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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DAVID ROMAINE,  
  
  Plaintiff,  
  
                                v.  
  
FORD MOTOR COMPANY,  
  
  Defendant.

Case No. 1:23-cv-00766-SAB  
  
ORDER ENTERING STIPULATED  
PROTECTIVE ORDER – DISCOVERY  
ONLY  
  
(ECF No. 23)

1.     PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, commercially sensitive, personally identifiable information (“PII”) or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

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1       2.     DEFINITIONS

2             2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
3 information or items under this Order.

4             2.2    “CONFIDENTIAL” Information or Items: information (regardless of how it is  
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
6 of Civil Procedure 26(c), including materials that contain trade secret or other confidential  
7 research, technical, cost, price, marketing, or other commercial information, which are, for  
8 competitive reasons, normally, kept confidential by the parties, as contemplated by Federal  
9 Rules of Civil Procedure 26(c)(1)(G).

10            2.3    Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
11 well as their support staff).

12            2.4    Designating Party: a Party or Non-Party that designates information or items that  
13 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “SUBJECT  
14 TO PROTECTIVE ORDER.”

15            2.5    Disclosure or Discovery Material: all items or information, regardless of the  
16 medium or manner in which it is generated, stored, or maintained (including, among other  
17 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
18 or responses to discovery in this matter.

19            2.6    Expert: a non-attorney person with specialized knowledge or experience in a  
20 matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
21 expert witness or as a consultant in this action, provided that no disclosure shall be made to any  
22 expert or consultant who is currently employed by a competitor of the Designating Party.

23            2.7    House Counsel: attorneys who are employees of a party to this action. House  
24 Counsel does not include Outside Counsel of Record or any other outside counsel.

25            2.8    Non-Party: any natural person, partnership, corporation, association, or other legal  
26 entity not named as a Party to this action.

27            2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
28 action but are retained to represent or advise a party to this action and have appeared in this

1 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
2 that party.

3 2.10 Party: any party to this action, including all of its officers, directors, employees,  
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
6 Material in this action.

7 2.12 Professional Vendors: persons or entities that provide litigation support services  
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
9 organizing, storing, or retrieving data in any form or medium) and their employees and  
10 subcontractors.

11 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
12 “CONFIDENTIAL” or “SUBJECT TO PROTECTIVE ORDER.”

13 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
14 Producing Party.

15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only Protected  
17 Material (as defined above), but also (1) any information copied or extracted from Protected  
18 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
19 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
20 Material. However, the protections conferred by this Stipulation and Order do not cover the  
21 following information: (a) any information that is in the public domain at the time of disclosure  
22 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving  
23 Party as a result of publication not involving a violation of this Order, including becoming part  
24 of the public record through trial or otherwise; and (b) any information known to the Receiving  
25 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source  
26 who obtained the information lawfully and under no obligation of confidentiality to the  
27 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
28 agreement or order.

1     4.     DURATION

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

9             5.     DESIGNATING PROTECTED MATERIAL

10            5.1    Exercise of Restraint and Care in Designating Material for Protection. Each Party  
11 or Non-Party that designates information or items for protection under this Order must take care  
12 to limit any such designation to specific material that qualifies under the appropriate standards.  
13 The Designating Party must designate for protection only those parts of material, documents,  
14 items, or oral or written communications that qualify – so that other portions of the material,  
15 documents, items, or communications for which protection is not warranted are not swept  
16 unjustifiably within the ambit of this Order.

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

21             If it comes to a Designating Party’s attention that information or items that it designated  
22 for protection do not qualify for protection, that Designating Party must promptly notify all other  
23 Parties that it is withdrawing the mistaken designation.

24            5.2    Manner and Timing of Designations. Except as otherwise provided in this Order  
25 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly  
27 so designated before the material is disclosed or produced.

28             Designation in conformity with this Order requires:

1 (a) For information in documentary form (e.g., paper or electronic documents, but  
2 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
3 Party affix the legend “CONFIDENTIAL” or “SUBJECT TO PROTECTIVE ORDER” to each  
4 page that contains protected material.

