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 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

10
 11 HERIBERTO DURAN, an individual,) **Case No. 2:22-CV-00457-FMO-E**
 12 Plaintiff,) (Removed from LASC
 13 vs.) Case No. 21STCV46728)
 14 NISSAN NORTH AMERICA, INC.; a) Assigned to: Hon. Fernando M. Olguin
 15 Delaware Corporation, and DOES 1) Magistrate Judge: Charles F. Eick
 through 20, inclusive,)
 16 Defendants.) **[PROPOSED] ORDER GRANTING**
 17) **STIPULATED PROTECTIVE ORDER**
 18)
 19) Complaint Filed: December 22, 2021
) Trial: March 28, 2023
 20)

21 The Court, having considered the Parties’ Stipulated Protective Order, all the
 22 papers filed in connection and for good cause appearing, hereby GRANTS the
 23 Stipulation, and ORDERS the following:

24
 25 **1. A. PURPOSES AND LIMITATIONS**

26 Discovery in this action is likely to involve production of confidential,
 27 proprietary, or private information for which special protection from public disclosure
 28 and from use for any purpose other than prosecuting this litigation may be warranted.

1 Accordingly, the parties hereby stipulate to and petition the Court to enter the
2 following Stipulated Protective Order. The parties acknowledge that this Order does
3 not confer blanket protections on all disclosures or responses to discovery and that the
4 protection it affords from public disclosure and use extends only to the limited
5 information or items that are entitled to confidential treatment under the applicable
6 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
7 that this Stipulated Protective Order does not entitle them to file confidential
8 information under seal; *Civil Local Rule 79-5* sets forth the procedures that must be
9 followed and the standards that will be applied when a party seeks permission from
10 the court to file material under seal.

11 **B. GOOD CAUSE STATEMENT**

12 The parties to the Litigation assert that public dissemination and disclosure of
13 Confidential Information could severely injure or damage the party disclosing or
14 producing the Confidential Information and could place that party at a competitive
15 disadvantage. This action is likely to involve technical and/or proprietary information
16 for which special protection from public disclosure and from use for any purpose other
17 than prosecution of this action is warranted. Such confidential and proprietary
18 materials and information consist of Consumer Affairs, Nissan Assurance Products
19 Resource Manual (APRM) DURAN001287-1683, Nissan SOP (2.9 and
20 3.19)(applicable sections), DURAN001684-1691, and the Service Manual for 2018
21 Nissan Sentra, information otherwise generally unavailable to the public, or which
22 may be privileged or otherwise protected from disclosure under state or federal
23 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow
24 of information, to facilitate the prompt resolution of disputes over confidentiality of
25 discovery materials, to adequately protect information the parties are entitled to keep
26 confidential, to ensure that the parties are permitted reasonable necessary uses of such
27 material in preparation for and in the conduct of trial, to address their handling at the
28 end of the litigation, and serve the ends of justice, a protective order for such

1 information is justified in this matter. It is the intent of the parties that information
2 will not be designated as confidential for tactical reasons and that nothing be so
3 designated without a good faith belief that it has been maintained in a confidential,
4 non-public manner, and there is good cause why it should not be part of the public
5 record of this case.

6 **2. DEFINITIONS**

7 2.1 **Action**: this pending federal lawsuit entitled *Heriberto Duran v. Nissan*
8 *North America, Inc.*, Case No. 2:22-CV-00457-FMO-E.

9 2.2 **Challenging Party**: a Party or Non-Party that challenges the designation
10 of information or items under this Order.

11 2.3 **“CONFIDENTIAL” Information or Items**: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for protection
13 under [Federal Rule of Civil Procedure 26\(c\)](#), and as specified above in the Good Cause
14 Statement.

15 2.4 **Counsel**: Outside Counsel of Record and House Counsel (as well as their
16 support staff).

