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 TOYOTA MOTOR SALES, U.S.A., INC.

12 [*Additional Counsel Cont'd. on Next Page*]

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA

15
 16 GLENN KESSELMAN, an individual,
 on behalf of himself and all others
 17 similarly situated, *et al.*

18 Plaintiffs,

19 v.

20 TOYOTA MOTOR SALES, U.S.A.,
 INC., a California corporation; TOYOTA
 21 MOTOR NORTH AMERICA, INC., a
 California corporation; TOYOTA
 22 MOTOR ENGINEERING &
 MANUFACTURING NORTH
 23 AMERICA, INC., a foreign corporation;
 and DOES 1 through 100, inclusive,

24 Defendants.

Case No. 2:21-cv-06010-AB-JC

Assigned to: Hon. André Birotte Jr.

**STIPULATION REGARDING
 STIPULATED PROTECTIVE ORDER**

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Attorneys for Plaintiffs

1 **COME NOW THE PARTIES, BY AND THROUGH THEIR COUNSEL, AND**
2 **HEREBY STIPULATE AS FOLLOWS:**

3 1. On March 15, 2022, this Court approved the Parties' stipulation to
4 consolidate this matter (*Kesselman v. Toyota Motor Sales, U.S.A., Inc.*, Case No. 2:21-
5 cv-06010-AB-JC), with the newly transferred *Freeman et al. v. Toyota Motor Sales,*
6 *U.S.A., Inc.* matter (Case No. 2:22-cv-00863-AB-JC), and ordered the cases
7 consolidated for all purposes.

8 2. In the March 15, 2022 Order, this Court ordered the Parties to file the
9 Stipulated Protective Order, Stipulated Order Regarding Electronically Stored
10 Information, and Stipulated Order Regarding the Disclosure of Privileged Information
11 submitted in *Freeman* (appearing in *Freeman* at Dkt. Nos. 52-54), in the consolidated
12 action by March 25, 2022.

13 **ACCORDINGLY, THE PARTIES DO HEREBY STIPULATE, SUBJECT TO**
14 **COURT APPROVAL, AS FOLLOWS:**

15 1. **APPLICABILITY OF THE PROTECTIVE ORDER.** This Stipulated
16 Order Governing the Designation and Handling of Confidential Materials (hereinafter
17 "Order") shall govern for pre-trial purposes the handling of documents, depositions,
18 deposition exhibits, interrogatory responses, responses to requests for admissions,
19 responses to requests for production of documents, and all other discovery obtained
20 pursuant to the Federal Rules of Civil Procedure by or from a Party in connection with
21 this Consolidated Action (this information hereinafter referred to as "Discovery
22 Material"). All references to "Party," "Receiving Party," "Producing Party" or
23 "Designating Party" throughout this Order are intended to include non-parties.

24 2. **DESIGNATION OF MATERIAL AS "CONFIDENTIAL" OR**
25 **"HIGHLY CONFIDENTIAL".** Any Producing Party may designate Discovery
26 Material as "Confidential" or "Highly Confidential" under the terms of this Order if the
27 Producing Party in good faith reasonably believes that such Discovery Material contains
28 non-public financial or commercially sensitive information that could cause it

1 competitive harm in the marketplace or personal private information that could
2 potentially cause harm to the interests of the disclosing party or nonparties, that requires
3 protections provided in this Order (hereinafter referred to as “Confidential Material” or
4 “Highly Confidential Material”). Confidential Material and Highly Confidential
5 Material are collectively defined as “Covered Information.”

6 a. **“Confidential Material.”** For purposes of this Order, Confidential
7 Material may include, but is not limited to, trade secrets, research,
8 design, development, financial, technical, marketing, planning,
9 personal, or commercial information, as such terms are used in Rule
10 26(c)(1)(G) of the Federal Rules of Civil Procedure and any applicable
11 case law interpreting Rule 26(c)(1)(G).

