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 FORD MOTOR COMPANY

15 UNITED STATES DISTRICT COURT  
 16 EASTERN DISTRICT OF CALIFORNIA

18 UNIVERSAL NORTH AMERICA  
 19 INSURANCE COMPANY,

20 Plaintiff,

21 vs.

22 FORD MOTOR COMPANY,

23 Defendant.  
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Case No. 2:16-CV-00487-MCE-EFB

**STIPULATED SHARING AND NON-  
 SHARING PROTECTIVE ORDER**



1 for the purpose of establishing that the challenged document(s) or information is/are confidential.  
2 Protected Documents will continue to be treated as such pending determination by the Court as to  
3 the confidential status.

4 5. Protected Documents and any copies thereof shall be maintained confidential by the  
5 persons authorized to receive the documents pursuant to paragraph 6 and shall be used only for  
6 prosecuting, defending, or attempting to settle this litigation, subject to the limitations set forth  
7 herein.

8 6. Protected Documents shall be disclosed only to “Qualified Persons.” Qualified  
9 Persons are limited to:

- 10 a. Counsel of Record for the parties, and the parties;
- 11 b. Paralegals and staff employed by Counsel of Record and involved in the  
12 preparation and trial of this action;
- 13 c. A vendor hired by a party to host data and maintain a database of electronic  
14 data or perform other work related to the collection, review or production of  
15 documents in the case;
- 16 d. Experts and non-attorney consultants retained by the parties for the  
17 preparation and/or trial of this case, provided that no disclosure shall be made  
18 to any expert or consultant who is employed by a competitor of Ford;
- 19 e. The Court, the Court’s staff, witnesses, and the jury in this case; and
- 20 f. With respect to documents designated as “Sharing” or “Subject to Protective  
21 Order,” attorneys representing Plaintiff(s) and the experts and non-attorney  
22 consultants retained by such attorneys, in other cases pending against Ford  
23 involving a 2001 Ford Expedition involved in a fire with claims that the  
24 vehicle’s speed control deactivation switch was defective, provided no  
25 disclosure shall be made to any expert or consultant who is employed by a  
26 competitor of Ford.



1           10.     To the extent that Protected Documents or information obtained therefrom are used in  
2 the taking of depositions (including exhibits) or other pretrial testimony and/or used as exhibits at  
3 trial, such documents or information shall remain subject to the provisions of this Order, along with  
4 the transcript pages of the deposition testimony and/or trial testimony dealing with, referring to or  
5 referencing the Protected Documents or information. Designation of the portion of the transcript  
6 (including exhibits) which contains references to Protected Documents or information shall be made  
7 (i) by a statement to such effect on the record during the proceeding in which the testimony is  
8 received, or (ii) by written notice served on counsel of record in this Litigation within thirty (30)  
9 business days after the receipt of the draft or final transcript (whichever is received earlier) of such  
10 proceeding (as used herein, the term “draft transcript” does not include an ASCII or rough  
11 transcript). However, before such thirty (30) day period expires, all testimony, exhibits and  
12 transcripts of depositions or other testimony shall be treated as Protected Documents. All portions of  
13 transcripts not designed as Confidential within the time frame provided herein shall be deemed not  
14 confidential.

15           11.     If any party disagrees with the designation of all or part of a deposition transcript  
16 designated as “Protected” pursuant to Paragraph 10 above, such party must notify the designating  
17 party in a written letter and identify the testimony (by line and page designation) and the specific  
18 grounds for the objection to the designation. If the parties are unable to resolve the issue of  
19 confidentiality regarding the challenged deposition testimony, the designating party will thereafter  
20 timely apply to the Court to set a hearing for the purpose of establishing that the challenged  
21 deposition testimony is confidential. The designated deposition testimony at issue, and any related  
22 exhibits, will continue to be treated as a Protected Document, in accord with its respective  
23 designation, pending determination by the Court as to the confidential status.