17 2.5 **Designating Party**: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 **Disclosure or Discovery Material**: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.7 **Expert**: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

27 2.8 **House Counsel**: attorneys who are employees of a party to this Action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 2.9 **Non-Party**: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.10 **Outside Counsel of Record**: attorneys who are not employees of a party
5 to this Action but are retained to represent or advise a party to this Action and have
6 appeared in this Action on behalf of that party or are affiliated with a law firm which
7 has appeared on behalf of that party, and includes support staff.

8 2.11 **Party**: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.12 **Producing Party**: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 2.13 **Professional Vendors**: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.14 **Protected Material**: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.” Except as otherwise indicated below, all
19 documents, including photographs, drawings, films, videotapes or other writings,
20 including lists or compilations thereof, answers to interrogatories, responses to other
21 discovery requests and deposition testimony designated by the producing party as
22 “CONFIDENTIAL,” “SUBJECT TO PROTECTIVE ORDER,” or any combination
23 thereof, and which are disclosed or produced to the attorneys for the other parties to
24 this Action are CONFIDENTIAL and are entitled to CONFIDENTIAL treatment as
25 described below.

26 2.15 **Receiving Party**: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.

28 **3. SCOPE**

1 The protections conferred by this Stipulation and Order cover not only
2 Protected Material (as defined above), but also (1) any information copied or extracted
3 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
4 Protected Material; and (3) any testimony, conversations, or presentations by Parties
5 or their Counsel that might reveal Protected Material.

6 Any use of Protected Material at trial shall be governed by the orders of the trial
7 judge. This Order does not govern the use of Protected Material at trial.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
11 in writing or a court order otherwise directs. Final disposition shall be deemed to be
12 the later of (1) dismissal of all claims and defenses in this Action, with or without
13 prejudice; and (2) final judgment herein after the completion and exhaustion of all
14 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
15 for filing any motions or applications for extension of time pursuant to applicable law.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 **Exercise of Restraint and Care in Designating Material for**
18 **Protection.** Each Party or Non-Party that designates information or items for
19 protection under this Order must take care to limit any such designation to specific
20 material that qualifies under the appropriate standards. The Designating Party must
21 designate for protection only those parts of material, documents, items, or oral or
22 written communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an improper
26 purpose (e.g., to unnecessarily encumber the case development process or to impose
27 unnecessary expenses and burdens on other parties) may expose the Designating Party
28 to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 **Manner and Timing of Designations.** Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
7 under this Order must be clearly so designated before the material is disclosed or
8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 "CONFIDENTIAL" OR "SUBJECT TO PROTECTIVE ORDER" (hereinafter
14 "CONFIDENTIAL legend"), to each page that contains protected material.

15 A Party or Non-Party that makes original documents available for inspection
16 need not designate them for protection until after the inspecting Party has indicated
17 which documents it would like copied and produced. During the inspection and before
18 the designation, all of the material made available for inspection shall be deemed
19 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
20 copied and produced, the Producing Party must determine which documents, or
21 portions thereof, qualify for protection under this Order. Then, before producing the
22 specified documents, the Producing Party must affix the "CONFIDENTIAL legend"
23 to each page that contains Protected Material.

24 (b) for testimony given in depositions that the Designating Party
25 identify the Disclosure or Discovery Material on the record, before the close of the
26 deposition all protected testimony. In the case of testimony not so designated during
27 the course of a deposition, counsel may, within thirty (30) days of receiving the
28 deposition transcript, notify the parties that the deposition testimony contains

1 “CONFIDENTIAL” material, in which case the testimony shall be subject to the full
2 protection of this Order.

3 (c) for information produced in some form other than documentary
4 and for any other tangible items, that the Producing Party affix in a prominent place
5 on the exterior of the container or containers in which the information is stored the
6 legend “CONFIDENTIAL.”

