# Exhibit D: Sample Order

**UNITED STATES DISTRICT COURT**

**DISTRICT OF [INSERT]**

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ IN RE: [INSERT] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  | :::::::  | NO. [INSERT] Master Docket No. [INSERT] JUDGE [INSERT]  |

# CASE MANAGEMENT ORDER NO. \_\_

(Protocol for Treatment of Privileged and Work Product Materials)

This Order shall govern the treatment of all privileged or work-product materials in this action. This Order applies equally to all parties, who for the purposes of below shall be designated as either the “Producing Party” or the “Requesting Party.”

1. **Definitions**
	1. The term "Producing Party" shall mean any Party or nonparty to this Litigation, including its counsel, retained experts, directors, officers, employees, and/or agents, who designates any discovery material produced in this Litigation pursuant to this Confidentiality Order.
	2. The term "Requesting Party" shall mean any Party, including its counsel, retained experts, directors, officers, employees, or agents, who receives any discovery material in this Litigation.
	3. When used in this Order, the word "document" encompasses, but is not limited to, any type of document or testimony, including all documents or things described in Federal Rule of Civil Procedure 34 and Federal Rule of Evidence 1001.
	4. As used in this Order, "discovery material" refers to all items or information, regardless of the medium or manner generated, stored, or maintained, including, among other things, documents, testimony, interrogatory responses, transcripts, depositions and deposition exhibits, responses to requests to admit, recorded or graphic matter, electronically stored information, tangible things, and/or other information produced, given, exchanged by, or obtained from any Party or non-party during discovery in this Litigation.
2. **General Principles.** Privilege logs shall comply with Federal Rule of Civil Procedure 26(b)(5), which requires a party to:
	1. Expressly identify the privilege asserted; and
	2. “[D]escribe the nature of the documents, communications, or tangible things not produced or disclosed . . . in a manner that, without revealing information itself privileged or protected, will enable other parties to assess this claim.” *See* FED. R. CIV. P. 26(b)(5).

**3. Specific Principles.**

 a. The Producing Party bears the burden of establishing that any relevant document, communication, information, or other content that is withheld from discovery in whole or part on the basis of an asserted privilege is in fact privileged and/or otherwise properly withheld. None of the following shifts or changes this burden.

b. In order to avoid unnecessary cost, once Producing Parties start reviewing documents for responsiveness and privilege, parties will meet and confer to identify any “gray area” issues which could be resolved up front to reduce the likelihood of later disputes and/or having to re-do logs later. If the issues cannot be resolved by the parties up front, they may be raised with the court for a determination prior to preparing the privilege log.

c. Pursuant to the Federal Rule of Civil Procedure, all relevant documents entirely withheld from production on the grounds of attorney-client privilege, work product protection, or similar grounds (each encompassed by the term ''privilege" as used hereafter), must be logged. Partially privileged documents must be produced with redactions but need not be logged [INSERT and logged].

d. Parties need not include on privilege logs any documents, otherwise meeting the criteria for privilege or work product protection, that were prepared by or sent to counsel for parties in the litigation, after inception of litigation [INSERT inception date].

e. Privilege logs of documents identified or reviewed prior to productions and withheld from such productions based on privilege grounds shall be served thirty (30) days following any such productions. [OR INSERT A Privilege log of documents reviewed and withheld from productions based on privilege grounds shall be served thirty (30) days after the completion of the final production.]

f. Privilege Logs shall be produced in spreadsheet or similar format that allows for text searching, sorting, and organization of data, and shall be produced either: (a) in a cumulative manner, so that each subsequent privilege log includes all privilege claims from prior logs; or (b) in installments using a consistent format so that the installments can be merged into a cumulative spreadsheet by the requesting parties.

g. For documents withheld on the basis of privilege or work product, the Producing Party shall provide a separate entry for each document as to which the Producing Party asserts a privilege. [CONSIDER INSERT Where a most inclusive email thread is withheld for privilege, the Producing Party need only include the most inclusive email threads on a privilege log and need not produce or log the prior or lesser-included emails within the same thread.]

h. Metadata Logs for ESI Documents: In lieu of traditional privilege logs, producing parties may initially produce privilege logs for withheld electronically stored information automatically generated from ESI metadata.

Each document on the Metadata Log shall be assigned a unique identification number. To the extent available in metadata, each log entry shall also include:

* + - 1. the date the document was prepared, last modified and/or sent,
			2. file type(s),
			3. author(s),
			4. recipient(s) (including, where applicable, addressees, copyees, and blind copies),
			5. email address domain names for those authors and recipients (where applicable),
			6. the document title or subject (which may be redacted if it reveals privileged information or the producing party may instead create a non-privileged description),
			7. attachment indicators,
			8. and the nature of each privilege claimed (i.e., attorney-client, work product).

i. Traditional Logs for hard copy (non ESI) documents: Traditional privilege log entries must still be provided for hard copy documents.

