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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

WILLIAM PHILIPS, JAIME GOODMAN,
ALISON COLBURN, IAN COLBURN,
JASON WILKINSON, ROBERT MORRIS,
VICTORIA JACKSON, JOHNPAUL
FOURNIER, RYAN WOLF, AND
REBECCA WOLF, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

FORD MOTOR COMPANY,

Defendant.

Case No.: 5:14-cv-02989 LHK

**ORDER REGARDING
DISCOVERY DISPUTE**

Pending before the Court is Plaintiffs' Motion for an Order requiring Ford to produce approximately 3,100 documents in un-redacted form and to conduct a reasonable and diligent search for all responsive documents related to the EPAS in the Ford Explorer. After multiple meet and confer sessions, both before and after April 8, 2016, the Parties were unable to resolve the discovery disputes outlined in the April 8, 2016 Joint Discovery Letter ("Joint Submission") to the Court. The Court has considered the submission of the Parties, the arguments of the Parties, and the law cited in the Joint Submission. Upon careful consideration, the Court GRANTS Plaintiffs' Motion.

Ford's Assertion of European Privacy Laws

1. Ford designed the North American Focus vehicles at issue in this case in Germany. When producing documents related to these vehicles from German

1 custodians, Ford redacted significant amounts of information from the documents, citing
2 purported concerns over European privacy laws.

3 2. The information Ford has redacted and withheld from production is
4 relevant to the case and is in the possession, custody, and control of *both* Ford Europe
5 and Ford North America employees and servers.
6

7 3. Ford's redaction of the names of each and every individual identified in the
8 German custodian documents, including the names of Ford North America employees
9 and individuals based in the United States, is not appropriate and is contrary to Ford's
10 discovery obligations in this case.
11

12 4. Specifically, many of the redacted documents produced by Ford consist of
13 e-mails between Ford Europe employees and Ford North America employees or
14 individuals in the United States. Therefore, the information at issue is available in the
15 United States and renders Ford's assertion of German privacy protection invalid. *See*
16 *BrightEdge Technologies*, 2014 WL 3965062 (N.D. Cal. Aug. 13, 2014).
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19 5. Additionally, the Parties have a Protective Order in place that adequately
20 addresses any potential concerns that Ford may have regarding confidentiality and the
21 privacy of its European employees.
22

23 6. The German Data Protection Act contains an exception exists for
24 disclosure in the context of litigation. Ford has failed to satisfy its burden to prove that
25 European laws prohibit disclosure of the redacted information.
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1 7. Ford is HEREBY ORDERED to produce un-redacted versions of the
2 documents in its Focus productions no later than May 6, 2016.

3 8. Ford is FURTHER ORDERED to make witnesses identified in the Focus
4 documents (and noticed for deposition by Plaintiffs) available for deposition in
5 Dearborn, Michigan, or such other place as the Parties may agree, prior to the June 30,
6 2016 discovery cut-off.
7

8 **Ford's Apparent Exclusion of Documents Relating to the Ford Explorer**
9

10 9. Plaintiffs have established that they are entitled to documents related to the
11 EPAS utilized in the Ford Explorer due to the similarities between the EPAS system
12 utilized in the Explorer and the EPAS system used in the vehicles at issue in this case.
13 Consequently, any decision by Ford to exclude Explorer documents from the scope
14 production is unjustified.
15

16 10. Because documents related to EPAS system in the Ford Explorer are
17 relevant, and there is ambiguity regarding Ford's search for responsive documents
18 related to the Explorer, Ford is HEREBY ORDERED to conduct a reasonable and
19 diligent search for responsive documents related to the EPAS system in the Ford
20 Explorer and to execute a certification that Ford has not withheld otherwise responsive
21 documents on the basis that they related only to the Explorer.
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1 Dated: April 20, 2016

Respectfully submitted,

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3 /s/ Nathan B. Atkinson

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Counsel for Plaintiffs

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10 IT IS SO ORDERED.

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12 Dated: May 25, 2016

