

FILED

September 27, 2024

ANA C. VISCOMI, J.S.C.

 BARBARA J. MIZER and GEORGE A. MIZER,

Plaintiffs,

v.

AISIN U.S.A. MFG., INC. et al.

Defendants.

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 SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION-MIDDLESEX COUNTY
 DOCKET NO. MID-L-4279-22 AS

 Civil Action
 Asbestos Litigation

STIPULATION and PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and defendants Nissan North America, Inc. (“NNA”) and Nissan Motor Co., Ltd. (“NML”; collectively, “the Nissan defendants”), through their respective counsel and subject to the approval of this Court, that the following Stipulation and Protective Order shall be entered in this action. This Stipulation and Protective Order resolves the Nissan defendants’ pending Motion to Compel Plaintiff Barbara Mizer to Provide a Blood Sample or Saliva Sample or Buccal Swab for Genetic Testing Purposes and shall govern any material collected from Plaintiff Barbara Mizer for the purposes of genetic testing and any DNA information or sequencing results that are derived therefrom. This Stipulation and Protective Order applies to any party in this action and any third party – including the testing lab and all expert witnesses – as addressed in paragraphs 7 and 13-16 below.

It is hereby agreed to by Plaintiffs and the Nissan defendants that:

1. Plaintiff Barbara Mizer agrees to provide a blood sample that will provide the source for DNA extraction (“the sample”). The sample will be collected at a time and place convenient for Mrs. Mizer within a reasonable time after this Stipulation and Protective Order is signed by counsel for the plaintiffs and the Nissan defendants and Ordered by the Court and with as little intrusion to Mrs. Mizer as possible (*e.g.* efforts will be made to collect that sample at the time that Mrs. Mizer regularly gives blood for her chemotherapy treatments). Plaintiff Barbara Mizer further agrees to

execute any necessary authorization(s) and/or consent form(s) to facilitate the sample collection in accordance with HIPPA and other applicable federal and state laws.

2. The Nissan defendants agree to conduct genetic testing using the sample.

3. The sample will be sent to Breakthrough Genomics to perform whole genome sequencing of DNA extracted from the sample. Regarding how the sample will be sent to Breakthrough Genomics, the parties will meet and confer in conjunction with Breakthrough Genomics and the health professional or medical laboratory that will collect the sample regarding a process for preservation and appropriate shipping of the sample. If there is an issue or problem with the quality of the sample, the parties will meet and confer in good faith regarding a process for obtaining a second sample from Mrs. Mizer; however, all reasonable efforts will be made to avoid the need for an additional blood sample. The sample, any DNA information, and all sequencing results are subject to this Stipulation and Protective Order.

4. After the sequencing process is completed, Breakthrough Genomics will send the sequencing results in writing to both Plaintiffs' attorneys and the Nissan defendants' attorneys simultaneously, and in the same manner, for the set of genes identified in paragraph 5 of this Stipulation and Protective Order. Breakthrough Genomics will, for the time being, retain the sequencing results for all genes, including those that are not directly reported to the parties initially. Breakthrough Genomics will not provide any party nor their attorneys, nor any third party, the information for any other genes not specified in paragraph 5 of this Stipulation and Protective Order unless agreed to by Plaintiffs' counsel and counsel for the Nissan defendants pursuant to paragraph 6 or otherwise ordered by the Court in this matter.

5. Sequencing results will be reported by Breakthrough Genomics, in accordance with the provisions of paragraph 4 of this Stipulation and Protective Order, for the following set of genes:

