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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

16 LINDSEY ABERIN, DON AWTREY,
17 DANIEL CRINER, JARED CROOKS,
REBECCA GRAY, MARK GERSTLE,
18 JOHN KELLY, YUN-FEI LOU, JORDAN
MOSS, DONALD TRAN, ARPAN
19 SRIVASTAVA, DONALD TRAN, and
20 MELISSA YEUNG, individually and on
behalf of all others similarly situated.

Plaintiffs,

v.
23 AMERICAN HONDA MOTOR CO.,
24 INC.,

Defendant.

Case No. 3:16-cv-04384-JST

**[PROPOSED] ORDER REGARDING
ELECTRONICALLY STORED
INFORMATION**

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1 **1. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this
3 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
4 Discovery of Electronically Stored Information, and any other applicable orders and rules.

5 **2. COOPERATION**

6 The Parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **3. LIAISON**

10 The Parties have identified liaisons to each other who are and will be knowledgeable
11 about and responsible for discussing their respective ESI. Plaintiffs’ liaison will be Scott Alan
12 George. Plaintiffs are referred to collectively herein as a “Party.” Defendant American Honda
13 Motor Co. Inc.’s (“AHM’s”) liaison will be Andrew Chinsky. Each e-discovery liaison will
14 be, or have access to those who are, knowledgeable about the technical aspects of e-discovery,
15 including the location, nature, accessibility, format, collection, search methodologies, and
16 production of ESI in this matter. The Parties will rely on the liaisons, as needed, to confer
17 about ESI and to help resolve disputes without court intervention.

18 **4. PRESERVATION**

19 The Parties have discussed their preservation obligations and needs and agree that
20 preservation of potentially-relevant ESI will be reasonable and proportionate. To reduce the
21 costs and burdens of preservation and to ensure proper ESI is preserved, the Parties agree to
22 the following:

- 23 a) Within 30 days after entry of this Protocol, each Party shall provide to the other
24 Party: (1) a description of each Party’s potentially responsive data sources,
25 including databases that are likely to contain responsive information, (2) a list of
26 individual custodians whose reasonably-accessible emails and other ESI (as
27 applicable) will be searched in accordance with this Order. Custodians shall
28

1 initially be identified by name, whether they are current or former employees and
2 by general job titles or descriptions (*e.g.* “marketing manager”). For each of its
3 custodians, the Party will confirm the custodian is subject to the preservation hold
4 that the Party has implemented in this case.

5 b) The Parties will agree on the number of custodians per Party for whom ESI will be
6 preserved after they exchange the information set forth in Paragraph 4 a) above.

7 The Parties may add or remove custodians by mutual agreement.

8 c) Among the sources of data the Parties agree are not reasonably accessible because
9 of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B), the Parties agree
10 they are under no obligation to preserve or make production from the following
11 categories of information unless and until: (1) a Party provides written notice to the
12 other Party identifying a specific category or categories the Party in good faith
13 believes the ESI should begin to be preserved or discovered as well as the reasons,
14 including the Party’s basis for believing its request(s) are proportional to the needs
15 of the case pursuant to Fed. R. Civ. P. 26(b)(1); and (2) either (i) mutual agreement
16 of the Parties, or (ii) a finding of good cause by the Court that such ESI should be
17 preserved or discovered (which the Parties acknowledge may involve cost-sharing
18 or cost-shifting, as applicable):

- 19
- 20 i. Backup data files that are maintained in the normal course of business for
21 purposes of disaster recovery, including (but not limited to) backup tapes, disks,
22 SAN, and other forms of media, and that are substantially duplicative of data
23 that are more accessible elsewhere, and the Parties agree that no Party shall be
24 required to modify or suspend procedures, including rotation of backup media,
25 used in the normal course of business to back up data and systems for disaster
26 recovery purposes unless first ordered to do so by the Court; and
 - 27 ii. For purposes of this Paragraph 4 (c), the Parties agree that deletion of ESI in the
28 normal course of business before the time the preservation obligation in this

1 litigation came into effect is not sufficient grounds for the other Party to seek to
2 preserve or discover any information identified in 4 (c)(i) or 4 c)(ii).