7 5.3 **Inadvertent Failures to Designate.** If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive the
9 Designating Party’s right to secure protection under this Order for such material. Upon
10 timely correction of a designation, the Receiving Party must make reasonable efforts
11 to assure that the material is treated in accordance with the provisions of this Order.

12 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1 **Timing of Challenges.** Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court’s
15 Scheduling Order.

16 6.2 **Meet and Confer.** The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37.1 et seq.

18 6.3 The burden of persuasion in any such challenge proceeding shall be on
19 the Designating Party. Frivolous challenges, and those made for an improper purpose
20 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
21 expose the Challenging Party to sanctions. Unless the Designating Party has waived
22 or withdrawn the confidentiality designation, all parties shall continue to afford the
23 material in question the level of protection to which it is entitled under the Producing
24 Party’s designation until the Court rules on the challenge.

25 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

26 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a Receiving
3 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
10 only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this Action,
12 as well as employees of said Outside Counsel of Record to whom it is reasonably
13 necessary to disclose the information for this Action;

14 (b) the officers, directors, and employees (including House Counsel)
15 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

16 (c) Experts (as defined in this Order) of the Receiving Party who are
17 not employed by or engaged as employees or contractors of a competitor of the
18 Producing Party, to whom disclosure is reasonably necessary for this Action and who
19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and
23 Professional Vendors to whom disclosure is reasonably necessary for this Action and
24 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (g) the author or recipient of a document containing the information;

26 (h) during their depositions, witnesses, and attorneys for witnesses, in
27 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
28 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they

1 will not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
3 by the Designating Party or ordered by the court. Pages of transcribed deposition
4 testimony or exhibits to depositions that reveal Protected Material may be separately
5 bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this Stipulated Protective Order; and

7 (i) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 Prior to the disclosure of any of the materials or information covered by this
10 Stipulated Protective Order to any person identified in 7.2 a-i, counsel disclosing the
11 materials or information shall present the person with a copy of this Order. After
12 reading the Order, such persons shall initial each page of a copy of the Order and shall
13 sign the attached form of “Acknowledgment and Agreement to Be Bound” (Exhibit
14 A). Copies of each such signed Order and Acknowledgement shall be maintained by
15 counsel disclosing the materials or information. In the event that any of these
16 individuals are identified or designated as experts who may testify in the Litigation, a
17 copy of each such signed Order and Acknowledgement shall be provided to opposing
18 counsel at the time of the designation.

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
20 **PRODUCED IN OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification
25 shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or
27 order to issue in the other litigation that some or all of the material covered by the
28 subpoena or order is subject to this Protective Order. Such notification shall include a

1 copy of this Stipulated Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought to be
3 pursued by the Designating Party whose Protected Material may be affected. If the
4 Designating Party timely seeks a protective order, the Party served with the subpoena
5 or court order shall not produce any information designated in this action as
6 “CONFIDENTIAL” before a determination by the court from which the subpoena or
7 order issued, unless the Party has obtained the Designating Party’s permission. The
8 Designating Party shall bear the burden and expense of seeking protection in that court
9 of its confidential material and nothing in these provisions should be construed as
10 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
11 directive from another court.

12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by
15 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
16 produced by Non-Parties in connection with this litigation is protected by the remedies
17 and relief provided by this Order. Nothing in these provisions should be construed as
18 prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request,
20 to produce a Non-Party’s confidential information in its possession, and the Party is
21 subject to an agreement with the Non-Party not to produce the Non-Party’s
22 confidential information, then the Party shall:

23 (1) promptly notify in writing the Requesting Party and the
24 Non-Party that some or all of the information requested is subject to a confidentiality
25 agreement with a Non-Party;

26 (2) promptly provide the Non-Party with a copy of the
27 Stipulated Protective Order in this Action, the relevant discovery request(s), and

28 (3) a reasonably specific description of the information

1 requested; and make the information requested available for inspection by the Non-
2 Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this court
4 within 14 days of receiving the notice and accompanying information, the Receiving
5 Party may produce the Non-Party's confidential information responsive to the
6 discovery request. If the Non-Party timely seeks a protective order, the Receiving
7 Party shall not produce any information in its possession or control that is subject to
8 the confidentiality agreement with the Non-Party before a determination by the court.
9 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
10 of seeking protection in this court of its Protected Material.