a. all genes listed in the following table; and

DNA GENE LIST: ENTIRE CODING SEQUENCE FOR THE DETECTION OF BASE SUBSTITUTIONS, INSERTION/DELETIONS, AND COPY NUMBER ALTERATIONS								
ABL1	ACVR1B	AKT1	AKT2	AKT3	ALK	ALOX12B	AMER1 (FAM123B or WTX)	
APC	AR	ARAF	ARFRP1	ARID1A	ASXL1	ATM	ATR	ATRX
AURKA	AURKB	AXIN1	AXL	BAP1	BARD1	BCL2	BCL2L1	BCL2L2
BCL6	BCOR	BCORL1	BRAF	BRCA1	BRCA2	BRD4	BRIP1	BTG1
BTG2	BTX	CALR	CARD11	CASP8	C8FB	CBL	CCND1	CCND2
CCND3	CCNE1	CD22	CD274 (PD-L1)	CD70	CD79A	CD79B	CDC73	CDH1
CDK12	CDK4	CDK6	CDK8	CDKN1A	CDKN1B	CDKN2A	CDKN2B	CDKN2C
CEBPA	CHEK1	CHEK2	CIC	CREBBP	CRKL	CSF1R	CSF3R	CTCF
CTNNA1	CTNNB1	CUL3	CUL4A	CXCR4	CYP17A1	DAXX	DDR1	DDR2
DIS3	DNMT3A	DOT1L	EED	EGFR	EMSY (C11orf30)	EP300	EPHA3	EPHB1
EPHB4	ERBB2	ERBB3	ERBB4	ERCC4	ERG	ERRF1	ESR1	EZH2
FANCA	FANCC	FANCG	FANCL	FAS	FBXW7	FGF10	FGF12	FGF14
FGF19	FGF23	FGF3	FGF4	FGF6	FGFR1	FGFR2	FGFR3	FGFR4
FH	FLCN	FLT1	FLT3	FOXO2	FUBP1	GABRA6	GATA3	GATA4
GATA6	GID4 (C17orf39)	GNAI1	GNAI3	GNAQ	GNAS	GRM3	GSK3B	H3-3A (H3F3A)
HDAC1	HGF	HNF1A	HRAS	HSD3B1	ID3	IDH1	IGH1	IGFIR
IKBKE	IKZF1	INPP4B	IRF2	IRF4	IRS2	JAK1	JAK2	JAK3
JUN	KDM5A	KDM5C	KDM6A	KDR	KEAP1	KEL	KIT	KLHL6
KMT2A (MLL)	KMT2D (MLL2)	KRAS	LTK	LYN	MAF	MAP2K1 (MEK1)	MAP2K2 (MEK2)	MAP2K4
MAP3K1	MAP3K13	MAPK1	MCL1	MDM2	MDM4	MED12	MEF2B	MEN1
MERTK	MET	MITF	MKNK1	MLH1	MPL	MRE11 (MRE11A)	MSH2	MSH3
MSH6	MST1R	MTAP	MTOR	MUTYH	MYC	MYCL (MYCL1)	MYCN	MYD88
NBN	NF1	NF2	NFE2L2	NFKB1A	NKX2-1	NOTCH1	NOTCH2	NOTCH3
NPM1	NRAS	NSD2 (WHSC1 or MMSE1)	NSD3 (WHSC1L1)	NTSC2	NTRK1	NTRK2	NTRK3	NTRK3
P2RY8	PALB2	PARP1	PARP2	PARP3	PAX5	PBRM1	PDCD1 (PD-1)	PDCD1LG2 (PD-L2)
PDGFRA	PDGFRB	PDK1	PIK3C2B	PIK3C2G	PIK3CA	PIK3CB	PIK3R1	PIM1
PMS2	POLD1	POLE	PPARG	PPP2R1A	PPP2R2A	PRDM1	PRKARIA	PRKC1
PRKN (PARK2)	PTCH1	PTEN	PTPN11	PTPRO	QKI	RAC1	RAD21	RAD51
RAD51B	RAD51C	RAD51D	RAD52	RAD54L	RAF1	RARA	RB1	RBM10
REL	RET	RICTOR	RNF43	ROS1	RPTOR	SDHA	SDHB	SDHC
SDHD	SETD2	SF3B1	SGK1	SMAD2	SMAD4	SMARCA4	SMARCB1	SMD
SNCAIP	SOC1	SOX2	SOX9	SPEN	SPOP	SRC	STAG2	STAT3
STK11	SUFU	SYK	TBX3	TEK	TENT5C (FAM46C)	TET2	TET2	TGFBR2
TIPARP	TNFAIP3	TNFRSF14	TP53	TSC1	TSC2	TYRO3	U2AF1	VEGFA
VHL	WT1	XPO1	XRCC2	ZNF217	ZNF703			
DNA GENE LIST: FOR THE DETECTION OF SELECT REARRANGEMENTS								
ALK	BCL2	BCR	BRAF	BRCA1	BRCA2	CD74	EGFR	ETV4
ETV5	ETV6	EW5R1	EZR	FGFR1	FGFR2	FGFR3	KIT	KMT2A (MLL)
MSH2	MYB	MYC	NOTCH2	NTRK1	NTRK2	NUTM1	PDGFRA	RAF1
RARA	RET	ROS1	RSP02	SDC4	SLC34A2	TERC*	TERT**	TMPRSS2

