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15 Attorneys for Defendant
 16 NISSAN NORTH AMERICA, INC.

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

20 MICHELLE FALK, INDHU JAYAVELU,
 21 PATRICIA L. CRUZ, DANIELLE TROTTER,
 CYNTHIA GARRISON, AND AMANDA
 22 MACRI, individually and on behalf of all
 others similarly situated,

23 Plaintiffs,

24 v.

25 NISSAN NORTH AMERICA, INC.,

26 Defendant.

Case No. 4:17-cv-04871-HSG

**STIPULATED PROTECTIVE ORDER
 REGARDING CONFIDENTIAL
 DISCOVERY MATERIAL**

Judge: Hon. Haywood S. Gilliam, Jr.

1 As requested and agreed to by Plaintiffs Michelle Falk, Indhu Jayavelu, Patricia L. Cruz,
2 Danielle Trotter, Cynthia Garrison, and Amanda Macri (“Plaintiffs”) and Defendant Nissan North
3 America, Inc. (“NNA” or “Defendant”) (collectively, the “Parties”), the parties request that the
4 Court issue this proposed Protective Order (the “Protective Order”) to facilitate document
5 disclosure and production in the above-captioned action (referred to as the “Litigation”) under the
6 Local Rules of Northern District of California and the Federal Rules of Civil Procedure. Unless
7 modified pursuant to the terms contained in this Protective Order, this Protective Order shall
8 apply to the Litigation and remain in effect through the conclusion of the Litigation.

9 In support of this Protective Order, the parties state that:

10 1. The Litigation concerns claims that model year 2013-2017 Nissan Sentra vehicles
11 have an alleged transmission defect. Documents and/or information containing confidential
12 proprietary and business information and/or trade secrets (“Confidential Information”) that bear
13 significantly on the parties’ claims or defenses is likely to be disclosed or produced during the
14 course of discovery in the Litigation;

15 2. The parties to the Litigation may assert that public dissemination and disclosure of
16 Confidential Information could severely injure or damage the party disclosing or producing the
17 Confidential Information and could place that party at a competitive disadvantage;

18 3. Counsel for the party or parties receiving Confidential Information are presently
19 without sufficient information to accept the representation(s) made by the party or parties
20 producing Confidential Information as to the confidential, proprietary and/or trade secret nature
21 of such Confidential Information; and

22 4. To protect the respective interests of the parties and to facilitate the progress of
23 disclosure and discovery in this Litigation, the following Protective Order should issue:

24 **IT IS THEREFORE STIPULATED THAT:**

25 1. Documents, including photographs, drawings, films, videotapes or other writings,
26 including lists or compilations thereof, answers to interrogatories, responses to other discovery
27 requests and deposition testimony or discovery by any party in this Litigation that qualify for
28 protection under Federal Rule of Civil Procedure 26(c) are referred to as “Confidential Material.”

1 Except as otherwise indicated below, all documents, including photographs, drawings, films,
2 videotapes or other writings, including lists or compilations thereof, answers to interrogatories,
3 responses to other discovery requests and deposition testimony designated by the producing party
4 as “Confidential,” “Subject to Protective Order,” or any combination thereof, and which are
5 disclosed or produced to the attorneys for the other parties to this Litigation are Confidential
6 Material and are entitled to Confidential treatment as described below.

7 2. Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that qualifies under the
9 appropriate standards. The designating party must designate for protection only those documents,
10 items, or oral or written communications that qualify – so that other portions of the material,
11 documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order. Mass, indiscriminate designations are prohibited.
13 Designations that are shown to clearly have been made for an improper purpose (e.g., to
14 unnecessarily encumber or retard the case development process or to impose unnecessary
15 expenses and burdens on other parties) expose the Designating Party to sanctions. If it comes to a
16 designating party’s attention that information or items that it designated for protection do not
17 qualify for protection, that designating party must promptly notify all other Parties that it is
18 withdrawing the mistaken designation.

19 3. Confidential Material shall not include (a) advertising materials, (b) materials that
20 on their face show that they have been published to the general public, or (c) documents that have
21 been submitted to any governmental entity without request for Confidential treatment.

22 4. All documents marked Confidential and identified as exhibits to the deposition are
23 subject to this Order. All deposition testimony shall be treated as Confidential and subject to the
24 full protection of this Order for forty-five (45) days following the deposition. After such time,
25 only those portions of any transcript designated as “Confidential” by a designating party shall be
26 deemed Confidential. To designate a portion of a transcript as “Confidential”, a party must
27 provide written notice to all Parties and the stenographer identifying, by page and line number,
28 the Confidential testimony.

