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12 Attorneys for Defendant,  
 13 GENERAL MOTORS, LLC

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 JOEL BRIGHTBILL AND PATRICIA  
 17 PAYEUR,

18 Plaintiffs,

19 v.

20 GENERAL MOTORS, LLC, (A.K.A.  
 21 "NEW GM") AND DOES 1-100,

22 Defendants.

Case No. 3:15-cv-03789-MMC

[Assigned to Hon. Maxine M. Chesney]

**STIPULATED PROTECTIVE  
 ORDER**

23 1. PURPOSES AND LIMITATIONS

24 Disclosure and discovery activity in this action are likely to involve production  
 25 of confidential, proprietary, or private information for which special protection from  
 26 public disclosure and from use for any purpose other than prosecuting this litigation  
 27 may be warranted. Accordingly, the parties hereby stipulate to and petition the court  
 28 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

1 12.3, below, that this Stipulated Protective Order does not entitle them to file  
2 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
3 that must be followed and the standards that will be applied when a party seeks  
4 permission from the court to file material under seal.

5 2. DEFINITIONS

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation  
7 of information or items under this Order.

8 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
9 how it is generated, stored or maintained) or tangible things that qualify for protection  
10 under Federal Rule of Civil Procedure 26(c).

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

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

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

20 2.6 Expert: a person with specialized knowledge or experience in a matter  
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
22 expert witness or as a consultant in this action.

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

26 2.8 Non-Party: any natural person, partnership, corporation, association, or  
27 other legal entity not named as a Party to this action.  
28

1           2.9 Outside Counsel of Record: attorneys who are not employees of a party  
2 to this action but are retained to represent or advise a party to this action and have  
3 appeared in this action on behalf of that party or are affiliated with a law firm which  
4 has appeared on behalf of that party.

5           2.10 Party: any party to this action, including all of its officers, directors,  
6 employees, consultants, retained experts, and Outside Counsel of Record (and their  
7 support staffs).

8           2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this action.

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

14          2.13 Protected Material: any Disclosure or Discovery Material that is  
15 designated as “CONFIDENTIAL.”

16          2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
17 from a Producing Party.

### 18    3. SCOPE

19          The protections conferred by this Stipulation and Order cover not only  
20 Protected Material (as defined above), but also (1) any information copied or extracted  
21 from Protected Material; (2) all copies, excerpts, summaries, or compilations of  
22 Protected Material; and (3) any testimony, conversations, or presentations by Parties  
23 or their Counsel that might reveal Protected Material. However, the protections  
24 conferred by this Stipulation and Order do not cover the following information: (a)  
25 any information that is in the public domain at the time of disclosure to a Receiving  
26 Party or becomes part of the public domain after its disclosure to a Receiving Party as  
27 a result of publication not involving a violation of this Order, including becoming part  
28 of the public record through trial or otherwise; and (b) any information known to the

1 Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
2 disclosure from a source who obtained the information lawfully and under no  
3 obligation of confidentiality to the Designating Party. Any use of Protected Material at  
4 trial shall be governed by a separate agreement or order.

5 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under this  
17 Order must take care to limit any such designation to specific material that qualifies  
18 under the appropriate standards.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations  
20 that are shown to be clearly unjustified or that have been made for an improper  
21 purpose (e.g., to unnecessarily encumber or retard the case development process or to  
22 impose unnecessary expenses and burdens on other parties) expose the Designating  
23 Party to sanctions. If it comes to a Designating Party's attention that information or  
24 items that it designated for protection do not qualify for protection, that Designating  
25 Party must promptly notify all other Parties that it is withdrawing the mistaken  
26 designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in  
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
2 under this Order must be clearly so designated before the material is disclosed or  
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic  
6 documents, but excluding transcripts of depositions or other pretrial or trial  
7 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each  
8 page that contains protected material. If any portion or portions of the material on a  
9 page qualifies for protection, the entire document shall be designated as  
10 “CONFIDENTIAL” given the volume of documents that may be produced and the  
11 impracticality of designating portions of each document.

12 A Party or Non-Party that makes original documents or materials available for  
13 inspection need not designate them for protection until after the inspecting Party has  
14 indicated which material it would like copied and produced. During the inspection and  
15 before the designation, all of the material made available for inspection shall be  
16 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents  
17 it wants copied and produced, the Producing Party must determine which documents  
18 qualify for protection under this Order. Then, before producing the specified  
19 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each  
20 page that contains Protected Material. If any portion or portions of the material on a  
21 page qualifies for protection, the entire document shall be designated as  
22 “CONFIDENTIAL” given the volume of documents that may be produced and the  
23 impracticality of designating portions of each document.

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

27 (c) for information produced in some form other than documentary and for  
28 any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information or item is stored the  
2 legend “CONFIDENTIAL.”

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items does not, standing alone, waive the  
5 Designating Party’s right to secure protection under this Order for such material.  
6 Upon timely correction of a designation, the Receiving Party must make reasonable  
7 efforts to assure that the material is treated in accordance with the provisions of this  
8 Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
11 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
12 Party’s confidentiality designation is necessary to avoid foreseeable, substantial  
13 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
14 litigation, a Party does not waive its right to challenge a confidentiality designation by  
15 electing not to mount a challenge promptly after the original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
17 resolution process by providing written notice of each designation it is challenging  
18 and describing the basis for each challenge. To avoid ambiguity as to whether a  
19 challenge has been made, the written notice must recite that the challenge to  
20 confidentiality is being made in accordance with this specific paragraph of the  
21 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
22 must begin the process by conferring directly (in voice to voice dialogue; other forms  
23 of communication are not sufficient) within 14 days of the date of service of notice. In  
24 conferring, the Challenging Party must explain the basis for its belief that the  
25 confidentiality designation was not proper and must give the Designating Party an  
26 opportunity to review the designated material, to reconsider the circumstances, and, if  
27 no change in designation is offered, to explain the basis for the chosen designation. A  
28 Challenging Party may proceed to the next stage of the challenge process only if it has

1 engaged in this meet and confer process first or establishes that the Designating Party  
2 is unwilling to participate in the meet and confer process in a timely manner.