*TERC is an ncRNA

**Promoter region of TERT is interrogated

b. the following genes: APC, ARID1A, ARID1B, ARID2, ATM, ATR, BAP1, BARD1, BLM, BRCA1, BRCA2, BRIP1, CBFA2T3, CDKN2A, CHEK2, CREBBP, DACT2, DIS3, DNMT3A, ERCC5, FANCA, FANCM, FANCC, FANCD2, FANCF, FANCI, FH, FLCN, JARID2, KDR, LRRK2, MITF, MLH1, MLH3, MRE11A, MSH3, MSH4, MSH6, MUTYH, NCOR1, NF2, NBN, PALB2, PARK2, PBRM1, PIK3C2G, PMS1, POLE, POLE4, POLQ, POT1, RAD50, RAD51B, RBM6, RECQL4, RHBDF2, SBDS, SDHA, SETBP1, SETD1B, SETD2, SHQ1, SLX4, SMARCA2, SMARCA4,

SMARCC1, SMARCD1, SMARCD2, SMARCD3, SMARCE1, SMO, TCF7L2, TET2, THEM127, TP53, VHL, WT1, XPC, XRCC1.

6. The Nissan defendants reserve the right to request, between the reporting mentioned above and the full and final conclusion of this action, the reporting of sequencing results for additional genes not listed in Paragraph 5 above. Any such request will be made in the first instance to Plaintiffs, who will inform the Nissan defendants within 10 days of receiving the Nissan defendants' request whether they agree to the reporting of additional genes. If Plaintiffs agree, Breakthrough Genomics will report the sequencing of the additional agreed-upon gene or genes in the same manner as described in paragraph 3 of this Stipulation. If Plaintiffs do not agree, the Nissan defendants may move to compel the additional reporting, and Plaintiffs may oppose said motion.

7. The sample, the extracted DNA, the sequencing results, and any other materials containing, relying upon, and/or referencing same, shall be used only for the purposes of litigation in this matter, and no party to this action, nor any agent, servant, employee, expert witness, consultant or independent contractor thereof, shall use, disseminate, reference, cite, or otherwise rely upon same for any other purpose. At the conclusion of this action, the sample, the extracted DNA, and the sequencing results are to be returned to the Plaintiffs or destroyed unless otherwise ordered by the Court. The sample, the extracted DNA, the sequencing results, and any other information derived directly or indirectly from Barbara Mizer's blood, DNA, genetic makeup, or genes shall not be used in any manner not directly related to the litigation of this matter regardless of whether Mrs. Mizer is personally identified in connection to that information. Nothing in this paragraph is intended to mean and does not mean that information not mentioned above, including without limitation the following categories of information, is to remain confidential: (i) Court

judgments, orders, decisions, correspondence, or any other such case-related communications, or (ii) any parties' filings or other communications with the Court.

8. Neither the Nissan defendants nor any other party, may request, obtain nor receive the sample itself nor the extracted DNA unless otherwise ordered by the Court or stipulated to by the parties.

9. By entering into this Stipulation and Protective Order, the parties do not herein resolve and, in fact, expressly reserve the right to pursue and/or oppose the admissibility of the testing results or any expert opinions related thereto.

10. The Nissan defendants also reserve the right to pursue any future requests related to the dissemination of results of sequencing any gene(s) not expressly enumerated above in paragraph 5 of this Stipulation and Protective Order.

11. The Nissan defendants also reserve the right to pursue future discovery related to plaintiff Barbara Mizer's medical history, including but not limited to, genetic testing and medical trials issues.