1 5. If at any time during the Litigation a party disputes the designation of discovery
2 material as Confidential, the objecting party will notify the designating party in writing of such
3 dispute, and request in writing a conference for the parties to confer in a good faith effort to
4 resolve the dispute. It shall be the responsibility of counsel for the objecting party to arrange for
5 this conference within fourteen (14) days of the request for a conference. The objecting party's
6 notice will identify the material in dispute and explain the basis for the objection. If no response
7 is provided within fourteen (14) days of the objecting party's request for a conference, then the
8 Confidential Material in dispute will no longer be subject to Confidential treatment as provided in
9 this Stipulated Protective Order.

10 5.1 If the parties cannot resolve a challenge without court intervention, the designating
11 party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
12 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of
13 challenge or within 14 days of the parties agreeing that the meet and confer process will not
14 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and confer
16 requirements imposed in the preceding paragraph. Failure by the designating party to make such a
17 motion including the required declaration within 21 days (or 14 days, if applicable) shall
18 automatically waive the confidentiality designation for each challenged designation. In addition,
19 the objecting party may file a motion challenging a confidentiality designation at any time if there
20 is good cause for doing so. Any motion brought pursuant to this provision must be accompanied
21 by a competent declaration affirming that the movant has complied with the meet and confer
22 requirements imposed by the preceding paragraph.

23 5.2 The burden of persuasion in any such challenge proceeding shall be on the
24 designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
25 or impose unnecessary expenses and burdens on other parties) may expose the objecting party to
26 sanctions. Unless the designating party has waived the confidentiality designation by failing to
27 file a motion to retain confidentiality as described above, all parties shall continue to afford the
28 material in question the level of protection to which it is entitled under the designating party's

1 designation until the Court rules on the challenge.

2 6. Confidential Treatment. Confidential Material and any information contained
3 therein shall not be used or shown, disseminated, copied, or in any way communicated to anyone
4 for any purpose whatsoever, except as provided below. Confidential Material may be copied only
5 by the parties' counsel in the Litigation or by personnel or outside vendors assisting such counsel
6 and only for purposes permitted by this Protective Order, and control and distribution of
7 Confidential Material and copies thereof will be the responsibility of such counsel, who will
8 maintain all written assurances executed by such persons as provided in Paragraph 8.

9 7. Confidential Material and any information contained therein shall be disclosed
10 only to the following persons ("Qualified Persons"):

- 11 a. The named parties, including the officers, directors, and employees (including
12 House Counsel) of the parties to whom disclosure is reasonably necessary for the
13 Litigation;
- 14 b. counsel of record in the Litigation for the designating party or party receiving
15 Confidential Material or any information contained therein;
- 16 c. Employees of such counsel (excluding experts and investigators) assigned to and
17 necessary to assist such counsel in the preparation and trial of the Litigation;
- 18 d. An independent contractor or expert retained by counsel to provide assistance,
19 expert advice, technical consultation, language translation, or testimony in the
20 Litigation and the employees of any such contractors, experts, consultants or
21 similar persons when working in connection with the Litigation under direct
22 supervision of said person;
- 23 e. Court reporters transcribing depositions in the Litigation;
- 24 f. Any witness at deposition (as contemplated by Paragraph 4), trial, or hearing in the
25 Litigation;
- 26 g. The Court (including the Court's administrative and clerical staff).

27 Confidential Material shall not be disclosed to any other person or entity without the prior
28 written consent of the designating party or order of the Court. Any disclosure shall be only to the

1 extent reasonably necessary for the effective prosecution and defense of the claims in the
2 Litigation. Confidential Material and any information contained therein shall be used by the
3 receiving party or parties solely for the prosecution of the Litigation and shall not be used by the
4 receiving party or parties for any other purpose or in any other litigation.

5 8. Prior to the disclosure of any of the materials or information covered by this
6 Protective Order to persons identified in paragraph 7 (d)-(f) of this Order, counsel disclosing the
7 materials or information shall present the person with a copy of this Order. After reading the
8 Order, such persons shall initial each page of a copy of the Order and shall sign the attached form
9 of “Acknowledgment of Protective Order” (the “Acknowledgement”). Copies of each such signed
10 Order and Acknowledgement shall be maintained by counsel disclosing the materials or
11 information. In the event that any of these individuals are identified or designated as witnesses or
12 as experts who may testify in the Litigation, a copy of each such signed Order and
13 Acknowledgement shall be provided to opposing counsel at the time of the designation.