12 b. **“Highly Confidential Material.”** For purposes of this Order, Highly
13 Confidential Material shall include, but is not limited to, any Protected
14 Data (defined in Section 2.b.(i) below) and/or Confidential Materials as
15 defined herein, which also includes non-public product design and
16 testing information or extremely sensitive, highly confidential, non-
17 public information, consisting either of trade secrets or proprietary or
18 other highly confidential business, financial, regulatory, or strategic
19 information (including information regarding business plans, technical
20 data, and non-public designs), the disclosure of which would create a
21 substantial risk of competitive or business injury to the Producing Party.
22 Certain Protected Data may compel alternative or additional protections
23 beyond those afforded Highly Confidential Material, in which event the
24 parties shall meet and confer in good faith, and, if unsuccessful, shall
25 move the Court for appropriate relief.

26 i. **“Protected Data.”** Protected Data shall refer to any information
27 that a party believes in good faith to be subject to federal, state,
28 or foreign Data Protection Laws or other privacy obligations,

1 including but not limited to personally identifiable information
2 (“PII”). Protected Data constitutes highly sensitive materials
3 requiring special protection. Any party may redact Protected Data
4 that it claims, in good faith, requires protections under the terms of
5 this Order. Protected Data, however, shall not be redacted from
6 Discovery Material to the extent it directly relates to or identifies an
7 individual named as a party in this Litigation. Protected Data of an
8 individual named as a party shall otherwise receive the same
9 protections and treatment afforded to other Protected Data under this
10 Protective Order.

11 3. **MARKING OF DOCUMENTS.** The designation of Discovery Material
12 as Confidential Material or Highly Confidential Material or Protected Data for purposes
13 of this Order shall be made in the following manner:

14 a. **PDF Documents.** In the case of documents or other materials (apart from
15 depositions or other pre-trial testimony), designation shall be made by
16 affixing the legend “Confidential” or “Highly Confidential” to all pages
17 in each document containing any Confidential Material or Highly
18 Confidential Material, respectively.

19 b. **Native Documents.** With respect to documents or materials containing
20 Covered Information produced in Native Format, the Designating Party
21 shall include the highest level of confidentiality designation in the
22 filename.

23 c. **Designating Depositions.** With respect to any deposition, confidential
24 treatment may be invoked by designating specific pages and/or lines as
25 “Confidential” or “Highly Confidential” on the record at the deposition,
26 or by serving such designations within 15 days after receipt of the
27 transcript of the deposition in which the designations are made. All
28 deposition transcripts shall be treated as Highly Confidential for 15 days

1 following receipt of the transcript.

- 2 d. **Non-Written Materials.** Any non-text Covered Information (e.g.,
3 videotape, audio tape, computer disk, etc.) may be designated as such
4 by labeling the outside of such material as “Confidential” or “Highly
5 Confidential”. In the event a Receiving Party generates any “hard copy”
6 transcription or printout from any such designated non-written
7 materials, the person who generates such “hard copy” transcription or
8 printout shall take reasonable steps to maintain the confidentiality of
9 such materials and properly identify and stamp each page of such
10 material as “Confidential” or “Highly Confidential” consistent with the
11 original designation by the Producing Party.

12 Markings will be applied prior to or at the time the documents are produced or
13 disclosed and shall be done in a manner that will not interfere with the legibility of the
14 document.

15 4. **DISCLOSURE OF COVERED INFORMATION.** The failure to
16 designate Covered Information does not constitute a waiver of such claim and may be
17 remedied by supplemental written notice within seven days upon discovery of the
18 disclosure, with the effect that such Covered Information will be subject to the
19 protections of this Order. The Receiving Party shall exercise good faith efforts to ensure
20 that copies made of Covered Information produced to it, and copies made by others who
21 obtained such Covered Information directly or indirectly from the Receiving Party,
22 include the appropriate confidentiality legend, to the same extent that the Covered
23 Information has been marked with the appropriate confidentiality legend by the
24 Producing Party.

25 5. **MATERIALS PREPARED BASED UPON COVERED**
26 **INFORMATION.** Any notes, lists, memoranda, indices, compilations, or other
27 materials prepared or based on an examination of Covered Information, that quote from
28 or paraphrase Covered Information with such specificity that the Covered Information

1 can be identified shall be accorded the same status of confidentiality as the underlying
2 Covered Information from which they are made, shall be designated with the
3 appropriate confidentiality legend, and shall be subject to all of the terms of this
4 Protective Order.