24           12.     All documents that are filed with the Court that contain any portion of any Protected  
25 Document or information taken from any Protected Document shall be filed under seal by following  
26 the protocols for sealed filings in this Court. If a party believes that documents designated as  
27 Protected Documents cannot or should not be sealed, pursuant to the protocols and rules in this  
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1 Court, then the party wishing to file the materials shall particularly identify the documents or  
2 information that it wishes to file to the producing party, in writing. The parties will then meet and  
3 confer, in a good faith effort to resolve the dispute. Failing agreement, the party wishing to file the  
4 materials must request a ruling from the Court on whether the Protected Documents in question must  
5 be submitted under seal. The producing party shall have the burden of justifying that the materials  
6 must be submitted under seal. Absent written permission from the producing party or a court Order  
7 denying a motion to seal, a receiving party may not file in the public record any Protected  
8 Documents.

9 13. To the extent a party is requested to produce documents it has determined should not  
10 be subject to the sharing provision of this protective order in paragraph 6(f), that party will designate  
11 such documents as “Non-Sharing.” Documents designated as “Non-Sharing” shall not be shared  
12 under paragraph 6(f).

13 14. With respect to Protected Documents designated as “Non-Sharing,” within one  
14 hundred and twenty (120) days after the conclusion of this case, counsel for the parties who received  
15 Protected Documents, including any documents that any such party disclosed to any person  
16 described in paragraph 6(b) or (c) above, shall either (a) return to the producing party the Protected  
17 Documents; or (b) securely destroy the Protected Documents and certify such destruction to the  
18 producing party within one hundred and fifty (150) days after the conclusion of this case.

19 15. With respect to documents designated as “Sharing” or “Subject to Protective Order,”  
20 Counsel for the parties shall not be required to return the Protected Documents to Ford after the  
21 conclusion of this case and may retain the documents pursuant to the terms of this Order.

22 16. Submission to regulatory agency or governmental entity:

- 23 a. This protective order shall not be construed to prohibit Ford’s disclosure or  
24 production of safety-related information to a regulatory agency or  
25 governmental entity with an interest in the safety-related information.  
26 Material subject to this protective order may only be disclosed to a regulatory  
27 agency or governmental entity with an interest in the safety-related  
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1 information by Ford, and such disclosure shall be made pursuant to 49 CFR  
2 512 or similar applicable rules.

- 3 b. If other parties to this protective order have a reasonable belief that certain  
4 documents are safety-related and need to be disclosed to a regulatory agency  
5 or governmental entity, they are not prohibited from advising the regulatory  
6 agency or governmental entity that they believe such documents were  
7 produced in this case, however, any disclosure of such documents shall adhere  
8 to the procedure described in Paragraph 16(a).

9 17. Inadvertent or unintentional production of documents or information containing  
10 confidential information that should have been designated as Protected Document(s) shall not be  
11 deemed a waiver in whole or in part of the party's claims of confidentiality.

12 18. The parties may disclose and produce responsive documents to each other in this  
13 litigation, and seek to do so without risking waiver of any attorney-client privilege, work product or  
14 other applicable privilege or protection. As such, the parties will adhere to the following procedures  
15 with regard to the production of privileged or protected material, should that occur:

- 16 a. The production of documents (including both paper documents and  
17 electronically stored information or "ESI") subject to protection by the  
18 attorney-client and/or work product doctrine or by another legal privilege  
19 protecting information from discovery, shall not constitute a waiver of any  
20 privilege or other protection, provided that the producing party notifies the  
21 receiving party, in writing, of the production after its discovery of the same.
- 22 b. If the producing party notifies the receiving party after discovery that  
23 privileged materials (hereinafter referred to as the "Identified Materials") have  
24 been produced, the Identified Materials and all copies of those materials shall  
25 be returned to the producing party or destroyed or deleted, on request of the  
26 producing party. The producing party will provide a privilege log providing  
27 information upon request or if required by the Federal Rules of Civil  
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1 Procedure and applicable case law to the receiving party at the time the  
2 producing party provides the receiving party notice of the Identified Materials.  
3 If the receiving party has any notes or other work product reflecting the  
4 contents of the Identified Materials, the receiving party will not review or use  
5 those materials unless a court later designates the Identified Materials as not  
6 privileged or protected.

7 c. The Identified Materials shall be deleted from any systems used to house the  
8 documents, including document review databases, e-rooms and any other  
9 location that stores the documents. The receiving party may make no use of  
10 the Identified Materials during any aspect of this matter or any other matter,  
11 including in depositions or at trial, unless the documents have been designated  
12 by a court as not privileged or protected.