3 d) Among the sources of data the Parties agree are not reasonably accessible, the
4 Parties agree not to preserve or discover the following:

- 5 i. ESI deleted in the normal course of business before the time a preservation
6 obligation in this matter came into effect;
- 7 ii. Deleted, “slack,” fragmented, or unallocated data only accessible by
8 forensics;
- 9 iii. Random access memory (RAM) , temporary files, or other ephemeral data
10 that are difficult to preserve without disabling the operating system;
- 11 iv. Data in metadata fields frequently updated automatically, such as last-
12 opened or last-printed dates;
- 13 v. Electronic data temporarily stored by laboratory equipment or attached
14 electronic equipment, provided that such data is not ordinarily preserved as
15 part of a laboratory report;
- 16 vi. Voicemail, text message and instant messages that are not substantively
17 related to the products at issue in this matter and that are not retained in the
18 ordinary course of business;
- 19 vii. Server, system, network, or software application logs;
- 20 viii. Structural files not material to individual file contents (e.g. .CSS, .XSL,
21 .XML, .DTD, etc.); and
- 22 ix. On-line access data such as (without limitation) temporary internet files,
23 history files, cache files, and cookies.

24 **5. SEARCH**

25 The Parties agree to the employ the following processes and parameters for
26 searching ESI:
27

- 28 a) To contain costs in the identification of relevant ESI for review and production, the

1 Parties may meet and confer to discuss either the use of reasonable search terms,
2 file types, and date ranges or the use of advanced search and retrieval technologies,
3 such as predictive coding or other technology-assisted review.

4 b) AHM will propose a list of search terms to Plaintiffs by April 24, 2017. Plaintiffs
5 will meet and confer with AHM by May 15, 2017. Agreement on search terms will
6 be completed promptly, but such agreement will not itself prevent either Party from
7 seeking additional search terms later subject to the other Party's agreement or the
8 Court's intervention, provided such search terms are proportional to the needs of the
9 case pursuant to Fed. R. Civ. P. 26(b)(1).

10 i. Plaintiffs and AHM will use the initial agreed-upon search terms to search
11 their ESI and electronic mail accounts, as applicable, and shall retrieve,
12 review and produce documents in accordance with this Order without
13 seeking contribution or cost recovery from the non-producing Party.

14 ii. Should either AHM or Plaintiffs request subsequent and/or additional term
15 searches, the Parties will discuss whether cost-sharing or shifting for such
16 searches is appropriate, and shall seek guidance from the Court to the extent
17 they cannot agree.

18 c) The fact that any document has been identified by agreed-upon searches terms shall
19 not prevent any Party from withholding such file from production on the grounds
20 that the document is not discoverable, including because it is not responsive, that it
21 is protected from disclosure by applicable privilege or immunity, that it is governed
22 by the European Data Privacy Directive or other applicable privacy law or
23 regulation, that it contains commercially sensitive or proprietary non-responsive
24 information, that the Protective Order entered in this Action allows the file to be
25 withheld, or otherwise.

26 d) Nothing in this section shall limit a Party's right reasonably to seek agreement from
27 the other Parties or a court ruling to modify previously agreed-upon search terms or
28 procedures for advanced search and retrieval technologies.

1 **6. PRODUCTION FORMATS**

2 The Parties agree to produce documents in the formats set forth in Exhibit 1 and
3 Schedule A thereto.

4 **7. PHASING**

5 The Parties will produce non-confidential documents in advance of the entry of a
6 confidentiality protective order. After a protective order is entered, the Parties will produce
7 confidential documents subject to the protective order.

8 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

9 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
10 protected document, whether inadvertent or otherwise, is not a waiver of privilege
11 or protection from discovery in this case or in any other federal or state proceeding.
12 For example, the mere production of privileged or work-product-protected
13 documents in this case as part of a mass production is not itself a waiver in this case
14 or in any other federal or state proceeding.

15 b) Communications involving a Party’s counsel or any of its agents that post-date the
16 filing of the original complaint need not be placed on a privilege log.