5 A Party or Non-Party that makes original documents or materials available for inspection  
6 need not designate them for protection until after the inspecting Party has indicated which  
7 material it would like copied and produced. During the inspection and before the designation,  
8 all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the  
9 inspecting Party has identified the documents it wants copied and produced, the Producing Party  
10 must determine which documents, or portions thereof, qualify for protection under this Order.  
11 Then, before producing the specified documents, the Producing Party must affix the  
12 “CONFIDENTIAL” or “SUBJECT TO PROTECTIVE ORDER” legend to each page that  
13 contains Protected Material.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
15 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
16 proceeding, all protected testimony.

17 (c) for information produced in some form other than documentary and for any  
18 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
19 container or containers in which the information or item is stored the legend  
20 “CONFIDENTIAL” or “SUBJECT TO PROTECTIVE ORDER.”

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
22 designate qualified information or items does not, standing alone, waive the Designating Party’s  
23 right to secure protection under this Order for such material. Upon timely correction of a  
24 designation, the Receiving Party must make reasonable efforts to assure that the material is  
25 treated in accordance with the provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
28 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
2 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
4 original designation is disclosed.

5         6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
6 process by providing written notice of each designation it is challenging and describing the basis  
7 for each challenged designation by Bates number, and describing the basis for each challenge.  
8 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that  
9 the challenge to confidentiality is being made in accordance with this specific paragraph of the  
10 Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
11 begin the process by conferring directly (in voice to voice dialogue; other forms of  
12 communication are not sufficient) within 14 days of the date of service of notice. In conferring,  
13 the Challenging Party must explain the basis for its belief that the confidentiality designation  
14 was not proper and must give the Designating Party an opportunity to review the designated  
15 material, to reconsider the circumstances, and, if no change in designation is offered, to explain  
16 the basis for the chosen designation. A Challenging Party may proceed to the next stage of the  
17 challenge process only if it has engaged in this meet and confer process first or establishes that  
18 the Designating Party is unwilling to participate in the meet and confer process in a timely  
19 manner.

20         6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality within  
22 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet  
23 and confer process will not resolve their dispute, whichever is earlier. Each such motion must  
24 be accompanied by a competent declaration affirming that the movant has complied with the  
25 meet and confer requirements imposed in the preceding paragraph. Failure by the Designating  
26 Party to make such a motion including the required declaration within 21 days (or 14 days, if  
27 applicable) shall automatically waive the confidentiality designation for each challenged  
28 designation. In addition, the Challenging Party may file a motion challenging a confidentiality

1 designation at any time if there is good cause for doing so, including a challenge to the  
2 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to  
3 this provision must be accompanied by a competent declaration affirming that the movant has  
4 complied with the meet and confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating  
6 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
7 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
8 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
9 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
10 material in question the level of protection to which it is entitled under the Producing Party's  
11 designation until the court rules on the challenge.

## 12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
14 or produced by another Party or by a Non-Party in connection with this case only for  
15 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
16 disclosed only to the categories of persons and under the conditions described in this Order.  
17 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
18 section 13 below (FINAL DISPOSITION).

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

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
23 disclose any information or item designated "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
26 information for this litigation and who have signed the Acknowledgment and Agreement to Be  
27 Bound" that is attached hereto as Exhibit A;

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure  
4 is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
5 Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters, videographers, and their staff, who are not personnel of the  
8 court, professional jury or trial consultants, and Professional Vendors to whom disclosure is  
9 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
10 Agreement to Be Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is  
12 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
13 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must  
15 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
16 under this Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information or a custodian  
18 or other person who otherwise possessed or knew the information provided that these individuals  
19 may only be shown the protected information and may not retain a copy of the protected  
20 information that was produced in this case.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
22 LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that compels  
24 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
25 “SUBJECT TO PROTECTIVE ORDER,” that Party must:

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

28 (b) promptly notify in writing the party who caused the subpoena or order to issue



1 in the other litigation that some or all of the material covered by the subpoena or order is subject  
2 to this Protective Order. Such notification shall include a copy of this Stipulated Protective  
3 Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
5 the Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the  
7 subpoena or court order shall not produce any information designated in this action as  
8 “CONFIDENTIAL” or “SUBJECT TO PROTECTIVE ORDER” before a determination by the  
9 court from which the subpoena or order issued, unless the Party has obtained the Designating  
10 Party’s permission. The Designating Party shall bear the burden and expense of seeking  
11 protection in that court of its confidential material – and nothing in these provisions should be  
12 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
13 directive from another court.

