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 27 FCA US LLC f/k/a Chrysler Group LLC

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

29 SHAWN ALGER as an individual and on
30 behalf of all others similarly situated,

31 Plaintiff,

32 v.

33 FCA US LLC f/k/a CHRYSLER GROUP
 34 LLC, a Delaware Corporation, and DOES 1
 35 through 100, inclusive,

36 Defendants.

Case No.: 2:18-cv-00360-MCE-EFB

STIPULATION AND ORDER
EXTENDING DISCOVERY DEADLINES

Assigned to Hon. Morrison C. England, Jr.
 Courtroom 7, 14th Floor
 Complaint Filed: February 16, 2018

1 Plaintiff Shawn Alger (“Plaintiff”) and Defendant FCA US LLC f/k/a Chrysler Group LLC
2 (“Defendant”) (together, the “Parties”), by and through their respective counsel, hereby stipulate as
3 follows:

4 **STIPULATION**

5 WHEREAS, Plaintiff filed his initial complaint on February 15, 2018 [Dkt. No. 1] and his
6 class action complaint on February 16, 2018 [Dkt. No. 4];

7 WHEREAS, Plaintiff filed his Second Amended Complaint (“SAC”) on April 23, 2018 [Dkt.
8 No. 13] and Defendant filed its Answer to the SAC on May 14, 2018 [Dkt. No. 14];

9 WHEREAS, Plaintiff served his initial disclosures on September 19, 2018 and Defendant
10 served its initial disclosures and supplemental initial disclosures on September 28, 2018;

11 WHEREAS, the Court entered an order on January 4, 2019 extending the discovery cut-off
12 to March 18, 2019 [Dkt. No. 43];

13 WHEREAS, Plaintiff has taken the deposition of Defendant’s Rule 30(b)(6) designees and
14 both Parties have taken several party and non-party depositions, as well as expert depositions;

15 WHEREAS, Plaintiff has served four sets of interrogatories and four sets of requests for
16 production of documents and Defendant has served two sets of interrogatories and three sets of
17 requests for production of documents;

18 WHEREAS, on March 4, 2019, the Court entered an order on stipulated class certification
19 deadlines and to extend the discovery cut-off to November 30, 2019 [Dkt. No. 47];

20 WHEREAS, pursuant to the Parties’ stipulation and the Court’s March 4, 2019 Order,
21 Plaintiff filed his motion for class certification on April 30, 2019;

22 WHEREAS, on June 12, 2019, the Court entered an order pursuant to the Parties’ stipulation
23 modifying class certification deadlines [Dkt. No. 65];

24 WHEREAS, pursuant to the Parties’ stipulation, Defendant filed its opposition to class
25 certification on July 15, 2019 and Plaintiff filed his reply in support of class certification on August
26 30, 2019;

27 WHEREAS, on September 20, 2019, the Court issued a Minute Order directing Plaintiff’s
28 counsel to submit “for the Court’s review, a comprehensive proposed order as to the Motion to

1 Certify Class [54] that is amenable to being filed on the public docket” [Dkt. No. 74];

2 WHEREAS, on September 20, 2019, Defendant filed a motion to exclude the opinions and
3 testimony of Plaintiff’s expert, Dr. Biondi [Dkt. No. 75] and a motion to strike the “Rebuttal Reports
4 of Plaintiff’s Expert Doctors” [Dkt. No. 78];

5 WHEREAS, pursuant to the Court’s September 20, 2019 Order, Plaintiff submitted a
6 [Proposed] Order Granting Plaintiff’s Motion for Class Certification on September 24, 2019 [Dkt.
7 No. 81];

8 WHEREAS, Defendant filed objections to Plaintiff’s proposed order granting class
9 certification on October 1, 2019 [Dkt. No. 91] and filed a proposed order denying class certification
10 on October 2, 2019 [Dkt. No. 93], and Plaintiff filed a letter responding to Defendant’s objections
11 and proposed order on October 4, 2019 [Dkt. No. 95];