11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
13 Protected Material to any person or in any circumstance not authorized under this
14 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
15 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
16 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
17 persons to whom unauthorized disclosures were made of all the terms of this Order,
18 and (d) request such person or persons to execute the "Acknowledgment and
19 Agreement to Be Bound" that is attached hereto as Exhibit A.

20 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 21 **PROTECTED MATERIAL**

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other protection,
24 the obligations of the Receiving Parties are those set forth in *Federal Rules of Civil*
25 *Procedure* Rule 26(b)(5)(B). This provision is not intended to modify whatever
26 procedure may be established in an e-discovery order that provides for production
27 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),
28 insofar as the parties reach an agreement on the effect of disclosure of a

1 communication or information covered by the attorney-client privilege or work
2 product protection, the parties may incorporate their agreement in the stipulated
3 protective order submitted to the court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in this
10 Stipulated Protective Order. Similarly, no Party waives any right to object on any
11 ground to use in evidence of any of the material covered by this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
14 only be filed under seal pursuant to a court order authorizing the sealing of the specific
15 Protected Material at issue. If a Party's request to file Protected Material under seal is
16 denied by the court, then the Receiving Party may file the information in the public
17 record unless otherwise instructed by the court.

18 12.4 Pursuant to *Federal Rule of Evidence* Rule 502(d) the production of a
19 privileged or work-product-protected document, whether inadvertent or otherwise, is
20 not a waiver of privilege or protection from discovery in this case or in any other
21 federal or state proceeding. Said protection exists with respect to such document or
22 other documents or communications, written or oral, including, without limitation,
23 other communications referred to in the documents produced. Nothing contained
24 herein is intended to or shall serve to limit a party's right to conduct a review of
25 documents for relevance, responsiveness and/or segregation of privileged and/or
26 protected information before production. Furthermore, a party's production shall not
27 be deemed a waiver of any party's right to object for any reason to the admission of
28 any document or thing into evidence, nor shall the production be deemed an admission

1 of its admissibility or relevance. Nothing in this Paragraph shall prejudice the right of
2 any party to seek discovery or communications, documents and things as to which a
3 claim of attorney-client privilege or attorney work-product has been made.

4 12.5 Any Party receiving Confidential Material shall not under any
5 circumstances sell, offer for sale, advertise, or publicize Confidential Material or any
6 information contained therein.

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4, within 30
9 days of a written request by the Designating Party, each Receiving Party must return
10 all Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
14 must submit a written certification to the Producing Party (and, if not the same person
15 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
16 category, where appropriate) all the Protected Material that was returned or destroyed
17 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the
19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
21 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
22 attorney work product, and consultant and expert work product, even if such materials
23 contain Protected Material. Any such archival copies that contain or constitute
24 Protected Material remain subject to this Protective Order as set forth in Section 4
25 (DURATION).

26 14. Any violation of this Order may be punished by any and all appropriate
27 measures including, without limitation, contempt proceedings and/or monetary
28 sanctions.

1 **IT IS ORDERED.**

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3 DATED: 4/15, 2022.

/S/ CHARLES F. EICK
United States District Magistrate Judge
Charles F. Eick

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Central District of California
7 on _____ [date] in the case of ***Heriberto Duran v. Nissan North America,***
8 ***Inc., Case No. 2:22-CV-00457-FMO-E.*** I agree to comply with and to be bound by
9 all the terms of this Stipulated Protective Order and I understand and acknowledge
10 that failure to so comply could expose me to sanctions and punishment in the nature
11 of contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity except
13 in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint
18 _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

27
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