14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
15 LITIGATION

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

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

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

26 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
27 Order in this litigation, the relevant discovery request(s), and a reasonably specific description  
28 of the information requested; and

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

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
19 MATERIAL

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

1     12.    MISCELLANEOUS

2           12.1   Right to Further Relief. Nothing in this Order abridges the right of any person to  
3     seek its modification by the court in the future.

4           12.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
5     Order no Party waives any right it otherwise would have to object to disclosing or producing  
6     any information or item on any ground not addressed in this Stipulated Protective Order.  
7     Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
8     material covered by this Protective Order.

9           12.3   Filing Protected Material. Without written permission from the Designating Party  
10    or a court order secured after appropriate notice, or upon another timeframe agreeable under the  
11    circumstances, to all interested persons, a Party may not file in the public record in this action  
12    any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
13    with Local Rule 141. Protected Material may only be filed under seal pursuant to a court order  
14    authorizing the sealing of the specific Protected Material at issue. A sealing order will issue only  
15    upon a request establishing that the Protected Material at issue is privileged, protectable as a  
16    trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to  
17    file Protected Material under seal is  
18    denied by the court, then the Receiving Party may file the information in the public record unless  
19    otherwise instructed by the court.

20    13.    FINAL DISPOSITION

21           Upon final termination of this action, including any and all appeals, counsel for each party  
22    must, upon request of the producing party, return all confidential information to the party that  
23    produced the information, including any copies, excerpts, and summaries of that information,  
24    or must destroy same at the option of the receiving party, and must purge all such information  
25    from all machine-readable media on which it resides. Notwithstanding the foregoing, counsel  
26    for each party may retain all pleadings, briefs, memoranda, motions, and other documents filed  
27    with the Court that refer to or incorporate confidential information, and will continue to be  
28    bound by this Order with respect to all such retained information.

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print  
4 or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court  
6 for the Eastern District of California on [ ] in the case of DAVID ROMAINE v. FORD  
7 MOTOR COMPANY, Case No. 1:23-cv-00766-JLT-SAB. I agree to comply with and to be  
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge  
9 that failure to so comply could expose me to sanctions and punishment in the nature of contempt.  
10 I solemnly promise that I will not disclose in any manner any information or item that is subject  
11 to this Stipulated Protective Order to any person or entity except in strict compliance with the  
12 provisions of this Order.

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

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone  
18 number] as my California agent for service of process in connection with this action or any  
19 proceedings related to enforcement of this Stipulated Protective Order.

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_

24 Signature: \_\_\_\_\_

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**COURT ORDER ENTERING STIPULATED PROTECTIVE ORDER**

Pursuant to the stipulation of the parties and good cause appearing, IT IS HEREBY ORDERED that:

1. The above stipulated protective order is ENTERED;
2. The provisions of the parties’ stipulation and this protective order shall remain in effect until further order of the Court;
3. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141;
4. The party making a request to file documents under seal shall be required to show either good cause or compelling reasons to seal the documents, depending on the type of filing, Pintos v. Pac. Creditors Ass’n, 605 F.3d 665, 677–78 (9th Cir. 2009); Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1101 (9th Cir. 2016); and
5. If a party’s request to file Protected Material under seal is denied by the Court, then the previously filed material shall be immediately accepted by the court and become information in the public record and the information will be deemed filed as of the date that the request to file the Protected Information under seal was made.

IT IS SO ORDERED.

Dated: May 14, 2024

  
UNITED STATES MAGISTRATE JUDGE