the Party who designated such
23 Confidential Information, then such person shall also qualify as a “Qualified
24 Person” and shall sign Exhibit A.

25 13. Nothing in this Protective Order shall prevent disclosure of
26 Confidential Information if the designating Party consents in writing to such
27 disclosure.
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Inadvertent Production

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2 14. The inadvertent failure by a Party to designate specific documents or
3 material as containing Confidential Information shall not be deemed a waiver in
4 whole or in part of a claim of confidentiality as to such documents or materials.
5 Upon notice to the receiving Party of such failure to designate, the receiving Party
6 shall cooperate to restore the confidentiality of the inadvertently disclosed
7 information.

Filing of Confidential Information

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9 15. In the event that a Party wishes to use any Confidential Information in
10 any pleading, motion, brief, memorandum, exhibit, affidavit, declaration, transcript,
11 response to a discovery request, or other paper filed with the Court, said Party shall
12 ~~submit said information to the Court in a sealed envelope or other appropriate~~
13 ~~container at the time the Party files its pleading, motion, brief, memorandum,~~
14 ~~exhibit, affidavit, declaration, transcript, response to a discovery request, or other~~
15 ~~paper filed with the Court, and shall contemporaneously file a Motion with the~~
16 ~~Court requesting that such documents submitted in the sealed envelope or other~~
17 ~~appropriate container be filed under seal.~~

18 The sealed envelope or appropriate container shall:

- 19 a. ~~Show the caption of this action;~~
20 b. ~~Identify its contents;~~
21 c. ~~Identify the name of the filing Party; and~~
22 d. ~~Include the following legend: "CONFIDENTIAL INFORMATION~~
23 ~~FOR THE COURT'S REVIEW ONLY." "This envelope [or container] contains~~
24 ~~proprietary information. This envelope [or container] was filed by [name of Party]~~
25 ~~and may not be opened, nor may its contents be displayed or revealed, except for~~
26 ~~use by the Court, or by court order or written stipulation of the parties."~~

27 This Protective Order does not prevent the use of Confidential Information at
28 trial, nor does it prevent the filing of such Confidential Information under seal as

1 Party all designated materials produced in this case that was made available to other
2 Qualified Persons, (3) permanently delete and provide to counsel for the designating
3 Party confirmation of deletion of designated materials and all designated materials
4 incorporated into other documents, and all copies (including electronic copies) made
5 thereof, including all documents or copies of documents provided by the party to
6 any other person from all systems, applications, hard drives, servers, web-based or
7 other storage repositories of any type, and (4) provide assurance to counsel for the
8 designating Party that no steps will be taken at any time in the future to restore
9 deleted designated materials and all documents containing information from
10 designated materials, and that any inadvertent violation of this assurance and steps
11 taken to remedy it will be promptly reported to the other party.

12 19. The provisions of this Protective Order shall survive and remain in full
13 force and effect after the termination or other disposition of this litigation, including
14 any appeals, or until otherwise expressly ordered by the Court.

15 **Breach of this Agreement**

16 20. Breach of this agreement may be punished by the contempt powers of
17 this Court.

18 **Miscellaneous**

19 21. Counsel of record shall be responsible for maintaining a file of the
20 Exhibit A executed by the Qualified Persons as designated in paragraph 3 (c)-(g).
21 The file of the signed declarations shall be available for inspection by the Court.

22 22. Nothing in this Protective Order shall prejudice the right of a Party to
23 oppose production of any information for lack of relevance, privilege, or any ground
24 other than confidentiality or privacy.

25 23. Nothing in this Protective Order shall prejudice the right of a Party to
26 seek at any time a further order modifying this Protective Order.

27 24. In the event that a new Party is added, substituted, or brought into this
28 litigation, this Protective Order will be binding on and inure to the benefit of the

1 new Party, subject to the right of the new Party to seek relief from or modification
2 of this Protective Order.

3 25. Nothing contained in this Protective Order shall affect the right of the
4 designating Party to disclose or use for any purpose the documents or information
5 produced and designated by it as confidential.

6 26. This protective Order shall be binding upon all Qualified Persons.
7

8 **ORDER**

9 Due to the changes made by the Court at paragraphs 15 and 17, the stipulated
10 protective order is **GRANTED in PART**.

11 IT IS SO ORDERED.
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13 Dated: January 6, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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1 **UNITED STATES DISTRICT COURT**
2 **EASTERN DISTRICT OF CALIFORNIA**

3 SHIRLEY BROUSSARD,) CASE NO. 1:16-cv-00462-LJO-JLT
4 Plaintiff,)
5 v.)
6 3M COMPANY, AS SUCCESSOR BY)
7 MERGER TO MINNESOTA MINING &)
8 MANUFACTURING COMPANY AND/OR)
9 ITS PREDECESSORS/SUCCESSORS IN)
10 INTEREST,)
11 Defendants.)

12 **EXHIBIT A**

13 **DECLARATION AND AGREEMENT TO BE BOUND**

14 I, _____ declare as follows:

15 My address is _____.

16 My present employer is _____, and the address of my
17 present employer is _____.

18 I hereby acknowledge that I may receive information designated as confidential under the
19 Protective Order of the Court in the above lawsuit, and I certify my understanding that
20 such Confidential Information is provided to me pursuant to the terms and restrictions of
21 the Protective Order in the above-captioned case, which is dated _____.

22 I further state that I have been given a copy of and have read the Protective Order, that I
23 am familiar with its terms, that I agree to comply with and to be bound by each of the
24 terms in the Protective Order, and that I agree to hold in confidence any Confidential
25 Information disclosed to me pursuant to the terms of the Protective Order and understand
26 that unauthorized disclosure of any Confidential Information, or its substance, may
27 constitute contempt of this Court and may subject me to sanctions or other remedies that
28 may be imposed by the Court.

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To assure my compliance with the Protective Order, I hereby submit myself to the jurisdiction of this Court for the limited purpose of any proceedings relating to the performance under, compliance with or violation of this Protective Order.

I understand that I am to retain all of the materials that I receive which have been designated as Confidential in a container, cabinet, drawer, room, or other safe place in a manner consistent with the Protective Order; that I agree to protect such materials from inadvertent disclosure; that all such material are to remain in my custody until I have completed my assigned duties, whereupon, within thirty (30) days, they are to be returned to the Party who provided them to me; and that any materials, memoranda, work notes, or other documents derived from the documents designated as Confidential are to be delivered to the Party who provided the designated materials. Such delivery shall not relieve me from any of the continuing obligations imposed by the Protective Order. I further agree to notify any stenographic or clerical personnel assisting me of the terms of the Protective Order.

I declare under the penalty of perjury under the law of the State of California and the United States of America that the foregoing is true and correct.

Executed On: _____

By: _____