12 WHEREAS, pursuant to the Court’s Minute Order directing that Defendant’s motion to strike
13 four of Plaintiff’s rebuttal expert reports be re-noticed before Magistrate Judge Brennan [Dkt. No.
14 86], Defendant re-filed and re-noticed its motion on October 1, 2019 [Dkt. No. 90];

15 WHEREAS, on October 22, 2019, Plaintiff filed a motion to compel Defendant to supplement
16 discovery responses pursuant to Rule 26(e), provide further responses to Plaintiff’s Fourth Set of
17 RFPs, and provide further responses to Plaintiff’s Fourth Set of Interrogatories, as well as to compel
18 compliance with depositions subpoenas served on four of Defendant’s dealerships [Dkt. Nos. 101
19 and 102];

20 WHEREAS, following the Parties’ extensive meet and confer efforts, Plaintiff offered to
21 make his rebuttal experts available for depositions. On October 25, 2019, Defendant served notices
22 of depositions of these experts on Plaintiff;

23 WHEREAS, on October 29, 2019, Judge England entered an order denying without prejudice
24 Defendant’s motion to exclude the opinions and testimony of Dr. Biondi, on the basis that the
25 motion was premature [Dkt. No. 106];

26 WHEREAS, on October 29, 2019, Judge Brennan issued a Minute Order [Dkt. No. 108]
27 directing the Parties to file a single joint statement addressing Defendant’s motion to strike [Dkt.
28 No. 90] and Plaintiff’s motions to compel [Dkt. Nos. 101 and 102];

1 WHEREAS, the Parties filed their Joint Statement Re Discovery Disagreement on November
2 6, 2019 [Dkt. No. 116];

3 WHEREAS, on the same day, Defendant filed a motion to stay [Dkt. No. 114], which has
4 been fully briefed by the Parties and is still pending [Dkt. Nos. 114, 126, and 129];

5 WHEREAS, on November 20, 2019, Judge Brennan entered an order denying Defendant's
6 motion to strike four of Plaintiff's rebuttal expert reports from Drs. Davis, Biondi, Ziejewski, and
7 Wachs and granting Plaintiff's motion to compel [Dkt. No. 124]. Specifically, Judge Brennan
8 ordered Defendant to produce all documents responsive to Plaintiff's RFP No. 29 by November 20,
9 2019. (*Id.*) Judge Brennan also ordered Defendant to produce all documents responsive to
10 Plaintiff's RFP Nos. 10-14 and 33-36 and provide further responses to Plaintiff's Interrogatories
11 Nos. 20-23 by November 27, 2019. (*Id.*) In addition, Judge Brennan ordered that Defendant shall
12 produce documents requested in each FCA dealership subpoena by 12:00 p.m. on the day before
13 each deposition. (*Id.*) Judge Brennan indicated during the hearing on Plaintiff's motion to compel
14 that Defendant was to give its "best effort" to comply with the November 27, 2019 deadline, but
15 that the deadline would be revisited if Defendant presented a declaration describing its efforts to
16 comply with the deadline and stating that it could not meet the deadline in spite of due diligence
17 [Dkt. No. 128-1, p. 2];

18 WHEREAS, following the discovery hearing before Judge Brennan, the Parties engaged in a
19 series of telephonic and written meet and confer efforts in part to discuss Defendant's supplemental
20 document productions, an ESI protocol for identifying relevant custodians and search terms,
21 documents submitted by Defendant to NHTSA in response to NHTSA's September 9, 2019
22 Preliminary Evaluation (PE19-014), deposition dates for FCA dealerships, as well as deposition
23 dates for Plaintiff's rebuttal experts;

24 WHEREAS, on November 27, 2019, Defendant filed a Motion to Extend Deadline to Produce
25 Certain Documents [Dkt. No. 128];

26 WHEREAS, as part of Defendant's motion to extend the document production deadline,
27 Defendant represented that it already produced documents responsive to RPD No. 29, and that it
28 will have timely produced certain other discovery by the November 27, 2019 deadline, including

