

NOTE: CHANGES MADE BY THE COURT

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 20 American Honda Motor Co., Inc.

21 **UNITED STATES DISTRICT COURT**  
 22 **CENTRAL DISTRICT OF CALIFORNIA**

23 MICHAEL E. FISHER, on behalf of ) Case No. 13-cv-9285 JAK (PLAx)  
 24 himself and all others similarly situated, )  
 25 ) **PROTECTIVE ORDER**  
 26 Plaintiff, )  
 27 )  
 28 vs. )  
 29 )  
 30 AMERICAN HONDA MOTOR CO., )  
 31 INC., )  
 32 )  
 33 Defendant. )  
 34 )  
 35 )

36 The parties to this Agreed Confidentiality Order have agreed to the terms of this  
 37 Order; accordingly, it is ORDERED:

38 **[PROPOSED] PROTECTIVE ORDER**

1           **1. Scope.** All materials produced or adduced in the course of discovery,  
2 including initial disclosures, responses to discovery requests, deposition testimony and  
3 exhibits, and information derived directly from those documents (collectively  
4 “documents”), shall be subject to this Order concerning Confidential Information as  
5 defined below. This Order is subject to the Local Rules of this District and the Federal  
6 Rules of Civil Procedure on matters of procedure and calculation of time periods.

7           **2. Confidential Information.** As used in this Order, “Confidential  
8 Information” means information designated as “CONFIDENTIAL-SUBJECT TO  
9 PROTECTIVE ORDER” by the producing party that falls within one or more of the  
10 following categories: (a) information prohibited from disclosure by statute; (b)  
11 information that reveals trade secrets; (c) research, technical, commercial, or financial  
12 information that the party has maintained as confidential; (d) personal identity  
13 information; (e) income tax returns (including attached schedules and forms), W-2  
14 forms, and 1099 forms; or (f) personnel or employment records of a person who is not  
15 a party to the case. Information or documents that are available to the public may not  
16 be designated as Confidential Information.

17           **3. Designation.**

18           **(a)** A party—including any third party that produces documents in response to a  
19 discovery request, subpoena, or Court order in this action—may designate a document  
20 as Confidential Information by placing or affixing the words “CONFIDENTIAL -  
21 SUBJECT TO PROTECTIVE ORDER” on the document and on all copies in a  
22 manner that will not interfere with the legibility of the document. As used in this  
23 Order, “copies” includes electronic images, duplicates, extracts, summaries, or  
24 descriptions that contain the Confidential Information. The marking  
25 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” shall be applied prior to  
26 or at the time of the documents are produced. Applying the marking  
27 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” does not mean the  
28 document has any status or protection by statute or otherwise except to the extent and

1 for the purposes of this Order. Any copies of documents marked “CONFIDENTIAL -  
2 SUBJECT TO PROTECTIVE ORDER” shall also be so marked, except that indices,  
3 electronic databases, or lists of documents that do not contain substantial portions or  
4 images of marked documents and do not otherwise disclose the substance of the  
5 Confidential Information need not be marked.

6 (b) The designation of a document as Confidential Information is a certification  
7 by an attorney or a party appearing *pro se* that the document contains Confidential  
8 Information as defined in this order.

9 **4. Depositions.** Unless all parties agree on the record at the time the deposition  
10 testimony is taken, all deposition testimony taken in this case shall be treated as  
11 Confidential Information until the 14th day after the transcript is delivered. During  
12 this time, a party may serve a Notice of Designation to all parties of record as to  
13 specific portions of the testimony that are designated Confidential Information, and  
14 thereafter only those portions identified in the Notice of Designation shall be protected  
15 by the terms of this Order. The failure to serve a timely Notice of Designation shall  
16 waive any designation of testimony taken in that deposition as Confidential  
17 Information, unless otherwise ordered by the Court or agreed by the parties.

18 **5. Protection of Confidential Material.**

19 (a) **General Protections.** Confidential Information shall not be used or  
20 disclosed by the parties, counsel for the parties, or any other persons identified in  
21 subparagraph (b) for any purpose whatsoever other than in this litigation, including  
22 any appeals. Confidential Information may be disclosed only to the named plaintiffs  
23 and not to any other member of the putative class unless and until a class including the  
24 putative member has been certified.