17 **9. MODIFICATION**

18 This Stipulated Order may be modified by a Stipulated Order of the Parties or by the
19 Court for good cause shown.

20 **IT IS SO STIPULATED**, through Counsel of Record.

21 Dated: March 31, 2017

22 /s/ Christopher A. Seeger
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*Attorneys for Plaintiffs and the Proposed
Classes and Subclasses*

IT IS ORDERED that the forgoing Agreement is approved.

Dated: April 3, 2017


UNITED STATES DISTRICT/MAGISTRATE JUDGE

SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Stipulation. In compliance with Civil Local Rule 5.1, I hereby attest that the signatory has concurred in this filing.

Dated: March 31, 2017

By: /s/ Christopher A. Seeger
Christopher A. Seeger

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1 **Exhibit 1: ESI Production Protocol**

2 **A. De-Duplication of Identical User Files**

3 All non-email documents (“User Files”) will be de-duplicated, across custodians, prior to
4 production. “De-duplicated across custodians” means that exact duplicates of documents, as
5 identified by MD5 hash value, held by a particular custodian and residing with another
6 custodian, will not be produced. Custodians of a de-duplicated document will be noted in the
7 metadata as “Duplicate Custodians” as set forth in Schedule A, and to the extent technically
8 feasible and not unduly burdensome, any additional metadata associated with a Duplicate
9 Custodian’s copy will be linked to that custodian.

10 **B. De-Duplication of Identical E-Mails**

11 The Parties are permitted to de-duplicate identical e-mails and their attachments using
12 MD5 hash technology, across custodians. Custodians of a de-duplicated e-mail will be noted in
13 the metadata as “Duplicate Custodians” as set forth in Schedule A, and to the extent technically
14 feasible and not unduly burdensome, any additional metadata associated with a Duplicate
15 Custodian’s copy will be linked to that custodian.

16 **C. Thread De-duplication of E-Mails**

17 For emails, “thread de-duplicates” will be removed from production. In order for an
18 email to be suppressed as a “thread duplicate,” it must be wholly contained in the later, surviving
19 email, and have all of the same recipients and attachments.

20 **D. De-Nisting of Electronically Stored Data**

21 The Parties may remove known operating system files and program files prior to
22 conducting searches of data, and may also remove files in accordance with the NSRL De-Nisting
23 Process.

24 **E. Redactions**

25 To the extent a document is produced in redacted form, any redactions shall be clearly
26 indicated on the face of the document, each redacted portion of the document from which
27 information is redacted shall bear a designation that it has been redacted, stating the fact of
28 redaction over the redacted portion of the document with the word “REDACTION” and a brief
description of the reason (*i.e.*, “PRIVILEGE,” “PII” (defined below), “NON RELEVANT”), and

1 a metadata field accompanying the document production shall indicate that the document
2 contains redactions to the extent technically feasible and not unduly burdensome. Where a
3 responsive document contains both redacted and non-redacted content, the producing Party shall
4 produce the remainder of the non-redacted portions of the document. The production of a
5 document in a redacted form does not affect the producing Party's obligation to properly
6 document and substantiate the assertion of privilege over the content on a privilege log.
7 Redacted documents shall be produced in TIFF image format except for Excel and Access
8 documents, which shall be produced in redacted native format. Redacted PowerPoint documents
9 may be produced in native upon request in a manner that will prevent disclosure of privileged
10 information provided it is technically feasible and not unduly burdensome to do so.

11 To the extent there is significant, non-relevant proprietary material about other vehicles
12 within an otherwise responsive document, and it's not demonstrably burdensome to the non-
13 producing Party, the non-relevant, proprietary material will be redacted, and a log describing the
14 category of the irrelevant content of the redacted material (*e.g.*, Non Relevant – Proprietary Info
15 Non-Acura Vehicles) will be provided. A document containing relevancy redactions with the
16 relevancy redactions removed shall be made available once for inspection at the request of the
17 non-producing Party at a mutually-agreeable time and place. If the non-producing Party believes
18 that the redacted information is relevant, the Parties will meet and confer and, if they are unable
19 to reach an agreement, will seek guidance from the Court. If guidance from the Court is sought,
20 the producing Party will make an unredacted version of the document available for *in camera*
21 inspection along with any submission by the Parties.

