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

12
 13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 SOUTHERN DIVISION – SANTA ANA

16 JENNIFER GRAMMER, JODY PLA,
 DOUGLAS POWELL, SHANAH
 17 ZISHKA, JANICE TOLER, BOBBY
 YORK, MELANIE MUNNS,
 18 MATTHEW SIFFERMANN, ALBERT
 HEBER, JOSEPH and KIM LESKO,
 19 h/w, RAYMOND BENNETT and
 SHEILA FAULKNER, h/w, PENNY
 20 PORTER, JAMES DONOGHUE,
 LESLIE COCHRANE, COLE and
 21 SHANNON MICHAELIS, h/w,
 STEPHEN BOWLING, HEIDI
 22 BROWDER, and HEATHER and
 DAVID JOHNS, h/w, individually and
 23 on behalf of all others similarly situated,

24 Plaintiffs,

25 vs.

26 TOYOTA MOTOR CORPORATION,
 TOTOYA MOTOR SALES, U.S.A.,
 27 INC., and DOES 1-10,

28 Defendants.

Case No. 8:16-cv-01525-AG-JCG

Judge: Honorable Jay C. Gandhi

STIPULATED PROTECTIVE ORDER

DISCOVERY MATTER

[Filed concurrently with Stipulation for Protective Order]

Complaint Filed: Sept. 2, 2016

1 To expedite the flow of discovery material, facilitate the prompt resolution of
2 disputes over confidentiality, adequately protect material entitled to be kept
3 confidential, and ensure that protection is afforded only to material so entitled,
4 plaintiffs Jennifer Grammer, *et al.* and defendant Toyota Motor Sales, U.S.A, Inc.
5 (“Toyota”) (collectively, “Parties”), have stipulated pursuant to Rule 26(c) of the
6 Federal Rules of Civil Procedure, and IT IS HEREBY ORDERED THAT the
7 following provisions shall govern the documents, materials or other things or portions
8 thereof (and the information contained therein) produced in discovery by any party to
9 this litigation:

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

19 2. **DESIGNATION OF MATERIAL AS “CONFIDENTIAL” OR**
20 **“HIGHLY CONFIDENTIAL.”** Any Producing Party may designate Discovery
21 Material as “Confidential” or “Highly Confidential” under the terms of this Order if
22 the Producing Party in good faith reasonably believes that such Discovery Material
23 contains non-public, confidential, personal, proprietary or commercially sensitive
24 information that requires protections provided in this Order (hereinafter referred to as
25 “Confidential Material” or “Highly Confidential Material”). Any Discovery Material
26 designated “Confidential” or “Highly Confidential” shall, prior to being designated as
27 such, be reviewed by counsel for the Designating Party.
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1 a. **“Confidential Material.”** For purposes of this Order, information
2 considered to be Confidential Material includes any information that a
3 Party believes in good faith to be confidential or sensitive non-public
4 information including, but not limited to, trade secrets, research, design,
5 development, financial, technical, marketing, planning, personal, or
6 commercial information, as such terms are used in Rule 26(c)(1)(G) of
7 the Federal Rules of Civil Procedure and any applicable case law
8 interpreting Rule 26(c)(1)(G).

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

23 c. Confidential Material and Highly Confidential Material are collectively
24 defined as “Covered Information.”

25 3. **MARKING OF DOCUMENTS.** The designation of Discovery
26 Material as Confidential Material or Highly Confidential Material or Protected Data
27 for purposes of this Order shall be made in the following manner:
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- 1 a. **TIFF Documents.** In the case of documents or other materials (apart
2 from depositions or other pre-trial testimony), designation shall be made
3 by affixing the legend “Confidential” or “Highly Confidential” to all
4 pages in each document containing any Confidential Material or Highly
5 Confidential Material, respectively.
- 6 b. **Native Documents.** With respect to documents or materials containing
7 Covered Information produced in Native Format, the Designating Party
8 shall include the highest level of confidentiality designation in the
9 filename.
- 10 c. **Designating Depositions.** With respect to any deposition, confidential
11 treatment may be invoked by designating specific pages and/or lines as
12 “Confidential” or “Highly Confidential” on the record at the deposition,
13 or by serving such designations within 15 days after receipt of the
14 transcript of the deposition in which the designations are made. All
15 deposition transcripts shall be treated as Highly Confidential for 15 days
16 following receipt of the transcript.
- 17 d. **Non-Written Materials.** Any non-text Covered Information (e.g.,
18 videotape, audio tape, computer disk, etc.) may be designated as such by
19 labeling the outside of such material as “Confidential” or “Highly
20 Confidential.” In the event a Receiving Party generates any “hard copy”
21 transcription or printout from any such designated non-written materials,
22 the person who generates such “hard copy” transcription or printout shall
23 take reasonable steps to maintain the confidentiality of such materials and
24 properly identify and stamp each page of such material as “Confidential”
25 or “Highly Confidential” consistent with the original designation by the
26 Producing Party.
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1 4. **DISCLOSURE OF COVERED INFORMATION.** The failure to
2 designate Covered Information does not constitute a waiver of such claim and may be
3 remedied by prompt supplemental written notice upon discovery of the disclosure,
4 with the effect that such Covered Information will be subject to the protections of this
5 Order. The Receiving Party shall exercise good faith efforts to ensure that copies
6 made of Covered Information produced to it, and copies made by others who obtained
7 such Covered Information directly or indirectly from the Receiving Party, include the
8 appropriate confidentiality legend, to the same extent that the Covered Information
9 has been marked with the appropriate confidentiality legend by the Producing Party.