14 9. Counsel of record for the party or parties receiving Confidential Material may
15 create an index of the Confidential Material and furnish it to attorneys of record representing or
16 having represented parties involved in litigation involving the claims alleged in this suit against
17 the party or parties disclosing or producing the Confidential Material. The index may only
18 identify the document, date, author, and general subject matter of any Protected Document, but
19 may not reveal the substance of any such document. Counsel for the party or parties receiving
20 Confidential Material shall maintain a current log of the names and addresses of persons to whom
21 the index was furnished.

22 10. The term “copy” as used herein means any photographic, mechanical or
23 computerized copy or reproduction of any document or thing, or any verbatim transcript, in whole
24 or in part, of such document or thing.

25 11. To the extent that Confidential Material or information contained therein are used
26 in depositions, such documents or information shall remain subject to the provisions of this
27 Protective Order.

28 12. Any court reporter or transcriber who reports or transcribes testimony in the

1 Litigation shall agree that all “Confidential” information designated as such under this Order shall
2 remain “Confidential” and shall not be disclosed by them, except pursuant to the terms of this
3 Protective Order, and that any notes or transcriptions of such testimony (and any accompanying
4 exhibits) will be retained by the reporter or delivered to counsel of record.

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

15 14. Inadvertent or unintentional production of documents or information containing
16 Confidential Information that are not designated “Confidential” shall not be deemed a waiver, in
17 whole or in part, of a claim for Confidential treatment.

18 15. Documents unintentionally produced without designation as “Confidential” at any
19 time during the Litigation may be retroactively designated by notice in writing of the designated
20 classification applicable to each document by Bates number, and by providing replacement copies
21 of such documents with the appropriate designation, unless such documents have already been
22 filed with the Court. Upon receipt of the replacement documents, the receiving party shall
23 thereafter return the documents being replaced to the producing party. Such documents shall be
24 treated as “Confidential” from the date written notice of the designation is provided to the
25 receiving party. A person disclosing any materials that are subsequently designated as
26 “Confidential” shall in good faith assist the party making the supplemental designation in
27 retrieving such materials from all recipients not entitled to such materials under the terms of this
28 Protective Order and to prevent further disclosures except as authorized under the terms of this

1 Protective Order. Documents to be inspected shall be treated as “Confidential” during inspection.
2 At the time of copying for the receiving parties, such inspected documents shall be stamped
3 prominently “Confidential” by the producing party.

4 16. Pursuant to Federal Rule of Evidence 502(d) the production of a privileged or
5 work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege
6 or protection from discovery in this case or in any other federal or state proceeding. Said
7 protection exists with respect to such document or other documents or communications, written
8 or oral, including, without limitation, other communications referred to in the documents
9 produced. Upon request, such inadvertently produced documents, and all copies thereof, shall be
10 sent to the producing party, sequestered or destroyed within five (5) days of the date of the
11 request, unless such documents have already been filed with the Court. Furthermore, a party’s
12 production shall not be deemed a waiver of any party’s right to object for any reason to the
13 admission of any document or thing into evidence, nor shall the production be deemed an
14 admission of its admissibility or relevance. Nothing in this Paragraph shall prejudice the right of
15 any party to seek discovery or communications, documents and things as to which a claim of
16 attorney-client privilege or attorney work-product has been made.

17 17. The party or parties receiving Confidential Material shall not under any
18 circumstances sell, offer for sale, advertise, or publicize Confidential Material or any information
19 contained therein.

20 18. If any party receives a subpoena from any non-party to this Protective Order
21 seeking production or disclosure of Confidential Material, the subpoenaed party shall give notice,
22 as soon as practicable and in no event more than three (3) business days after receiving the
23 subpoena and at least seven (7) business days before providing materials responsive to the
24 subpoena, to counsel for the designating party, which notice will enclose a copy of the subpoena,
25 such that the designating party may assert its rights, if any, to non-disclosure.

26 19. Any documents produced by a non-party witness in discovery in the Litigation
27 pursuant to subpoena or otherwise may be designated by such non-party as “Confidential” under
28 the terms of this Order, and such designation shall have the same force and effect, and create the

1 same duties, obligations, and remedies as if made by one of the parties hereto.

2 20. After termination of the Litigation, the provisions of this Protective Order shall
3 continue to be binding, except with respect to those documents and information that become a
4 matter of public record. This Court retains and shall have continuing jurisdiction over the parties
5 and recipients of the Confidential Material for enforcement of the provisions of this Protective
6 Order following termination of the Litigation.