Such Traditional Logs shall include:

* + - 1. unique identification numbers for each included document,

and to the extent reasonably available,

* + - 1. the date the document was prepared,
			2. author(s),
			3. recipient(s) (including, where applicable, addressees, copyees, and blind copies),
			4. email address domain names for those authors and recipients (where applicable),
			5. a short description describing the general nature of the legal advice requested or provided or an explanation of the work-product claim that, without revealing information itself privileged or protected, will enable other parties to assess the claim,
			6. attachment indicators,
			7. and the nature of each privilege claimed (i.e., attorney-client, work product).
	1. Together with the production of the privilege log, the producing party shall also produce any non-privileged list(s) of known in-house and outside attorneys, law firms, or others in a legal role (e.g. non-lawyer professionals acting under the direction of attorneys and alleged to be part of a privileged relationship with the producing party) that the producing party used when making privilege determinations in the instant litigation. The list(s) may be supplemented, as appropriate. However, inadvertent failure to include any particular individuals, firms, or current employers on those lists, shall not waive any privilege. Such lists will be treated as Highly Confidential.
	2. The producing party shall also produce other readily available non-privileged lists or documentation helpful in assessing privilege claims, such as the domains of law firms that have represented the withholding party, lists of persons included under commonly used email aliases, and/or other readily-available non-privileged lists used by the producing party in making the privilege determinations in the instant litigation.
	3. Metadata Log, Meet and Confer, and Sampling Process:
		1. Once any metadata privilege log is produced, the Requesting Party shall notify the Producing Party, within 30 days, whether it would like to “meet and confer” to discuss the initial log. This will be an opportunity for the requesting party to ask questions that may emanate from review of the initial metadata log and to ask for enhanced information about a sampling of documents from the log to more completely justify the privilege claim. The requesting party has discretion to select a random or targeted sample or some mixture. For example, the requesting party could focus more on documents that are more difficult to assess because of a lack of clarity about the identity of all recipients or the subject matter of the documents. However, for each privilege log produced where there are more than 100 logged documents, this initial sampling should not include more than the lesser of 10% of the withheld documents (including partially redacted documents produced in the associated production) or a maximum of 300 documents.
		2. The producing party shall, within 30 days, produce additional information sought by the requesting party. Such requested information could relate to, for example, the identity and/or roles of individuals authoring, receiving or mentioned in the documents, more detail about the subject matter of the documents (without revealing privileged information) and/or reasons for the claimed privilege or other protection.
		3. After receiving the additional information, the requesting party has fifteen (15) days to review the additional information and to notify the producing party if it has any remaining issues relating to the privilege claims.
		4. Parties shall meet and confer to attempt to resolve remaining issues. If such issues cannot amicably be resolved by the parties, parties may elect to seek court intervention.
1. **Challenges to Privilege and/or Work Product Claims.**
	1. Traditional and Metadata Privilege Log Entries: If the Requesting Party seeks to challenge a claim of privilege, parties shall meet and confer in an attempt to resolve the issue(s) prior to submitting a challenge to the court.

* 1. To the extent that the resolution may require the review of any documents in camera or other use of scarce court resources, the parties and/or the court should consider retaining the assistance of a Special Master.
	2. The Producing Party shall have the opportunity, at the court or Special Master’s discretion, to provide affidavits, argument, and/or *in camera* explanations of the privileged nature of the documents at issue to ensure that the court has complete information upon which to base its privilege determinations. The Requesting Party shall have the opportunity to respond and/or reply to any such affidavits, argument, and/or *in camera* explanations.
	3. If a party is found to have made unsubstantiated privilege claims or challenges, then appropriate remedies may be granted, including:

i. a determination that the producing party reassess privilege in regard to some or all other withheld documents and/or provide additional detail to justify privilege claims made as to some or all of them; and/or

ii. an order for further in-camera review by the court or Special Master;

iii. a determination that the offending party shall defray some or all reasonable costs (including attorneys’ fees) of the privilege dispute process; and

iv. in extreme cases, such as where a Producing Party has intentionally attempted to conceal important non-privileged information, or where a Requesting Party has repeatedly lodged unfounded privilege challenges, the court may order privilege waiver, objection waiver, and/or other appropriate remedies.

* 1. In cases where a determination has been made by a Special Master, parties must either abide by the decisions of the Special Master or take exceptions to the court and be governed by the resulting ruling.

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 HON. [INSERT]

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