10 5. **MATERIALS PREPARED BASED UPON COVERED**
11 **INFORMATION.** Any notes, lists, memoranda, indices, compilations, or other
12 materials prepared or based on an examination of Covered Information, that quote
13 from or paraphrase Covered Information with such specificity that the Covered
14 Information can be identified shall be accorded the same status of confidentiality as
15 the underlying Covered Information from which they are made, shall be designated
16 with the appropriate confidentiality legend, and shall be subject to all of the terms of
17 this Protective Order.

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

23 7. **GOOD-FAITH BELIEF.** For purposes of this Order, the Party
24 designating Discovery Material as “Confidential” or “Highly Confidential” (the
25 “Designating Party”) bears the burden of establishing the appropriate designation of
26 all such Discovery Material. The designation of any Discovery Material as
27 “Confidential” or “Highly Confidential” pursuant to this Order shall constitute the
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1 verification by the Designating Party and its counsel that the material constitutes
2 “Confidential” or “Highly Confidential” as defined above. Blanket designation of
3 documents or information as “Confidential” or “Highly Confidential” without regard
4 to the specific contents of each document or piece of information is prohibited.

5 8. If at any time prior to the trial of this Action a Party realizes that
6 previously produced Discovery Material should be designated as “Confidential” or
7 “Highly Confidential” the Party may so designate by advising all other Parties in
8 writing and by producing replacement documents or material with the appropriate
9 “Confidential” or “Highly Confidential” designation as described above. The
10 designated documents or material will thereafter be treated as “Confidential” or
11 “Highly Confidential” pursuant to this Order. Upon receipt of such designation in
12 writing and re-production of the material with the “Confidential” or “Highly
13 Confidential” stamp, the Parties and other persons subject to this Order shall take
14 reasonable and appropriate steps to notify any and all recipients of the Discovery
15 Material about the protected status of the newly designated “Confidential” or “Highly
16 Confidential” and to retrieve the newly designated “Confidential” or “Highly
17 Confidential” from any person who is not permitted by this Order to have Confidential
18 Information.

19 9. No Party receiving Covered Information shall be under any obligation to
20 object to the designation of any document at the time such designation is made or at
21 any time thereafter. No Party shall, by failure to object, be found to have acquiesced
22 or agreed to such designation or be barred from objecting to such designation at any
23 time.

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

27 a. the Court, including attorneys, employees, judges, magistrates,
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1 secretaries, special masters, stenographic reporters, staff, transcribers and
2 all other personnel necessary to assist the Court in its function, and the
3 jury;

4 b. mediators or other individuals engaged or consulted in settlement of all
5 or part of this Action;

6 c. the Parties;

7 d. counsel of record for the Parties, including all partners, members, and
8 associate attorneys of such counsel's law firms who are assisting in the
9 conduct of the Action, as well as any other counsel and support personnel
10 of such counsel who may be assisting counsel of record for the parties in
11 the conduct of the Action, and all clerks, employees, independent
12 contractors, consultants, investigators, paralegals, assistants, secretaries,
13 staff and stenographic, computer, audio-visual and clerical employees
14 and agents thereof when operating under the supervision of such partners
15 or associate attorneys;

16 e. litigation support services, including outside copying services, court
17 reporters, stenographers or companies engaged in the business of
18 supporting computerized or electronic litigation discovery or trial
19 preparation, retained by a Party or its counsel, provided that they execute
20 Exhibit A as described in Paragraph 13 of this Order;