13 d. The contents of the Identified Materials shall not be disclosed to anyone who  
14 was not already aware of the contents of them before the notice was made.  
15 The receiving party must take reasonable steps to retrieve the Identified  
16 Materials if the receiving party disclosed the Identified Materials before being  
17 notified.

18 e. If any receiving party is in receipt of a document from a producing party  
19 which the receiving party has reason to believe is privileged, the receiving  
20 party shall in good faith take reasonable steps to promptly notify the  
21 producing party of the production of that document so that the producing  
22 party may make a determination of whether it wishes to have the documents  
23 returned or destroyed pursuant to this Stipulation and Order.

24 f. The party returning the Identified Materials may move the Court for an order  
25 compelling production of some or all of the Identified Material returned or  
26 destroyed, but the basis for such motion may not be based on the fact or  
27 circumstances of the production.



1 g. The disclosure of Identified Materials in this action is not a waiver of the  
2 attorney-client privilege, work product doctrine or any other asserted privilege  
3 in any other federal or state proceeding, pursuant to Rule 502(d), Federal  
4 Rules of ~~Civil Procedure~~ Evidence.

5 19. No provision of this stipulated order shall constitute a concession by any party that  
6 any documents are subject to protection by the attorney-client privilege, the work product doctrine  
7 or any other potentially applicable privilege or doctrine. No provision of this stipulated order is  
8 intended to waive or limit in any way either party's right to contest any privilege claims that may be  
9 asserted with respect to any of the documents produced except to the extent set forth herein.

10 20. In the event that a party inadvertently produces a document without a confidentiality  
11 designation as permitted by this Order, the following procedures shall apply:

12 a. The producing party shall, within fourteen (14) days of the discovery of the  
13 disclosure, notify the other party in writing. The party receiving such notice  
14 shall promptly destroy the document, including any copies it has, or return the  
15 document on request of the producing party. Within ten (10) days after such  
16 document is returned or its destruction certified, the producing party will  
17 produce a new version of any such document that was returned or destroyed,  
18 which will contain the appropriate confidentiality designation.

19 b. If the receiving party disputes the producing party's claim of confidentiality,  
20 that party may move the Court to challenge the confidential designation in  
21 accordance with Paragraph 4 of this Order. If the receiving party elects to file  
22 such a motion, the receiving party may retain possession of the document, but  
23 shall treat it in accordance with the terms of the Protective Order pending  
24 resolution of the motion. If the receiving party's motion is denied, the parties  
25 shall promptly comply with Paragraph 20(a) of this Order.

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c. The production of such document does not constitute a waiver of any claim of confidentiality as set forth in this order or any other matter in any other jurisdiction, unless otherwise ordered by the Court.

21. This Protective Order may not be waived, modified, abandoned or terminated, in whole or part, except by an instrument in writing signed by the parties. If any provision of this Protective Order shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby.

22. After termination of this litigation, the provisions of this Order shall continue to be binding. This Court retains and shall have jurisdiction over the parties and recipients of the Protected Documents for enforcement of the provisions of this Order following termination of this litigation.

23. This Protective Order shall be binding upon the parties hereto, upon their attorneys, and upon the parties' and their attorneys' successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

Dated: December 29, 2016

Respectfully submitted,

ALPER & McCULLOCH

By: /s/ Dean A. Alper (as authorized on 12/29/16)  
DEAN A. ALPER

Attorneys for Plaintiff  
Universal North America Insurance  
Company

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Dated: December 29, 2016

Respectfully submitted,  
SHOOK, HARDY & BACON L.L.P.

By: /s/ Edward B. Gaus  
FRANK P. KELLY, III  
ANDREW L. CHANG  
EDWARD B. GAUS

Attorneys for Defendant  
Ford Motor Company

IT IS SO ORDERED.

DATED: January 5, 2017.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**

I, \_\_\_\_\_, declare as follows:

- 1. I am over the age of majority and am competent in every respect to make this declaration.
- 2. I acknowledge that the statements below are based on my personal knowledge.
- 3. I have read the Stipulated Sharing and Non-Sharing Protective Order attached hereto, and I understand its terms and meanings.
- 4. I agree that my signature below submits me to the jurisdiction of the UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA, in the above captioned case and binds me to the provisions of the Stipulated Sharing and Non-Sharing Protective Order, including to all promises undertaken in the Order, as if originally agreed by me.

I declare under criminal penalty of perjury of the State of California that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

Declarant