1 over 1,000 pages of documents responsive to RPD No. 13, supplemental responses to Interrogatories
2 Nos. 20-23, and all documents responsive to RPD Nos. 33-36. (FCA US LLC’s Mot. to Extend
3 Deadline to Produce Certain Docs., pp. 4-5.) [Dkt. No. 128-1]. Defendant also represented that its
4 application of initial search terms for a subset of just twelve custodians generated approximately
5 150,000 documents, that meet and confer efforts regarding custodians and an ESI protocol were
6 ongoing, that it was still in the process of compiling documents for its response to NHTSA, and that
7 despite its due diligence and good faith effort, it was unable to produce all documents responsive to
8 RPD Nos. 10-14 by the November 27, 2019 deadline. (*Id.*, p. 5.; Dkt. No. 128-3, Declaration of
9 Brittany J. Mouzourakis.) Defendant requested that Judge Brennan “extend until December 10,
10 2019, its deadline for completing production of documents responsive to RPDs 10, 12, and 13, and
11 extend until January 30, 2020, its deadline for completing production of documents responsive to
12 RPDs 11 and 14.” [Dkt. No. 128-1, p. 6];

13 WHEREAS, following the filing of Defendant’s motion to extend the document production
14 deadline, the Parties continued to meet and confer on outstanding discovery issues;

15 WHEREAS, the Defendant produced documents responsive to RPDs 10, 12, and 13 on
16 December 6, 2019, and then represented to Plaintiff on December 10, 2019 that after a reasonable
17 and diligent search, Defendant had produced all documents discovered that were responsive to
18 RPDs 10, 12, and 13;

19 WHEREAS, Defendant represented to Plaintiff on December 12, 2019 that it would produce
20 the remaining documents ordered for production by Judge Brennan on a rolling basis, with the first
21 production on December 20, 2019, and an anticipated completion date of January 30, 2020;

22 WHEREAS, the Defendant produced documents on December 20, 2019, consistent with its
23 proposed rolling production schedule;

24 WHEREAS, the Parties have reached an agreement that Defendant will complete the
25 discovery requirements set forth in Judge Brennan’s November 20, 2019 Order by January 30, 2020
26 and Defendant will accordingly file a Notice of Agreement in Judge Brennan’s court;

27 WHEREAS, the Parties reached a further agreement to propose moving the discovery cut-off
28 to March 30, 2020, including for purposes of scheduling and conducting limited depositions of

1 Plaintiff's rebuttal experts, scheduling and conducting remaining FCA dealership depositions, and
2 allowing Plaintiff seven (7) additional depositions, where any depositions of individuals previously
3 deposed would be limited to new documents or information contained in Defendant's impending
4 December and January productions;

5 WHEREAS, the Parties agree that moving the discovery cut-off will address Defendant's
6 motion to extend the document production deadline pending before Judge Brennan and that the
7 motion will be withdrawn upon the filing of this Stipulation; and

8 WHEREAS, good cause exists to extend the discovery cut-off by four months, to March 30,
9 2020, for the reasons described above and due to the intervening holidays.

10 NOW, THEREFORE, the undersigned counsel for the Parties, having met and conferred,
11 stipulate and agree as follows:

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1. The deadline to complete merits-based discovery is extended to March 30, 2020. All other case deadlines shall be adjusted accordingly, consistent with the Court's Initial Pretrial Scheduling Order [Dkt. No. 3].

Dated: January 2, 2020.

Respectfully submitted,

KERSHAW, COOK & TALLEY PC

By: /s/ Stuart C. Talley

STUART C. TALLEY
WILLIAM A. KERSHAW
IAN J. BARLOW

Attorneys for Plaintiff and the putative Class

Dated: January 2, 2020.

DYKEMA GOSSETT LLP

By: /s/ Fred J. Fresard

FRED J. FRESARD
DOMMOND E. LONNIE
JAMES P. FEENEY
ABIRAMI GNANADESIGAN

Attorneys for Defendant
FCA US LLC f/k/a/ Chrysler Group LLC

ORDER

IT IS SO ORDERED.

DATED: January 6, 2020



MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE