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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

17 DAVID BARANCO, JAMES ABBITT,
 18 HARRIET ABRUSCATO, DONALD
 19 BROWN, DANIEL CARON, ANITA
 20 FARRELL, JOHN FURNO, JAMES
 21 JENKIN, ROGER KINNUNEN, GARY
 22 KUBBER and MALISA NICOLAU
 23 individually and on behalf of all others
 24 similarly situated,

Plaintiffs,

v.

25 FORD MOTOR COMPANY, a Delaware
 26 corporation,

Defendant.

Case No. 3:17-cv-03580-EMC

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER**

CLASS ACTION

District Judge Edward M. Chen
 Courtroom 5, 17th Floor

Comp. Filed: June 21, 2017
 Trial Date: Not Yet Set

JURY TRIAL DEMANDED

1 To expedite the flow of discovery material, facilitate the prompt resolution of disputes
2 over confidentiality, adequately protect material entitled to be kept confidential, and ensure
3 that protection is afforded only to material so entitled, Plaintiffs and Defendant (the “Parties”),
4 by and through their respective counsel, and pursuant to Rule 26(c) of the Federal Rules of
5 Civil Procedure, HEREBY STIPULATE that:

6 1. **Parties to the Protective Order.** This Stipulated Protective Order (“Order”)
7 shall govern, for pretrial purposes only, the Parties in the above-captioned action (the
8 “Action”). All references to “Party” or “Designating Party” throughout this Order are intended
9 to include non-parties who agree to be bound by this Order.

10 2. **Scope of Order.** This Order is intended to facilitate the Parties’ production of
11 certain information and documents as part of voluntary disclosure and in response to discovery
12 requests. Nothing in this Order is to be construed to expand or limit the Parties’ discovery
13 obligations. This Order covers the production and use of all Protected Documents in this
14 action that constitute, contain, or disclose, in whole or in part, information which the
15 Designating Party designates as “Confidential.” This Order is also intended to apply to any
16 documents produced to the Parties by a non-party in connection with a subpoena. Nothing in
17 this Order will prevent counsel from using Confidential Information in connection with any
18 work product created by or on behalf of that counsel. Subject to the provisions of paragraphs
19 9 and 15 herein, such work product may be retained by the counsel creating it.

20 3. **General Definitions.** For purposes of this Order, the following terms have the
21 following meanings:

22 a. Pursuant to Fed. R. Civ. P. 26(c)(1)(G) and Cal. Civ. Code §§ 3426, et
23 seq., “Confidential Information” shall mean trade secrets or other confidential research,
24 development, or commercially sensitive business information, the disclosure of which would
25 cause competitive harm, that is contained in Protected Documents, and which have not been
26 disclosed or made available to the public. Confidential Information may include, but is not
27 limited to: (1) engineering documents, including design drawings and other technical
28 engineering related specifications; (2) test documents, analysis, and testing procedures;

1 (3) manufacturing specifications and procedures, including communications with and process
2 documents pertaining to Ford's suppliers and supplier relationships; (4) internal business or
3 financial information; (5) confidential customer information and personally identifiable
4 information; and (6) any other similar proprietary, confidential, private information,
5 commercially sensitive business information, or competitive intelligence, including but not
6 limited to, trade secrets. Confidential Information shall not include information that has been
7 publicly disclosed by any Party prior to the date hereof, or that has been or is as of the date
8 hereto generally available to the public, or that becomes generally available to the public after
9 the date hereof, other than as a result of disclosure by the Non-Designating Party.

10 b. "Customer" shall mean any person or entity that purchases or otherwise
11 comes to possess Defendant's product.

12 c. "Designating Party" shall mean the Party or non-party designating
13 Discovery Material as "Confidential."

14 d. "Discovery Materials" shall mean and include, without limitation,
15 Documents, including Electronically Stored Information (ESI), responses to interrogatories,
16 requests for admissions, or other discovery requests, physical objects, samples, CD-ROMs,
17 tapes or other items, deposition transcripts and exhibits thereto, and information provided by or
18 on behalf of the Parties or any non-party witness pursuant to subpoena or otherwise in the
19 course of discovery.

20 e. "Document" shall mean and include, without limitation, all written
21 material, videotapes, and all other tangible items, produced in whatever format (e.g., hard
22 copy, electronic, digital, etc.) and on whatever media (e.g., hard copy, videotape, computer
23 diskette, CD-ROM, DVD, hard drive, or otherwise) defined as permitted under
24 Fed. R. Civ. P. 34.

25 f. "Party" or "Parties" shall mean and include the parties to this litigation.

26 g. "Pleadings" shall mean and include, without limitation, all papers,
27 motions, briefs, affidavits, declarations, exhibits, etc., filed with the Court.
28

1 h. "Protected Documents" shall mean documents and materials to be
2 produced in this litigation which contain Confidential Information.

3 4. **Designating Confidential Information.**

4 a. All designations of Confidential Information shall be made in good faith
5 by the Designating Party and made at the time of disclosure, production, or tender.

6 b. The designation of Confidential Information may be made by marking
7 or placing the applicable notice "Subject to Protective Order," "Confidential," or substantially
8 similar notice on media containing the documents, on the document itself, or on a copy of the
9 document, in such a way that it does not obscure the text or other content of the document.
10 The parties recognize that native-format documents cannot be stamped with a confidential
11 designation on the document itself; thus, to the extent native-format documents are produced,
12 the producing Party will make reasonable efforts to identify native-format documents in a
13 manner so that it is clear that they are designated as confidential under this protective order
14 (e.g., slip sheets, file name, on the media containing the document, etc.).

15 c. Any document or any information designated as "Subject to Protective
16 Order," "Confidential," or similar language in accordance with the provisions of this Order
17 shall only be used, shown, or disclosed as provided in this Order.

18 d. The burden of proving that a Protected Document contains Confidential
19 Information is on the Designating Party. Prior to designating any material as "Confidential,"
20 the Designating Party must make a bona fide determination that the material is, in fact, a trade
21 secret or other confidential research, development, or commercial information subject to
22 protection under Fed. R. Civ. P. 26(c)(1)(G).

23 e. If a Party disagrees with the "Confidential" designation of any Protected
24 Document, the Party will so notify the Designating Party in writing. Counsel shall confer in
25 good faith in an effort to resolve any dispute concerning such designation or redaction. The
26 Parties shall follow the procedures set forth in Civil Local Rule 37-1 and the Court's Civil
27 Standing Order on Discovery to resolve whether the Confidential Information should be
28 treated as "Confidential." If the objection cannot be resolved by agreement, the Designating

1 Party shall initiate the process for filing a joint letter pursuant to the Court’s Civil Standing
2 Order on Discovery within thirty (30) days after counsel have concluded that no agreement can
3 be reached. The document or information whose “Confidential” designation or redaction is
4 objected to shall continue to be treated as “Confidential,” as applicable, until the motion has
5 been decided by the Court.

6 f. Personally Identifying Information (“PII”) of Ford customers contained
7 in documents produced by Ford shall be treated as “Confidential” as outlined in this Order.
8 The Parties continue to meet and confer regarding whether Ford can redact PII from the
9 documents produced to Plaintiffs, the use of PII contained in responsive documents to contact
10 absent class members prior to the Court determining whether a class can be certified, whether
11 any limitations should apply to any such communications, and whether any disclosures should
12 be made in connection with any such communications.

13 5. **Use and Disclosure of Protected Documents.**

14 a. Protected Documents and any copies thereof received pursuant to this
15 Protective Order shall be maintained Confidential by the receiving party, his/her attorney,
16 other representatives, and expert witnesses, and shall be used only for purposes of this action,
17 subject to the limitations set forth herein. The persons or entities identified in Paragraph
18 4(b)(i)-(ix) below to whom Protected Documents are disclosed pursuant to this Order shall
19 keep all such materials and information, and any copies, notes, extracts, summaries, or
20 descriptions of such material, within their exclusive possession and control, shall treat all such
21 copies, notes, extracts, summaries, or descriptions of the Protected Documents or any portion
22 thereof as Confidential, shall take all necessary and prudent measures to maintain the
23 confidentiality of all such materials or information, and shall not disseminate such Protected
24 Documents other than in accordance with this Order.

25 b. Protected Documents shall be disclosed only to “Qualified Persons.”
26 Qualified Persons are limited to:

- 27 i. The Court and its personnel;
- 28 ii. The Parties to this litigation;

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- iii. Counsel of record in this litigation, as well as paralegals, technical, administrative, and clerical employees working under the direct supervision of such counsel;
- iv. Experts and non-attorney consultants retained by the Parties for the preparation or trial of this case, provided that no disclosure shall be made to any expert or consultant who is currently employed by an automobile manufacturer competitor of Ford;
- v. A potential, anticipated, or actual fact witness whom counsel for the disclosing Party believes in good faith is likely to have knowledge pertaining to the content of the Protected Documents to be disclosed;
- vi. The author(s) or any recipient of the document;
- vii. Litigation support consultants and vendors who provide litigation support services (e.g., photocopying, electronic discovery, videotaping, translating, preparing exhibits or demonstrations, etc.);
- viii. Court reporters recording and/or transcribing deposition testimony; and
- ix. Any person expressly named and agreed to in writing by the Parties or by further Order of the Court.

c. While the Parties may provide Protected Documents in accordance with the provisions of this Protective Order in an electronic form, such documents may not be posted on any website or internet accessible document repository that is accessible to anyone other than “Qualified Persons” listed above.

d. All persons described in Paragraph 4(b)(i)-(ix) above shall not under any circumstance sell, offer for sale, advertise, or publicize either the Protected Documents and the Confidential information contained therein or the fact that such persons have obtained Protected Documents and Confidential Information.

1 e. All persons described in Paragraphs 4(b)(iv), (v), and (ix) above shall
2 not have access to Protected Documents without having first read, acknowledged, and agreed
3 to be bound by this Order by executing the Agreement to be Bound attached as **Exhibit A** (the
4 “Agreement to Be Bound”).

5 f. Each Party’s counsel shall retain each executed Agreement to Be Bound
6 and a list of Protected Documents disclosed to each person who signed an Agreement to Be
7 Bound. Each executed Agreement to Be Bound shall not be made available to the Designating
8 Party during the pendency of the litigation but shall, along with the list of Protected
9 Documents disclosed, be available for an in camera inspection by the Court if good cause for
10 review is demonstrated by the Designating Party. During the pendency of the litigation or
11 after the termination of the litigation, subject to the attorney work product doctrine/attorney-
12 client privilege and for good cause shown, the Court may order any party to provide to the
13 Designated Party any executed Agreement to Be Bound.

14 g. Stipulation to and entry of this Protective Order does not prohibit a
15 party from seeking entry of a separate order, if warranted, governing documents identified and
16 designated as Highly Confidential which would be disclosed only to persons described in
17 Paragraphs 4(b)(iii), (iv), (vi), (vii), and (ix) and members of the in-house legal departments
18 for the Parties to this litigation or their parents or affiliates, including their paralegals,
19 investigative, technical, secretarial, and clerical personnel who are engaged in assisting them
20 in this litigation.

21 6. **Designation of Deposition Testimony.**

22 a. Deposition testimony that counsel for the Party or non-party witness
23 tendering such testimony, in good faith, believes refers to Protected Documents or information
24 obtained therefrom shall be designated as “CONFIDENTIAL,” as applicable, by such counsel
25 by making a statement on the record for inclusion in the deposition transcript or, in writing,
26 within twenty-one (21) calendar days after receipt of the transcript.

27 b. When Protected Documents or information obtained therefrom is
28 designated as “Confidential” in a deposition transcript, the counsel making the designation

1 shall instruct the reporter to imprint the legend “THIS TRANSCRIPT CONTAINS
2 CONFIDENTIAL INFORMATION” on the cover page of the transcript and to include, at the
3 front of the transcript, a page identifying all pages and lines designated “CONFIDENTIAL” in
4 the transcript.

5 c. To the extent that Protected Documents or information obtained
6 therefrom are used in the taking of depositions and/or used as exhibits at trial, such documents
7 or information shall remain subject to the provisions of this Order, along with the transcript
8 pages and lines of the deposition testimony and/or trial testimony dealing with the Protected
9 Documents or information.

10 d. Any court reporter or transcriber who reports or transcribes testimony in
11 this action shall agree that all Confidential Information designated as such under this Order
12 shall remain Confidential and shall not be disclosed by them, except pursuant to the terms of
13 this Order, and that any notes or transcriptions of such testimony (and any accompanying
14 exhibits) will be retained by the reporter or delivered to counsel of record.

15 7. **Filing Under Seal.** If any party wishes to file or lodge Protected Documents,
16 portions of Protected Documents, or information taken from Protected Documents with the
17 Court, that party must seek to file under seal pursuant to Civil Local Rule 79-5(d) and serve
18 the Designating Party on the same day with a copy of the declaration identifying the
19 documents or portions that contain designated confidential material. Civil L.R. 79-5(e).
20 Within four (4) days of this notification, the Designating Party must file a responsive
21 declaration under Civil Local Rule 79-5(d)(1)(A) to establish that the material is sealable.
22 Pending determination of the motion, the lodged document(s) will be conditionally under seal.
23 Until such time as the Court issues an order sealing the Protected Documents, the party
24 seeking to use the Protected Documents may refer only to a redacted version. Upon granting
25 of an order sealing the record, the Protected Documents will be sealed and labeled by the court
26 clerk and treated according to Civil Local Rule 79-5(g). Upon denial of such an order, the
27 documents may be filed in the public record no earlier than four (4) days and no later than ten
28 (10) days after the motion is denied. Civil L.R. 79-5(e)(2).

1 8. **Return and Destruction of Protected Documents.** Within ninety (90) days
2 after the conclusion of this case, upon request of the Designating Party, counsel for the Party
3 who has received Protected Documents shall either: (a) return to the Designating Party the
4 Protected Documents, including any documents which any such Party disclosed to any
5 Qualified Person, or (b) securely destroy the Protected Documents, including any documents
6 which any such Party disclosed to any Qualified Person, and certify in writing such destruction
7 to the Designating Party.

8 9. **Inadvertent Production.**

9 a. Inadvertent or unintentional production of documents or information
10 containing information which should have been designated as Confidential shall not be deemed
11 a waiver in whole or in part of the Party's claims of confidentiality. If a Party has
12 inadvertently or unintentionally produced information which should have been designated as
13 Confidential, the producing Party will notify the receiving Party within ten (10) days of
14 discovery of the inadvertent production and request that the Confidential designation be
15 applied to such documents or information. If a receiving party objects to the producing Party's
16 Confidentiality designation, it will notify the producing Party of its objections in writing within
17 seven (7) business days of receipt of the notification described above, and the Parties shall
18 proceed in accordance with paragraph 3(e) to resolve the dispute. Pending the Court's ruling, a
19 receiving Party agrees to maintain the documents as Confidential under the terms of this Order.

20 If timely corrected, an inadvertent failure to designate qualified information or
21 items does not, standing alone, waive the Designating Party's right to secure protection under
22 this agreement for such material. Upon timely correction of a designation by advising all other
23 Parties in writing and by producing replacement documents or material with the "Confidential"
24 designation as described above, the receiving Party must make reasonable efforts to ensure that
25 the material is treated in accordance with the provisions of this agreement.

26 b. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-
27 product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or
28 protection from discovery in this case or in any other federal or state proceeding. For example,

1 the mere production of privileged or work-product-protected documents in this case as part of
2 a mass production is not itself a waiver in this case or in any other federal or state proceeding.

3 10. **Right to Use Own Information.** Nothing in this Order shall limit any Party's
4 right to disclose to any person, or use for any purpose, its own information and Documents.

5 11. **Subpoena or Order.** If a Party is served with a subpoena or an order issued in
6 other litigation that would compel disclosure of any information or items designated in this
7 action as Confidential, counsel for the receiving Party must promptly notify counsel for the
8 Designating Party in writing, and in no event, more than five (5) business days after receiving
9 the subpoena or order. Counsel for the receiving Party also must inform, in writing, the Party
10 who caused the subpoena or order to issue in the other litigation that some or all the material
11 covered by the subpoena or order is the subject of this Order.

12 12. **Non-Party Discovery.** Any documents or information produced by a non-
13 party witness in discovery in the action pursuant to subpoena or otherwise may be designated
14 by such non-party as "Confidential" under the terms of this Order, and such designation shall
15 have the same force and effect, and create the same duties, obligations, and remedies as if
16 made by one of the Parties hereto.