25 (b) **Limited Third-Party Disclosures.** The parties and counsel for the parties  
26 shall not disclose or permit the disclosure of any Confidential Information to any third  
27 person or entity except as set forth in subparagraphs (1)-(9). Subject to these  
28

1 requirements, the following categories of persons may be allowed to review  
2 Confidential Information:

3           **(1) Counsel.** Counsel for the parties and employees of counsel who have  
4 responsibility for the action;

5           **(2) Parties.** Individual parties and employees of a party but only to the  
6 extent counsel determines in good faith that the employee's assistance is  
7 reasonably necessary to the conduct of the litigation;

8           **(3) The Court and its personnel.**

9           **(4) Court Reporters and Recorders.** Court reporters and recorders  
10 engaged for depositions;

11           **(5) Contractors.** Those persons specifically engaged for the limited  
12 purpose of making copies of documents or organizing or processing documents,  
13 including outside vendors hired to process electronically stored documents;

14           **(6) Consultants and Experts.** Consultants, investigators, or experts  
15 employed by the parties or counsel for the parties to assist in the preparation  
16 and trial of this action but only after such persons have completed the  
17 certification in Attachment A, Acknowledgment of Understanding and  
18 Agreement to Be Bound;

19           **(7) Witnesses at depositions.** During their depositions, witnesses in this  
20 action to whom disclosure is reasonably necessary. Witnesses shall not retain a  
21 copy of documents containing Confidential Information, except witnesses may  
22 receive a copy of all exhibits marked at their depositions in connection with  
23 review of the transcripts. Pages of transcribed deposition testimony or exhibits  
24 to depositions that are designated as Confidential Information pursuant to the  
25 process set out in this Order must be separately bound by the court reporter and  
26 may not be disclosed to anyone except as permitted under this Order.

27           **(8) Author or recipient.** The author or recipient of the document (not  
28 including persons who received the document in the course of litigation); and

1                   **(9) Others by Consent.** Other persons only by written consent of the  
2                   producing party or upon order of the Court and on such conditions as may be  
3                   agreed or ordered.

4                   **(c) Control of Documents.** Counsel for the parties shall make reasonable  
5                   efforts to prevent unauthorized or inadvertent disclosure of Confidential Information.

6                   **6. Inadvertent Production.**

7                   **(a)** To the maximum extent permitted by law, the undersigned agree, and the  
8                   Court orders, that the production of documents by parties and non-parties shall be  
9                   governed by Federal Rule of Civil Procedure 26(b)(5)(B) and Federal Rule of  
10                  Evidence 502(b) regarding the inadvertent production of material protected by the  
11                  attorney-client privilege, the work product doctrine, or any other privilege or  
12                  protection from disclosure recognized under applicable law (“Privileged Material”).

13                  **(b)** The procedure set forth below is intended to reduce the time and expense of  
14                  an initial review for privilege (including any privilege or protection from disclosure  
15                  recognized under applicable law) and work product protection by providing the  
16                  producing party or any other party or non-party purporting to hold a privilege with an  
17                  efficient method for retrieving or “clawing back” inadvertently produced Privileged  
18                  Material, subject to resolution of any dispute over the privileged or protected status of  
19                  the Privileged Material, and for foreclosing any arguments of waiver, subject to the  
20                  procedures outlined below for bringing disputed claims to the Court for resolution.

21                  **(c)** If a producing party, or any other party or non-party purporting to hold a  
22                  privilege, has a good faith belief that Privileged Material has been inadvertently  
23                  produced, it shall promptly notify the receiving parties of the claim of privilege or  
24                  protection. In connection with this provision, the parties shall comply with their  
25                  ethical and legal obligations concerning the actual or apparent inadvertent production  
26                  of Privileged Material, including their obligation to promptly notify the Producing  
27                  Party in appropriate circumstances.

28

1 (d) Upon receipt of a notice claiming that a document is or includes Privileged  
2 Material, all other parties (regardless of whether they agree with the claim of privilege  
3 or work-product protection) shall promptly:

4 (1) use reasonable efforts to destroy or sequester all copies of the  
5 inadvertently produced documents or material in their possession,  
6 custody, or control, and notify the producing party, or any other party or  
7 non-party purporting to hold a privilege, that they have done so; and

8 (2) notify the producing party that they have  
9 taken reasonable steps to retrieve and destroy or sequester the  
10 inadvertently produced documents or material from other persons, if any, to  
11 whom such documents or material have been provided, consistent with Rule 26  
12 (b)(5)(B).