21 f. any individual expert, consultant, or expert consulting firm retained by
22 counsel of record in connection with this Action to the extent necessary
23 for the individual expert, consultant, or expert consulting firm to prepare
24 a written opinion, to prepare to testify, or to assist counsel of record in
25 the prosecution or defense of this Action, provided, however, that: (i) the
26 disclosure shall be made only to an individual expert, or to members,
27 partners, employees or agents of an expert consulting firm as the expert
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1 consulting firm shall designate as the persons who will undertake the
2 engagement on behalf of the expert consulting firm (the “Designated
3 Expert Personnel”); (ii) the individual expert or Designated Expert
4 Personnel use the information solely in connection with this Action; (iii)
5 the individual and/or a representative of each expert consulting firm sign
6 the written assurance attached on Exhibit A on behalf of any Designated
7 Expert Personnel associated with that firm; and (iv) excluding any
8 retention for this Action, the individual expert and each of the Designated
9 Expert Personnel is neither a current nor former (within the past year
10 from the date of this Order) employee of any party or any entity which
11 directly competes with, or is a customer of or direct seller to Toyota; and
12 (v) the terms of Paragraph 16 of this Order are met;

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

18 h. auditors and insurers of the Parties; and

19 i. any other person as may be designated by written agreement by the
20 Producing Party or by order of the Court.

21 **11. PERSONS AUTHORIZED TO RECEIVE HIGHLY**
22 **CONFIDENTIAL MATERIAL.** Except as specifically provided for in this or
23 subsequent Court orders, Highly Confidential Material, Protected Data, or their
24 contents may be disclosed, summarized, described, or otherwise communicated or
25 made available in whole or in part only to the persons identified and conditions set
26 forth in Paragraphs 10(a)-(b), (d)-(f) and (i), and:
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- 1 a. Members of the in-house legal departments for the parties or their parents
2 or affiliates, including their paralegals, investigative, technical,
3 secretarial, and clerical personnel who are engaged in assisting them in
4 this Litigation; or
5 b. Any person (1) who created, authored, received or reviewed such
6 Covered Information, is or was a custodian of the Covered Information,
7 is identified on such Covered Information; and (2) who has signed
8 Exhibit A as described in paragraph 13.

9 **12. EXECUTING THE NON-DISCLOSURE AGREEMENT.** Each
10 person to whom Covered Information is disclosed, except the persons identified in ¶
11 10 (a) above, shall execute a non-disclosure agreement in the form annexed hereto as
12 Exhibit A before receiving Covered Information. Copies of the executed Exhibit A
13 shall be retained by counsel disclosing Covered Information to such person.

14 **13. CHALLENGING “CONFIDENTIAL”, “HIGHLY**
15 **CONFIDENTIAL, AND “PROTECTED DATA” DESIGNATIONS.** A Party
16 objecting to the designation of any material as Confidential, Highly Confidential or
17 Protected Data shall give written notice to the Designating Party. Upon receipt of the
18 written objection, counsel for the Designating Party shall, within ten days, provide a
19 written response to the objecting Party explaining the basis and supporting authority
20 for the designation; otherwise the document(s) or material(s) shall be deemed to be no
21 longer Confidential or Highly Confidential without a Court order. The Parties shall
22 meet and confer in good faith to attempt to resolve the dispute without resort to Court
23 intervention. If the Objecting Party and the Designating Party cannot resolve their
24 dispute through such meet and confer discussions, within 15 court days after the
25 Parties have reached an impasse after meet and confer efforts, the Challenging Party
26 shall file and serve a motion to challenge confidentiality pursuant to Local Rule 37-2.
27 The Designating Party has the burden of establishing that the document is entitled to
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1 protection. Any material so designated shall remain Confidential, Highly Confidential
2 or Protected Data, and shall be subject to all of the restrictions on its disclosure and
3 use set forth in this Order until such time as the Court may determine otherwise. In
4 the event the Court rules that the challenged material is not Confidential or Highly
5 Confidential, the Designating Party shall reproduce copies of all materials so
6 designated without Confidential or label at the Designating Party's expense within ten
7 business days.

8 **14. SUBPOENA FOR COVERED INFORMATION.** If any Party has
9 obtained Covered Information under the terms of this Order and receives a request to
10 produce such Covered Information by subpoena or other compulsory process
11 commanding the production of such Covered Information, such Party shall promptly
12 notify the Designating Party, including in such notice the date set for the production of
13 such subpoenaed information and the Designating Party shall object to the production
14 of such materials on the grounds of the existence of this Order.