22 **F. Protected Information**

23 If information protected from disclosure by any applicable privacy law or rule
24 (“Protected Information”) is contained in a document or ESI obtained from any custodian or data
25 source, prior to production of the document or ESI, the Party will redact such Protected
26 Information in accordance with the procedures identified in Section E above and identify it as
27 “PII.”
28

1 **G. Document Numbering for TIFF Images**

2 Each page of a document produced in TIFF file format shall have a legible, unique
3 numeric identifier (“Bates number”) not less than seven (7) digits (with zero-padding)
4 electronically “burned” onto the image at a place on the document that does not obscure, conceal
5 or interfere with any information originally appearing on the document. The Bates number for
6 each document shall be created so as to identify the producing party or non-party and the Bates
7 number (*e.g.*, “ABC-0000000”).

8 **H. Document Type and Preferred Production Format**

9 In addition to the parameters set forth below, all productions should include a
10 Concordance load file (.DAT and .OPT). The producing party shall provide a data load file
11 (“Data Load File”) that shall contain the reasonably-available metadata associated with each
12 field as specified in Schedule A, attached hereto, to the extent applicable and not cost prohibitive
13 or burdensome. The producing party also shall produce document level .txt files for all
14 documents containing extracted full text wherever possible, or OCR text if extracted full text is
15 unavailable or there are redactions in the document. Each TIFF and TXT file shall be named
16 consistent with the Bates number endorsed on the image as required in Section F above.
17 Production shall be in black-and-white, except where otherwise specified, or where color is
18 necessary to understand the document (*e.g.*, charts). The receiving party may make good faith
19 requests for color production of specific documents as reasonably necessary.

20 If a TIFF file is permitted by this Order to be, and is, produced instead of a native file, all
21 hidden text (*e.g.*, track changes, hidden columns, comments, notes, markups, etc.) will be
22 expanded, extracted, and rendered in the TIFF file. This specifically includes, but is not limited
23 to, the inclusion of any notes or comments contained within any PowerPoint slides/presentations
24 that are produced in TIFF format. To the extent such hidden text is subject to a claim of
25 attorney-client privilege or attorney work product it may be redacted and logged.

26 **1. Hard Copy Documents**

27 Hard copy documents shall be scanned to single page, uniquely numbered TIFF image
28 files not less than 300dpi resolution with OCR .txt files and Bates numbers with appropriate zero

padding. Image files should be produced in such a way that it is clear where each document produced begins and ends (*i.e.*, unitized) to the extent feasible and also will be produced together with an “.OPT load file.” No Party will modify or change the format of hard copy documents as they actually exist in paper form, but each Party will use best efforts to produce difficult-to-read hard copy documents in a manner that causes their contents to be reasonably readable.

2. E-Mail

The parties will produce e-mail, together with all attachments, as follows:

a. The parties will convert native e-mails to single page TIFFs.

b. Each TIFF is to show the Bates number and confidentiality designation for each such email page. E-mail families will be given a PARENTID field in the accompanying .DAT Data Load File as set forth in Schedule A, attached.

c. E-mail attachment icons or filenames should be visible in the imaged body of the e-mail, to the extent existing in the original data if reasonably feasible and where the icons or filenames are not redacted.

3. User Files

User files, other than Microsoft Excel or like kind files, shall be defined to include all word processing, text editing, presentation program file formats (including but not limited to files created with Microsoft Word, Word Perfect, and Notepad, including comparable applications utilized by non-Microsoft operating systems such as Macintosh). Such files, de-duplicated as per above, will be produced as single page TIFFs with extracted text (with documents containing redactions processed as necessary to protect the redacted information from disclosure), with reasonably-available metadata as set forth in Schedule A to the extent feasible and not cost-prohibitive, and Bates numbers.