3       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
4 court intervention, the Designating Party shall file and serve a motion to retain  
5 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-  
6 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of  
7 the parties agreeing that the meet and confer process will not resolve their dispute,  
8 whichever is earlier. Each such motion must be accompanied by a competent  
9 declaration affirming that the movant has complied with the meet and confer  
10 requirements imposed in the preceding paragraph. Failure by the Designating Party to  
11 make such a motion including the required declaration within 21 days (or 14 days, if  
12 applicable) shall automatically waive the confidentiality designation for each  
13 challenged designation. In addition, the Challenging Party may file a motion  
14 challenging a confidentiality designation at any time if there is good cause for doing  
15 so, including a challenge to the designation of a deposition transcript or any portions  
16 thereof. Any motion brought pursuant to this provision must be accompanied by a  
17 competent declaration affirming that the movant has complied with the meet and  
18 confer requirements imposed by the preceding paragraph.

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

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1     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

2             7.1     Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a Non-Party in connection with this case  
4 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
5 Material may be disclosed only to the categories of persons and under the conditions  
6 described in this Order. When the litigation has been terminated, a Receiving Party  
7 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

11            7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless  
12 otherwise ordered by the court or permitted in writing by the Designating Party, a  
13 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
14 only to:

15            (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
16 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
17 disclose the information for this litigation and who have signed the “Acknowledgment  
18 and Agreement to Be Bound” that is attached hereto as Exhibit A;

19            (b) the officers, directors, and employees (including House Counsel) of the  
20 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
21 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

25            (d) the court and its personnel;

26            (e) court reporters and their staff, professional jury or trial consultants,  
27 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary  
28 for this litigation and who have signed the “Acknowledgment and Agreement to Be



1 Bound” (Exhibit A);

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

8 (g) the author or recipient of a document containing the information or a  
9 custodian or other person who otherwise possessed or knew the information.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
11 OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation  
13 that compels disclosure of any information or items designated in this action as  
14 “CONFIDENTIAL,” that Party must:

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

17 (b) promptly notify in writing the party who caused the subpoena or order to  
18 issue in the other litigation that some or all of the material covered by the subpoena or  
19 order is subject to this Protective Order. Such notification shall include a copy of this  
20 Stipulated Protective Order; and

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

23 If the Designating Party timely seeks a protective order, the Party served with  
24 the subpoena or court order shall not produce any information designated in this  
25 action as “CONFIDENTIAL” before a determination by the court from which the  
26 subpoena or order issued, unless the Party has obtained the Designating Party’s  
27 permission. The Designating Party shall bear the burden and expense of seeking  
28 protection in that court of its confidential material – and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this action to  
2 disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
4 IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a  
6 Non-Party in this action and designated as "CONFIDENTIAL." Such information  
7 produced by Non-Parties in connection with this litigation is protected by the  
8 remedies and relief provided by this Order. Nothing in these provisions should be  
9 construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to  
11 produce a Non-Party's confidential information in its possession, and the Party is  
12 subject to an agreement with the Non-Party not to produce the Non-Party's  
13 confidential information, then the Party shall:

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

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

20 (3) make the information requested available for inspection by the Non-  
21 Party.

22 (c) If the Non-Party fails to object or seek a protective order from this court  
23 within 14 days of receiving the notice and accompanying information, the Receiving  
24 Party may produce the Non-Party's confidential information responsive to the  
25 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
26 Party shall not produce any information in its possession or control that is subject to  
27 the confidentiality agreement with the Non-Party before a determination by the court.  
28 Absent a court order to the contrary, the Non-Party shall bear the burden and expense

1 of seeking protection in this court of its Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
4 Protected Material to any person or in any circumstance not authorized under this  
5 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
6 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
7 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
8 persons to whom unauthorized disclosures were made of all the terms of this Order,  
9 and (d) request such person or persons to execute the “Acknowledgment and  
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
12 PROTECTED MATERIAL

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

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
25 person to seek its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
27 Protective Order no Party waives any right it otherwise would have to object to  
28 disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the  
4 Designating Party or a court order secured after appropriate notice to all interested  
5 persons, a Party may not file in the public record in this action any Protected Material.  
6 A Party that seeks to file under seal any Protected Material must comply with Civil  
7 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
8 order authorizing the sealing of the specific Protected Material at issue. Pursuant to  
9 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that  
10 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
11 entitled to protection under the law. If a Receiving Party's request to file Protected  
12 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then  
13 the Receiving Party may file the information in the public record pursuant to Civil  
14 Local Rule 79-5(e) unless otherwise instructed by the court.

15 13. FINAL DISPOSITION

16 Within 60 days after the final disposition of this action, as defined in paragraph  
17 4, each Receiving Party must return all Protected Material to the Producing Party or  
18 destroy such material. As used in this subdivision, "all Protected Material" includes  
19 all copies, abstracts, compilations, summaries, and any other format reproducing or  
20 capturing any of the Protected Material. Whether the Protected Material is returned or  
21 destroyed, the Receiving Party must submit a written certification to the Producing  
22 Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
23 deadline that (1) identifies (by category, where appropriate) all the Protected Material  
24 that was returned or destroyed and (2) affirms that the Receiving Party has not  
25 retained any copies, abstracts, compilations, summaries or any other format  
26 reproducing or capturing any of the Protected Material. Notwithstanding this  
27 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
28 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,