13 (e) To the extent a receiving party disputes the claim of privilege or work-  
14 product protection, the disputing party shall notify the producing party, or any other  
15 party or non-party purporting to hold a privilege, of its position within seven days of  
16 receiving the notice (the “Dispute Notification”). Within seven days of receiving the  
17 Dispute Notification, the producing party, or any other party or non-party purporting  
18 to hold a privilege, shall either withdraw its claim of privilege or confer with the  
19 disputing party in an effort to resolve their disagreement. If the disagreement is not  
20 resolved, the producing party, or any other party or non-party purporting to hold a  
21 privilege, and the Disputing Party shall cooperate in presenting the dispute to the  
22 Court in a manner consistent with the local rules. **See Local Rule 37.**

23 (f) Pursuant to Fed. R. Evid. 502(d), the inadvertent production of Privileged  
24 Material in this proceeding shall not constitute a waiver of any applicable privilege,  
25 protection, or prohibition from disclosure of that Privileged Material in any other  
26 federal or state proceeding.

1           **7. Deposition Procedures for Inadvertently Produced Documents.** If, during  
2 a deposition, a party claims that a document being used in the deposition (e.g., marked  
3 as an exhibit, shown to the witness, or made the subject of examination) is subject to  
4 privilege or work-product protection, it may at its sole election (a) allow the document  
5 to be used in the deposition without waiver of its claim of privilege or work-product  
6 protection or (b) consistent with Federal Rule of Civil Procedure 30(c)(2), instruct the  
7 witness not to answer questions about the document pending a prompt resolution of  
8 any disagreement over the document’s privileged or protected status. If the party  
9 allows the examination about the document to proceed on a non-waiver basis, the  
10 parties shall sequester all copies of the purportedly privileged or protected document.  
11 Immediately after the deposition, the parties will commence the procedure outlined in  
12 the preceding paragraphs to address the claim of privilege or other protection.

13           **8. Inadvertent Failure to Designate.** An inadvertent failure to designate a  
14 document as Confidential Information does not, standing alone, waive the right to so  
15 designate the document. If a party designates a document as Confidential Information  
16 after it was initially produced, the receiving party, on notification of the designation,  
17 must make a reasonable effort to assure that the document is treated in accordance  
18 with the provisions of this Order. No party shall be found to have violated this Order  
19 for failing to maintain the confidentiality of material during a time when that material  
20 has not been designated Confidential Information, even where the failure to so  
21 designate was inadvertent and where the material is subsequently designated  
22 Confidential Information.

23           **9. Filing of Confidential Information.** This Order does not, by itself, authorize  
24 the filing of any document under seal. Any party wishing to file a document  
25 designated as Confidential Information in connection with a motion, brief, or other  
26 submission to the Court must comply with Local Rule 79-5.1. **Good cause for the**  
27 **under seal filing must be shown.**

1           **10. Challenges by a Party to Designation as Confidential Information.** The  
2 designation of any material or document as Confidential Information is subject to  
3 challenge by any party. The following procedure shall apply to any such challenge.

4           **(a) Meet and Confer.** A party challenging the designation of Confidential  
5 Information must do so in good faith and must begin the process by conferring with  
6 counsel for the designating party. In conferring, the challenging party must explain the  
7 basis for its belief that the designation was not proper and must give the designating  
8 party an opportunity to review the designated material, to reconsider the designation,  
9 and, if no change in designation is offered, to explain the basis for the designation.  
10 The designating party must respond to the challenge within seven days.

11           **(b) Judicial Intervention.** A party that elects to challenge a confidentiality  
12 designation may file a motion **pursuant to Local Rule 37** that identifies the  
13 challenged material and sets forth in detail the basis for the challenge. Each such  
14 motion must be accompanied by a competent declaration that affirms that the movant  
15 has complied with the meet and confer requirements of this procedure. The burden of  
16 persuasion in any such challenge shall be on the designating party. Until the Court  
17 rules on the challenge, all parties shall continue to treat the materials as Confidential  
18 Information.

19           **11. Action by the Court.** Applications to the Court for an order relating to  
20 materials or documents designated Confidential Information shall be by motion,  
21 **pursuant to Local Rule 37.** Nothing in this Order or any action or agreement of a  
22 party under this Order limits the Court's power to make orders about the disclosure of  
23 documents produced in discovery or at trial.