7 21. Within thirty (30) days of termination of the Litigation by dismissal, judgment, or
8 settlement, including any appeals, counsel for the party or parties receiving Confidential Material
9 shall return the Confidential Material, including all copies to counsel for the party or parties
10 disclosing or producing the Confidential Material or alternatively, the parties shall provide
11 certification under oath under penalty of perjury under the laws of the United States of America
12 confirming that counsel have destroyed all documents within their possession, custody or control.
13 The party or parties receiving Confidential Material shall undertake reasonable and good faith
14 efforts to ensure that any person to whom they provided copies of any Confidential Information
15 complies with this obligation. This provision will not apply to court filings or file copies of
16 pleadings, briefs or correspondence or other work product maintained by the parties' respective
17 counsel in the ordinary course of business.

18 22. This Protective Order shall be binding on any party to this Protective Order or any
19 person having executed the attached Exhibit A. This Protective Order also shall be binding upon
20 the parties and their attorneys, successors, executors, personal representatives, administrators,
21 heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent
22 contractors, or other persons or organizations over which they have control.

23 23. If other parties are added to the Litigation, no Confidential Material previously
24 exchanged, produced, or used herein will be disclosed to such other parties or their counsel except
25 upon their agreeing to be bound by the provisions of this Protective Order. This provision does
26 not prejudice any party's rights to otherwise object to the production or disclosure of Confidential
27 Material or non-confidential documents or other information to a party added to the Litigation.

28 24. This Protective Order is without prejudice to the right of any party to move the

1 Court for an order for good cause shown for protection of Confidential Material sought by or
2 produced through discovery, which protection is different from or in addition to that provided for
3 in this Protective Order, and such right is expressly reserved.

4 **IT IS SO STIPULATED.**

5 Dated: May 24, 2018

DRINKER BIDDLE & REATH LLP

6
7 By: /s/ Michael J. Stortz

8 Michael J. Stortz

Marshall L. Baker

9 E. Paul Cauley, Jr. (*pro hac vice*)

10 Attorneys for Defendant

NISSAN NORTH AMERICA, INC.

11 Dated: May 24, 2018

BRONSTEIN GEWIRTZ & GROSSMAN

12
13 By: /s/ Shimon Yiftach

14 Shimon Yiftach

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* Admitted *pro hac vice*.
** *Pro hac vice* to be filed

Attestation Pursuant to Civil Local Rule 5-1(i)


Pursuant to Civil Local Rule 5-1(i), I, Michael J. Stortz, hereby attest that I have obtained concurrence in the filing of this document from the other signatory to this document.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of May, 2018 in San Francisco, California.

By: /s/ Michael J. Stortz
Michael J. Stortz

PURSUANT TO STIPULATION, IT SO ORDERED.

DATED: June 15, 2018


Hon. Haywood S. Gilliam, Jr.
U.S. District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 MICHELLE FALK, INDHU JAYAVELU,
5 PATRICIA L. CRUZ, DANIELLE TROTTER,
6 CYNTHIA GARRISON, AND AMANDA
MACRI, individually and on behalf of all
others similarly situated,

7 Plaintiffs,

8 v.

9 NISSAN NORTH AMERICA, INC.,

10 Defendant.

Case No. 4:17-cv-04871-HSG

**STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL
DISCOVERY MATERIAL**

Judge: Hon. Haywood S. Gilliam, Jr.

11
12 **ACKNOWLEDGMENT OF PROTECTIVE ORDER ENTERED IN THE UNITED**
13 **STATES DISTRICT COURT – NORTHERN DISTRICT OF CALIFORNIA**

14 I hereby acknowledge that I have read the Stipulated Protective Order Regarding
15 Confidential Discovery Material (“Protective Order”) entered in *Falk, et al. v. Nissan North*
16 *America, Inc.*, Case No. 4:17-cv-04871-HSG, understand its terms, agree to be bound by each of
17 those terms, and agree to submit myself to the jurisdiction of the United States District Court for
18 the Northern District of California for the purposes of enforcing the terms of the Protective Order.
19 Specifically and without limitation upon such terms, I further agree that I will not disseminate,
20 use or disclose any Confidential Material protected by the Protective Order that I have received
21 and/or reviewed in this case to anyone other than the Qualified Persons defined in Paragraph 7 of
22 the Protective Order.

23 Dated: ___ day of _____, 20__.

24
25 _____
26 Signature

27 _____
28 Printed Name