17 13. **Submissions to Regulatory Agencies or Governmental Entities.**

18 a. This Stipulated Protective Order shall not be construed to prohibit
19 Ford's disclosure or production of safety-related information to a regulatory agency or
20 governmental entity with an interest in the safety-related information. Material subject to this
21 Order may only be disclosed to a regulatory agency or governmental entity with an interest in
22 the safety-related information by Ford, and such disclosure shall be made pursuant to
23 49 C.F.R. 512 or similar applicable rules.

24 b. If other parties to this Order have a reasonable belief that certain
25 documents are safety-related and need to be disclosed to a regulatory agency or governmental
26 entity, they are not prohibited from advising the regulatory agency or governmental entity that
27 they believe such documents were produced in this case, however, any disclosure of such
28 documents shall adhere to the procedure described in Paragraph 12(a).

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Attorneys for Plaintiffs and the Class

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Dated: March 19, 2018

DYKEMA GOSSETT LLC
JOHN M. THOMAS (266842)
DAVID M. GEORGE (pro hac vice)

By: s/ David M. George

DAVID M. GEORGE

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Attorneys for Defendant Ford Motor Co.

ECF CERTIFICATION

The filing attorney attests that she has obtained concurrence regarding the filing of this document from the signatories to this document.

Dated: March 19, 2018

BLOOD HURST & O'REARDON, LLP

By: s/ Leslie E. Hurst

LESLIE E. HURST

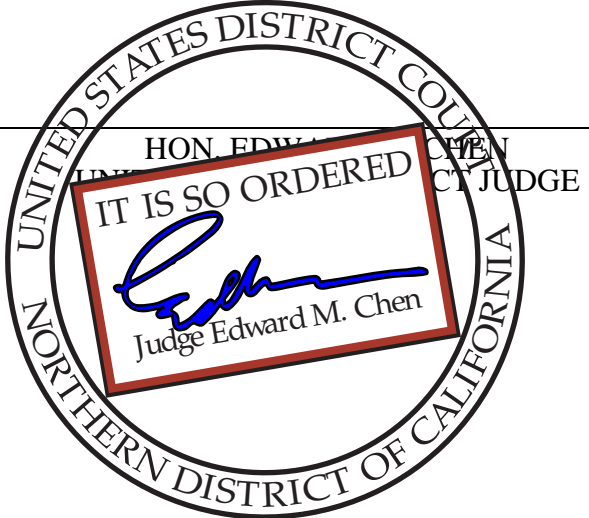
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[PROPOSED] ORDER

Having reviewed the above Stipulated Protective Order, and finding good cause exists,
IT IS HEREBY ORDERED that the Stipulated Protective Order be entered as an order of this
Court.

IT IS SO ORDERED.

Dated: 3/19/2018



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

DAVID BARANCO, JAMES ABBITT,
HARRIET ABRUSCATO, DONALD
BROWN, DANIEL CARON, ANITA
FARRELL, JOHN FURNO, JAMES
JENKIN, ROGER KINNUNEN, GARY
KUBBER and MALISA NICOLAU
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

FORD MOTOR COMPANY, a Delaware
corporation,

Defendant.

Case No. 3:17-cv-03580-EMC

**AGREEMENT TO BE BOUND
(EXHIBIT A TO STIPULATED
PROTECTIVE ORDER)**

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AFFIDAVIT OF _____, being duly sworn

and personally appearing before the undersigned attesting officer, duly authorized by law to administer oaths, deposes and says that the within statements are true and correct:

1. I have read the Stipulated Protective Order attached hereto, and I understand its terms and meanings.

2. I agree that my signature below submits me to the jurisdiction of the United States District Court Northern District of California in the above-captioned case and binds me to the provisions of the Stipulated Protective Order, including to all promises undertaken in the Order, as if originally agreed by me.

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Further Affiant sayeth not.

This _____ day of _____, 20__.

AFFIANT

SUBSCRIBED AND SWORN to before me
this ___ day of _____, ____.

NOTARY PUBLIC

Name: _____

No.: _____

My Commission Expires: _____

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 19, 2018.

s/ Leslie E. Hurst

LESLIE E. HURST

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