24           **12. Use of Confidential Documents or Information at Trial.** Nothing in this  
25 Order shall be construed to affect the use of any document, material, or information at  
26 any trial or hearing. A party that intends to present or that anticipates that another  
27 party may present Confidential Information at a hearing or trial shall bring that issue  
28 to the Court's and parties' attention by motion or in a pretrial memorandum without



1 disclosing the Confidential Information. The Court may thereafter make such orders  
2 as are necessary to govern the use of such documents or information at trial.

3 **13. Confidential Information Subpoenaed or Ordered Produced in Other**  
4 **Litigation.**

5 (a) If a receiving party is served with a subpoena or other document that would  
6 compel disclosure of Confidential Information, the receiving party must so notify the  
7 designating party, in writing, promptly and in no event more than three days after  
8 receiving the subpoena or order. The notification must include a copy of the subpoena  
9 or other document.

10 (b) The receiving party also must promptly inform in writing the party who  
11 caused the subpoena or other document to issue that some or all of the material  
12 covered by the subpoena or other document is the subject of this Order. In addition,  
13 the receiving party must promptly deliver a copy of this Order to the party that caused  
14 the subpoena or other document to issue.

15 (c) The purpose of these duties is to alert the interested persons to the existence  
16 of this Order and to afford the designating party in this case an opportunity to try to  
17 protect its Confidential Information in the court or other forum from which the  
18 subpoena or other document issued. The designating party shall bear the burden and  
19 the expense of seeking protection of its Confidential Information, and nothing in these  
20 provisions should be construed as authorizing or encouraging a receiving party in this  
21 action to disobey a lawful directive from another court or other lawful authority. The  
22 obligations in this paragraph remain in effect while the party has in its possession,  
23 custody, or control Confidential Information produced in this case.

24 **14. Challenges by Members of the Public to Sealing Orders.** A party or  
25 interested member of the public has a right to challenge the sealing of particular  
26 documents that have been filed under seal, and the party asserting confidentiality will  
27 have the burden of demonstrating the propriety of filing under seal.

1           **15. Obligations on Conclusion of Litigation.**

2           **(a)** Unless otherwise agreed or ordered, this Order shall remain in force after  
3 dismissal or entry of final judgment not subject to further appeal.

4           **(b)** Within sixty-three days after dismissal or entry of final judgment not subject  
5 to further appeal, all Confidential Information and documents marked  
6 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” under this Order by the  
7 designating party, including copies as defined in ¶ 3(a), shall be returned to the  
8 producing party or destroyed (with the receiving party certifying the destruction in  
9 writing) unless the document has been admitted into evidence or filed without  
10 restriction as to disclosure. Notwithstanding the above requirements, counsel may  
11 retain attorney work product, including an index that refers to Confidential  
12 Information so long as that work product does not duplicate verbatim substantial  
13 portions of Confidential Information, and one complete set of all documents filed with  
14 the Court including those filed under seal. Any retained Confidential Information shall  
15 continue to be protected under this Order. An attorney may use his or her work  
16 product in subsequent litigation provided that its use does not disclose or use  
17 Confidential Information.

18           **(c) Deletion of Documents Filed under Seal from ECF System.** Filings under  
19 seal shall be deleted from the ECF system only upon order of the Court.

20           **16. Order Subject to Modification.** This Order shall be subject to modification  
21 by the Court on its own initiative or on motion of a party or any other person with  
22 standing concerning the subject matter.

23           **17. No Prior Judicial Determination.** This Order is entered based on the  
24 representations and agreements of the parties and for the purpose of facilitating  
25 discovery. Nothing in this Order shall be construed as a judicial determination that any  
26 document or material designated Confidential Information by counsel or the parties is  
27 entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or  
28 otherwise until the Court rules on a specific document or issue.

1           **18. Persons Bound.** This Order shall take effect when entered and shall be  
2 binding upon all counsel of record and their law firms, the parties, and persons made  
3 subject to this Order by its terms.

4           **SO ORDERED.**

5           Dated: May 29, 2014



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The Honorable Paul L. Abrams  
United States Magistrate Judge

7           **WE SO MOVE**  
8 **and agree to abide by the**  
9 **terms of this Order.**

10  
11           /s/ Eric S. Mattson

Counsel for American Honda Motor Co., Inc.

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