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

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

22 **17. SECURITY OF COVERED INFORMATION.** Any person in
23 possession of another Party's Covered Information shall exercise the same care with
24 regard to the storage, custody, or use of Covered Information as they would apply to
25 their own material of the same or comparable sensitivity. Receiving Parties must take
26 reasonable precautions to protect Covered Information from loss, misuse and
27 unauthorized access, disclosure, alteration and destruction including, but not limited
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1 to:

- 2 a. Covered Information in electronic format shall be maintained in a secure
3 litigation support site(s) that applies standard industry practices regarding
4 data security including, but not limited to, application of access control
5 rights to those persons entitled to access Covered Information under this
6 Order;
- 7 b. An audit trail of use and access to litigation support site(s) shall be
8 maintained while this Litigation, including any appeals, is pending;
- 9 c. Any Covered Information downloaded from the litigation support site(s)
10 in electronic format shall be stored only on device(s) (e.g. laptop, tablet,
11 smartphone, thumb drive, portable hard drive) that are password
12 protected and/or encrypted with access limited to persons entitled to
13 access Covered Information under this Order. If the user is unable to
14 password protect and/or encrypt the device, then the Covered Information
15 shall be password protected and/or encrypted at the file level.
- 16 d. Covered Information in paper format is to be maintained in a secure
17 location with access limited to persons entitled to access Covered
18 Information under this Order; and
- 19 e. Summaries of Covered Information, including any lists, memorandum,
20 indices or compilations prepared or based on an examination of Covered
21 Information, that quote from or paraphrase Covered Information in a
22 manner that enables it to be identified shall be accorded the same status
23 of confidentiality as the underlying Covered Information.
- 24 f. If the recipient of Covered Information is shipping data in electronic
25 format, the recipient shall encrypt the data prior to shipping and provide
26 the encryption key in separate correspondence. If hard copy documents
27 are shipped, the Receiving Party will ship the documents using secure
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1 packaging tape via Federal Express or UPS and retain a tracking number
2 for the materials. If the Receiving Party learns at any time that the
3 Covered Information has been retrieved or viewed by unauthorized
4 parties during shipment, it will immediately notify the Producing Party
5 and take all reasonable measures to retrieve the improperly disclosed
6 materials.

7 If the Receiving Party discovers a breach of security¹ relating to the Covered
8 Information of a Producing Party, the Receiving Party shall: (1) provide written notice
9 to the Producing Party of the breach within 48 hours of the Receiving Party's
10 discovery of the breach; (2) investigate and remediate the effects of the breach, and
11 provide the Producing Party with assurance reasonably satisfactory to the Receiving
12 Party that the breach shall not recur; and (3) provide sufficient information about the
13 breach that the Producing Party can ascertain the size and scope of the breach. The
14 Receiving Party agrees to cooperate with the Producing Party or law enforcement in
15 investigating any such security incident.

16 18. **FILING COVERED INFORMATION.** The Parties acknowledge that
17 this Order creates no entitlement to file Covered Information under seal.

18 19. **FINAL TERMINATION.** Upon final termination of the Action,
19 including any and all appeals, counsel for each Party shall, upon request of the
20 Producing Party, return all Covered Information, including any copies, excerpts and
21 summaries thereof, or shall destroy same at the option of the Receiving Party, and
22 shall purge all such information from all machine-readable media on which the
23 Covered Information resides. Notwithstanding the foregoing, counsel for each Party
24 may retain all pleadings, briefs, memoranda, discovery responses, deposition
25 transcripts, deposition exhibits, expert reports, motions, and other documents filed
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27 ¹ Breach is defined to include, but is not limited to, the confirmed or suspected: (i)
28 disclosure or use of Covered Information by or to an unauthorized person; and/or (ii)
the loss, theft or hacking of a device containing Covered Information.

1 with the Court that refer to or incorporate Covered Information, and will continue to
2 be bound by this Order with respect to all such retained information. Further, attorney
3 work-product materials that contain Covered Information need not be destroyed, but,
4 if they are not destroyed, the person in possession of the attorney work-product will
5 continue to be bound by this Order with respect to all such retained information.

6 **20. PROTECTIVE ORDER REMAINS IN FORCE.** This Protective
7 Order shall remain in force and effect until modified, superseded, or terminated by
8 consent of the Parties or by order of the Court made upon reasonable written notice.
9 Unless otherwise ordered or agreed upon by the Parties, this Protective Order shall
10 survive the termination of this Action. The Court retains jurisdiction even after
11 termination of this Action to enforce this Protective Order and to make such
12 amendments, modifications, deletions and additions to this Protective Order as the
13 Court may from time to time deem appropriate.

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

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19 **IT IS SO ORDERED.**

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21 Dated: June 5, 2017



Hon. Jay C. Gandhi
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 _____ [insert date] in the case of *[insert
name of case and civil action no.]*. 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: _____