5 6. **NOTICE TO NON-PARTIES.** Any Party issuing a subpoena to a non-
6 party shall enclose a copy of this Protective Order with a request that, within ten (10)
7 business days, the non-party either request the protection of this Protective Order or
8 notify the issuing Party that the non-party does not need the protection of this Protective
9 Order or wishes to seek different protection.

10 7. **GOOD-FAITH BELIEF.** For purposes of this Order, the Party
11 designating Discovery Material as “Confidential” or “Highly Confidential” (the
12 “Designating Party”) bears the burden of establishing the appropriate designation of all
13 such Discovery Material. The designation of any Discovery Material as “Confidential”
14 or “Highly Confidential” pursuant to this Order shall constitute the verification by the
15 Designating Party and its counsel that the material constitutes “Confidential” or “Highly
16 Confidential” as defined above. Blanket designation of documents or information as
17 “Confidential” or “Highly Confidential” without regard to the specific contents of each
18 document or piece of information is prohibited.

19 8. If at any time prior to the trial of this Consolidated Action a Party realizes
20 that previously produced Discovery Material should be designated as “Confidential” or
21 “Highly Confidential” the Party may so designate by advising all other Parties in writing
22 and by producing replacement documents or material with the appropriate
23 “Confidential” or “Highly Confidential” designation as described above. The
24 designated documents or material will thereafter be treated as “Confidential” or “Highly
25 Confidential” pursuant to this Order. Upon receipt of such designation in writing and
26 re-production of the material with the “Confidential” or “Highly Confidential” stamp,
27 the Parties and other persons subject to this Order shall take reasonable and appropriate
28 steps to notify any and all recipients of the Discovery Material about the protected status

1 of the newly designated “Confidential” or “Highly Confidential” and to retrieve the
2 newly designated “Confidential” or “Highly Confidential” from any person who is not
3 permitted by this Order to have Confidential Information.

4 9. No Party receiving Covered Information shall be under any obligation to
5 object to the designation of any document at the time such designation is made or at any
6 time thereafter. No Party shall, by failure to object, be found to have acquiesced or
7 agreed to such designation or be barred from objecting to such designation at any time.

8 10. **PERSONS AUTHORIZED TO RECEIVE CONFIDENTIAL**
9 **MATERIAL.** Confidential Material may be disclosed only to the following “Qualified
10 Persons”:

- 11 a. the Court, including attorneys, employees, judges, magistrates,
12 secretaries, special masters, stenographic reporters, staff, transcribers and
13 all other personnel necessary to assist the Court in its function, and the
14 jury;
- 15 b. mediators or other individuals engaged or consulted in settlement of all
16 or part of this Consolidated Action;
- 17 c. the Parties;
- 18 d. counsel of record for the Parties, including all partners, members, and
19 associate attorneys of such counsel’s law firms who are assisting in the
20 conduct of the Consolidated Action, as well as any other counsel and
21 support personnel of such counsel who may be assisting counsel of
22 record for the parties in the conduct of the Consolidated Action, and all
23 clerks, employees, independent contractors, consultants, investigators,
24 paralegals, assistants, secretaries, staff and stenographic, computer,
25 audio-visual and clerical employees and agents thereof when operating
26 under the supervision of such partners or associate attorneys;
- 27 e. litigation support services, including outside copying services, court
28 reporters, stenographers or companies engaged in the business of

1 supporting computerized or electronic litigation discovery or trial
2 preparation, retained by a Party or its counsel, provided that they
3 execute Exhibit A as described in Paragraph 13 of this Order;

