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January 21, 2022

VIA ECF

Application granted.

SO ORDERED.

Hon. Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan Courthouse
Southern District of New York
500 Pearl St.
New York, New York 10007

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 28, 2022

Keri E. Borders
Partner

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KBorders@mayerbrown.com

Re: ***In re Kind LLC Healthy and All Natural Litig., No. 1:15-md-2645-NRB***
In re Kind LLC Healthy and All Natural Litig., No. 1:15-mc-2645-NRB

Dear Judge Buchwald:

Pursuant to Your Honor’s Individual Practices § 2(H), Your Honor’s Standing Order, the Southern District of New York’s Local Rules, and Section 6 of the Southern District’s Electronic Case Filing Rules & Instructions, Defendant KIND LLC (“KIND”) respectfully submits this request to file under seal unredacted versions of Exhibits 7, 16, and 17 to the Declaration of Keri E. Borders in support of KIND’s concurrently filed motions (the “Borders Declaration”). The Viewing Level for these documents will be for “Selected Parties.” KIND also requests to file redacted versions of the same documents as publicly available filings.

In accordance with the Individual Practices of this Court, unredacted versions of Exhibits 7, 16, and 17 to the Borders Declaration—along with redacted versions of these documents—are being filed contemporaneously with this request. Copies of this letter and the unredacted and redacted versions of the exhibits shall be contemporaneously mailed to Your Honor.

In this action, the parties are subject to a Stipulated Protective Order approved by Judge William Pauley. ECF No. 158. Under the terms of that Order, a party may designate as “Confidential” or “Highly Confidential” material or information that the party “reasonably and in good faith believes constitutes and reveals confidential trade secrets, proprietary business information, and/or non-public personal, client, or customer information concerning individuals or other entities” (*id.* ¶ 2.3), provided that the designating party “shall take care to limit any such designation to specific material that qualifies under the appropriate standards.” *Id.* ¶ 5.1. Properly designated Confidential or Highly Confidential material may not be disclosed publicly under the terms of the Order (*id.* ¶¶ 7.1-7.3) and must instead be filed under seal pursuant to Your Honor’s Individual Practices. *Id.* ¶ 12.3.

The information that KIND seeks to file under seal, and which has been designated as “Highly Confidential – Attorneys’ Eyes Only” under the terms of the Stipulated Protective Order, includes:

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- Exhibit 7: a true and correct copy of the Expert Report of Anton A. Toutov, Ph.D., dated September 10, 2021.
- Exhibit 16: a true and correct copy of the Rebuttal Expert Report of Dr. Catherine Adams Hutt, Ph.D., R.D., C.F.S., dated November 12, 2021.
- Exhibit 17: true and correct copies of documents produced by KIND in discovery to plaintiffs bearing Production Nos. KIND_0000195-198, KIND_0000353-354, and KIND_0000419-421.

These exhibits contain highly confidential, proprietary, and trade secret information regarding ingredients of KIND products and their properties, internal procedures for manufacture of products with those ingredients, manufacture and sourcing information, and supplier information.

Federal Rule of Civil Procedure 26(c) authorizes district courts, upon a showing of good cause, to “require that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.” Fed. R. Civ. P. 26(c)(1)(H). “Documents may be sealed if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (internal quotations and alterations omitted).

Here, KIND seeks leave to publicly file these exhibits with all references to Highly Confidential information redacted, and to file wholly unredacted versions of these documents under seal. This request is narrowly tailored in that it relates only to documents designated by KIND as Highly Confidential pursuant to the Stipulated Protective Order and will allow the exhibits to be sealed only to the extent necessary to protect KIND’s business interests and commercially sensitive business information.

Judge William Pauley, when presented with a virtually identical request, allowed KIND to file the materials under seal. *See* ECF No. 197.

Based on the foregoing, KIND respectfully requests that: (i) the Court approve this request to file documents under seal pursuant to Your Honor’s Individual Practices § 2(H); (ii) the redacted versions of Exhibit 7, 16, and 17 to the Borders Declaration be accepted as the public version to be electronically filed; and (iii) that the Court grant KIND leave to file unredacted versions of the same under seal.

Respectfully submitted,

/s/ Keri E. Borders

Keri E. Borders
Partner

cc: All Counsel of Record via ECF