4. Microsoft Excel, Access, and PowerPoint Files

Microsoft Excel, Access, and PowerPoint files shall be produced natively, in accordance with the specifications below, except where redactions are required, in which case, ¶ E, above also shall apply.

5. Photographs

1 Standalone, electronically stored photographs shall be produced in .JPG, .GIF, or some
2 other reasonably accessible file format with reasonably-available metadata; each production file
3 name should contain the document Bates number. Photographs should be produced in color.

4 **6. Audio/Video Files**

5 Video, animation, and audio files should be produced in native file format, unless the
6 native application is proprietary and not compatible with open source or common audio and
7 video players such as Quicktime or Windows Media Player, in which case the file should be
8 converted for universal compatibility, to the extent reasonably feasible. If a Party contends that
9 it is not reasonably feasible to convert a file for universal compatibility, the Party shall promptly
10 meet and confer with all other parties about whether and how the information in question can be
11 produced consistent with this agreement and in a reasonably accessible form.

12 All video, animation, or audio files that a producing party in good faith believes contains
13 material protected by either the attorney-client privilege or attorney work product doctrine must
14 be identified on a privilege log.

15 **7. All Other File Formats**

16 Production of file-types reasonably believed to contain relevant information not included
17 in the list above should be immediately identified and brought to the attention of the receiving
18 party to discuss a mutually agreeable and reasonably useable format for production and labeling.

19 **8. Natively Produced Documents**

20 For any documents produced in native format, the production file name should contain
21 the Bates number of the document, and appropriate confidentiality designation, if any. The
22 metadata field for file name should contain the original file name as specified in the file's
23 properties, if reasonably available. A placeholder TIFF should be included in the load file
24 indicating that the file was produced natively. A folder of native files should be included in the
25 load file and a NATIVEPATH field containing the path to the native file so that a link can be
26 made in Concordance. Native files that do not contain redactions will be produced with
27 extracted text and reasonably-available, applicable metadata fields to the extent applicable and
28

1 not cost prohibitive or burdensome. For documents that contain redactions, the parties may
2 apply the redactions directly on the native file itself.

3 **9. Structured Data**

4 Generally, databases should be produced in a mutually-agreeable data exchange format.
5 The parties agree to meet and confer regarding the data to be produced from each source, if any,
6 and the form(s) of the production thereof.

7 **10. Foreign Language Text Files**

8 Files containing foreign language and reasonably-available metadata should be produced
9 with the correct encoding to enable the preservation of the documents' original language.

10 **I. Privilege Log**

11 The Parties agree that for all documents and information that are withheld (or redacted)
12 on privilege or work product grounds, the following information will be provided in an easily
13 readable chart within a reasonable time not to exceed sixty (60) days from the date of each
14 production of documents (in a rolling production) by a Party for which the asserted basis for
15 withholding (or redaction) applies (or within a specific timeframe that is mutually agreed-upon):

- 16 **1.** Privilege log reference number;
- 17 **2.** Bates range of document (if applicable);
- 18 **3.** Author(s) (designating which, if any, are attorneys);
- 19 **4.** Recipient(s), including copyee(s) (designating which, if any, are attorneys);
- 20 **5.** Description of the documents (or redacted portion of the document) as set forth in
21 Rule 26(b)(5)(A)(ii) of the Federal Rules of Civil Procedure; and
- 22 **6.** Asserted basis for withholding.

23 A Party will make reasonable efforts to produce a privilege log for a custodian/department at
24 least ten (10) days in advance of such a deposition upon request by the other Party for documents
25 and information that previously has been produced for which no privilege log has yet been
26 provided.

SCHEDULE A LOAD FILE FIELDS:

Field Name:
BCC:
BegAttch:
BegDoc:
CC:
Conf Desig:
Custodian:
Author:
Date Created:
Time Created
Date Last Modified:
Time Last Modified
Date Sent:
Time Sent
Date Received:
Time Received
Email Subject:
EndAttch:
EndDoc:
File Extension:
Source File Name:
File Size:
From:
MD5 Hash:
NATIVEPATH:
E-Mail Folder Path
Duplicate Custodian
PARENTID:
PG Count:
To:
Prod Volume:
Redaction