4 f. any expert witness, outside consultant, retained specifically in
5 connection with this litigation, however (i) the disclosure shall be made
6 only to an individual expert, or to members, partners, employees or
7 agents of an expert consulting firm as the expert consulting firm shall
8 designate as the persons who will undertake the engagement on behalf
9 of the expert consulting firm (the “Designated Expert Personnel”); (ii)
10 the individual expert or Designated Expert Personnel use the
11 information solely in connection with this Consolidated Action; and
12 only after such persons have completed the written assurance attached
13 on Exhibit A, and provided that, Plaintiffs agree not to show any such
14 persons who are employed by or a principal with a competitor of
15 Defendant documents that Defendant claims are Confidential or Highly
16 Confidential until after Plaintiff designates such individual or otherwise
17 gives Defendant advance notice of their intention. If Plaintiffs seek to
18 show any such persons Confidential or Highly Confidential documents,
19 Plaintiffs will raise the issue with Defendant at that time, and if
20 necessary, with the Court and (v) the terms of Paragraph 17 of this Order
21 are satisfied;

22 g. Any person (i) who created, authored, received or reviewed such
23 Covered Information; (ii) is or was a custodian of the Covered
24 Information; (iii) is identified on such Covered Information; or (iv) is
25 or was an employee of the producing party and is reasonably believed
26 to have knowledge of the matters in the Covered Information;

27 h. Any potential, anticipated, or actual fact witness and his or her counsel,
28 but only to the extent such confidential documents or information will

1 assist the witness in recalling, relating, or explaining facts or in
2 testifying, and only after such persons have completed the written
3 assurance attached on Exhibit A;

- 4 i. auditors and insurers of the Parties; and
- 5 j. any other person as may be designated by written agreement by the
6 Producing Party or by order of the Court.

7 **11. PERSONS AUTHORIZED TO RECEIVE HIGHLY**
8 **CONFIDENTIAL MATERIAL.** Except as specifically provided for in this or
9 subsequent Court orders, Highly Confidential Material, Protected Data, or their contents
10 may only be disclosed, summarized, described, or otherwise communicated or made
11 available in whole or in part only to the persons identified and conditions set forth in
12 Paragraphs 10(a)-(b), (d)-(f), (h), and (j), and:

- 13 a. Members of the in-house legal departments for the parties or their parents
14 or affiliates, including their paralegals, investigative, technical,
15 secretarial, and clerical personnel who are engaged in assisting them in
16 this Litigation; or
- 17 b. Any person who (1) (a) created, authored, received or reviewed such
18 Covered Information, (b) is or was a custodian of the Covered
19 Information, (c) is identified on such Covered Information; and (2) has
20 signed Exhibit A as described in paragraph 12.

21 **12. EXECUTING THE NON-DISCLOSURE AGREEMENT.** Each
22 person as identified in Paragraphs 10(e), (f) and (h) and 11 (b) to whom Covered
23 Information is disclosed shall execute a non-disclosure agreement in the form annexed
24 hereto as Exhibit A before receiving Covered Information. Execution may be made with
25 an electronic signature. Copies of the executed Exhibit A shall be retained by counsel
26 disclosing Covered Information to such person.

27 **13. CHALLENGING “CONFIDENTIAL” DESIGNATIONS.** A Party
28 objecting to the designation of any material as Confidential or Highly Confidential or

1 Protected Data shall give written notice to the Designating Party, and the objecting party
2 must meet and confer in good faith to resolve the objection informally without judicial
3 intervention, as contemplated in the Local Rules. If the objecting Party and the
4 Designating Party cannot resolve their dispute through such meet and confer
5 discussions, the Challenging Party may file and serve a motion to challenge
6 confidentiality that identifies the challenged material and sets forth in detail the basis
7 for the challenge. The Designating Party has the burden of establishing that the
8 document is entitled to protection. Any challenged material shall remain as designated,
9 and shall be subject to all of the restrictions on its disclosure and use set forth in this
10 Order until such time as the Court may determine otherwise. In the event the Court
11 rules that the challenged material is not Confidential or Highly Confidential, the
12 Designating Party shall reproduce copies of all materials so designated without such
13 designation at the Designating Party's expense within ten business days.