12. The Nissan defendants also expressly reserve the right to seek sanctions regarding the August 16, 2024, disclosure of Barbara Mizer's May 17, 2023 genetic testing results whether directly related to the Nissan Defendants' motion to compel genetic testing that is the subject of this stipulation and protective order or not. Plaintiffs reserve the right to oppose any and all motions or requests filed by the Nissan Defendants or any other defendant in this action on this topic or any others, including any attempt by the Nissan defendants to seek sanctions.

13. With respect to the sample referenced in paragraphs 1-3 above and the release of sequencing results referenced in paragraphs 4 and 5 above, the parties to this action shall not disclose or permit to be disclosed either the sample or the release of sequencing results to any person or other entity, except to "Qualified Persons," who shall be defined to include:

a. Counsel of record for the parties in this action, and employees of such counsel who are actively engaged in assisting counsel with this action, provided they have first read this Stipulation and Protective Order and have agreed to abide by its terms;

b. The responsible employee(s) of a corporate party charged with overseeing that party's participation in this action, provided they have first read this Stipulation and Protective Order and have agreed to abide by its terms;

c. Independent experts and/or consultants retained by the parties to this action for the purpose of assisting in the preparation of this case, provided they have first read this Stipulated Protective Order and have agreed to abide by its terms and have signed a written certification in the form attached as **Exhibit A**. Counsel for all parties to this action shall maintain such certifications for at least sixty (60) days following the conclusion of this action, including any appeals that emanate from the action. Counsel shall provide copies of the signed certifications to plaintiffs' counsel within 10 days of any such written request.

d. Witnesses, either by deposition or trial testimony;

e. The Court, Court personnel, special adjudicators, mediators, other persons appointed by the Court in this action, and stenographic and other reporters; and

f. Jurors associated with this action to the extent such information is disclosed during the trial of this matter.

14. Any person who reviews the information produced subject to this Stipulation and Protective Order agrees to the jurisdiction over their person where the above-captioned matter is pending for the purposes of any action seeking to enforce the terms of this Stipulation Protective Order or any action for contempt for violation of the terms of this Stipulation and Protective Order.

15. The information produced subject to this Stipulation and Protective Order may be referred to by a party in this action in notices, motions, briefs or any other pleadings, may be used

in depositions or at trial, and may be marked as deposition or trial exhibits in this action (subject to the provisions of Rule 104). The information produced subject to this Stipulation and Protective Order shall not be used in conjunction with any publication, article, or study regardless of whether the information appears anonymously without any reference to Mrs. Mizer.

16. After termination of this action, the provisions of this Stipulation and Protective Order shall continue to be binding, except with respect to those documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of information produced subject to this Stipulation and Protective Order following the termination of this action. This Stipulation and Protective Order shall be binding upon the parties and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

(CONTINUED)

The court has approved the stipulation reached by the parties, but this should not be interpreted as the court taking any position on the issue being litigated.

IT IS SO ORDERED


September 27, 2024

/s/ Ana C. Viscomi
Honorable Ana C. Viscomi, J.S.C.

Dated: New York, New York
September ____, 2024

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EXHIBIT A

[ATTACH FULLY EXECUTED STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER TO THIS AFFIDAVIT]

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BARBARA J. MIZER and GEORGE A.	:
MIZER,	:
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Plaintiffs,	:
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-against-	:
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AISIN U.S.A. MFG., INC.; et al.,	:
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Defendants.	:
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

Docket No.: MID-L-4279-22-AS

Civil Action – Asbestos Litigation

DECLARATION OF

RE

STIPULATION AND PROTECTIVE ORDER

STATE OF _____)
) ss.
COUNTY OF _____)

I, _____, declare under penalty of perjury under
(insert name of recipient of the documents)

the laws of _____ that the following is true and correct:
(state)

1. My full name and business address are: _____
_____.
2. I have read and fully understand the attached Stipulation and Protective Order.
3. I am fully familiar with and agree to comply with and be bound by the provisions
of said Stipulation and Protective Order and submit to the jurisdiction of the court in which this
matter is pending for any proceedings with respect to said Stipulation and Protective Order.

4. I will not discuss or divulge to persons other than those specifically authorized by this Stipulation and Protective Order, and will not copy or use, except solely for the purposes of this action and for no other purposes, any documents, materials or information obtained pursuant to said Stipulation and Protective Order.

EXECUTED this ____ day of _____, 202__.

Signature of Declarant