14 **14. SUBPOENA FOR COVERED INFORMATION.** If any Party has
15 obtained Covered Information under the terms of this Order and receives a request to
16 produce such Covered Information by subpoena or other compulsory process
17 commanding the production of such Covered Information, such Party shall promptly
18 notify the Designating Party, including in such notice the date set for the production of
19 such subpoenaed information. The receiving party also must immediately inform in
20 writing the party who caused the subpoena to issue in the other litigation that some or
21 all of the material covered by the subpoena is the subject of this Order. In addition, the
22 receiving party must deliver a copy of this Order promptly to the party in the other
23 action that caused the subpoena to issue. The purpose of imposing these duties is to alert
24 the interested persons to the existence of this Order and to afford the designating party
25 in this case an opportunity to try to protect its Confidential Information in the court from
26 which the subpoena or order issued. The designating party bears the burden and expense
27 of seeking protection in that court of its Confidential Information, and nothing in these
28 provisions should be construed as authorizing or encouraging a receiving party in this

1 action to disobey a lawful directive from another court.

2 15. **USE OF DISCOVERY MATERIAL.** Covered Information shall be
3 used solely for purposes of the Litigation, including any appeal.

4 16. **EXCLUSION OF INDIVIDUALS FROM DEPOSITIONS.** Counsel
5 shall have the right to exclude any person who is not authorized by this Order to receive
6 documents or information designated as Covered Information from any deposition
7 where testimony regarding Covered Information or the use of Covered Information is
8 likely to arise.

9 17. **SECURITY OF COVERED INFORMATION.** Any person in
10 possession of another Party's Covered Information shall exercise the same care with
11 regard to the storage, custody, or use of Covered Information as they would apply to
12 their own material of the same or comparable sensitivity. Receiving Parties must take
13 reasonable precautions to protect Covered Information from loss, misuse and
14 unauthorized access, disclosure, alteration and destruction.

15 a. Covered Information in electronic format shall be maintained in a secure
16 manner that applies standard industry practices regarding data security,
17 including limiting access to Covered Information to those persons entitled
18 to access it under this Order.;

19 b. Any Covered Information in electronic format shall only be stored on
20 device(s) (e.g. laptop, tablet, smartphone, thumb drive, portable hard
21 drive) that are password protected and encrypted. If the user is unable to
22 password protect and/or encrypt the device, then the Covered
23 Information shall be password protected and/or encrypted at the file
24 level.

25 c. Covered Information in paper format is to be maintained in a secure
26 location with access limited to persons entitled to access Covered
27 Information under this Order; and

28 d. Summaries of Covered Information, including any lists, memorandum,

1 indices or compilations prepared or based on an examination of Covered
2 Information, that quote from or paraphrase Covered Information in a
3 manner that enables it to be identified shall be accorded the same status
4 of confidentiality as the underlying Covered Information.

5 e. If the recipient of Covered Information is shipping data in electronic
6 format, the recipient shall encrypt the data prior to shipping and provide
7 the encryption key in separate correspondence. If hard copy documents
8 are shipped, the Receiving Party will ship the documents using secure
9 packaging tape via Federal Express or UPS and retain a tracking number
10 for the materials. If the Receiving Party learns at any time that the
11 Covered Information has been retrieved or viewed by unauthorized
12 parties during shipment, it will immediately notify the Producing Party
13 and take all reasonable measures to retrieve the improperly disclosed
14 materials.

15 f. If the Receiving Party discovers a breach of security relating to the
16 Covered Information of a Producing Party, the Receiving Party shall:
17 (1) provide written notice to the Producing Party of the breach within
18 48 hours of the Receiving Party's discovery of the breach; (2)
19 investigate and attempt to remediate the effects of the breach, and take
20 appropriate actions to ensure the breach will not recur; and (3) provide
21 sufficient information about the breach that the Producing Party can
22 ascertain the size and scope of the breach. The Receiving Party agrees
23 to cooperate with the Producing Party or law enforcement in
24 investigating any such security incident.

25 18. **FILING COVERED INFORMATION.** In the event a Party seeks to file
26 any document containing Confidential Information or Highly Confidential Information
27 subject to protection under this Order with the Court, that Party must take appropriate
28 action to ensure that the document receives proper protection from public disclosure

1 including: (a) filing a redacted document such that the document completely redacts
2 any Confidential Information or highly Confidential Information; (b) where appropriate
3 (e.g., in relation to discovery and evidentiary motions), submitting the document solely
4 for in camera review; or (c) when the preceding measures are inadequate, because, for
5 instance, the filer desires to have the court review the redacted portions, seeking
6 permission to file the document under seal by filing a motion for leave to file under seal
7 in accordance with applicable rules. Nothing in this Order will be construed as a prior
8 directive to allow any document to be filed under seal. The Parties understand that the
9 requested documents may be filed under seal only with the permission of the Court after
10 proper motion.

11 **19. FINAL TERMINATION.** Upon final termination of the Consolidated
12 Action, including any and all appeals, counsel for each Party shall, upon request of the
13 Producing Party, return all Covered Information, including any copies, excerpts and
14 summaries thereof, or shall destroy same at the option of the Receiving Party, and shall
15 purge all such information from all machine-readable media on which the Covered
16 Information resides. Notwithstanding the foregoing, counsel for each Party may retain
17 all pleadings, briefs, memoranda, discovery responses, deposition transcripts,
18 deposition exhibits, expert reports, motions, and other documents filed with the Court
19 that refer to or incorporate Covered Information, and will continue to be bound by this
20 Order with respect to all such retained information. Further, attorney work-product
21 materials that contain Covered Information need not be destroyed, but, if they are not
22 destroyed, the person in possession of the attorney work-product will continue to be
23 bound by this Order with respect to all such retained information.

24 **20. PROTECTIVE ORDER REMAINS IN FORCE.** This Protective Order
25 shall remain in force and effect until modified, superseded, or terminated by consent of
26 the Parties or by order of the Court made upon reasonable written notice. Unless
27 otherwise ordered or agreed upon by the parties, this Protective Order shall survive the
28 termination of this Consolidated Action. The Court retains jurisdiction even after

1 termination of this Consolidated Action to enforce this Protective Order and to make
2 such amendments, modifications, deletions and additions to this Protective Order as the
3 Court may from time to time deem appropriate.

4 21. **MODIFYING THIS ORDER.** Nothing in this Order shall be construed
5 to prohibit the Parties from agreeing to modify any provision of this Order or seeking
6 relief from the Court. Nor shall anything in this Order or any Party's compliance
7 herewith be construed as a waiver of any Party's rights under applicable law.

8 **IT IS SO STIPULATED.**

9 Dated: March 25, 2022

SHOOK, HARDY & BACON L.L.P.

11 By: /s/ Mark D. Campbell

12 Mark D. Campbell
13 Michael L. Mallow
14 Rachel A. Straus
15 Molly S. Carella

16 Attorneys for Defendant
17 TOYOTA MOTOR SALES, U.S.A., INC.,

18 ARIAS SANGUINETTI WANG & TORRIJOS
19 LLP

20 Dated: March 25, 2022

By: /s/ Robert M. Partain

21 Mike M. Arias
22 Craig S. Momita
23 Robert M. Partain

24 Attorneys for Plaintiffs
25 LAW OFFICE OF RICHARD S.
26 CORNFELD, LLC

27 Richard S. Cornfeld
28 Daniel S. Levy

Attorneys for Plaintiffs

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GOLDENBERG HELLER & ANTOGNOLI,
P.C.

Mark C. Goldenberg
Thomas P. Rosenfeld
Kevin P. Green

Attorneys for Plaintiffs

IT IS SO ORDERED.

Dated: March 30, 2022

/s/
Hon. Jacqueline Chooljian
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [*print or type full name*], of _____ [*print or type full address*], have read and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on March 30, 2022 in the consolidated case *Kesselman, et al. v. Toyota Motor Sales U.S.A., Inc.*, Case No. 2:21-cv-06010-AB (JCx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order. In compliance with this Order, I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Signed this ____ day of _____, 20____, at _____ [*insert city and state where sworn and signed*].

Signature: _____