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 21 **FCA US LLC**

22 UNITED STATES DISTRICT COURT  
 23 SOUTHERN DISTRICT OF CALIFORNIA

24 **GIAVANNI M. BAUMANNNS,**  
 25 Plaintiff,

26 v.

27 **FCA US LLC; CARL BURGERS**  
 28 **DODGE CHRYSLER JEEP RAM**  
**WORLD; and DOES 1 through 10,**  
 inclusive,  
 Defendants.

Case No: 3:21-cv-01054-JLS-MSB  
 Dist. Judge: Janis L. Sammartino  
 Mag. Judge: Michael S. Berg  
 Courtroom: 4D

**PROTECTIVE ORDER**

1 The Court recognizes that at least some of the documents and information  
2 ("materials") being sought through discovery in the above-captioned action are, for  
3 competitive reasons, normally kept confidential by the parties. The parties have agreed to  
4 be bound by the terms of this Protective Order ("Order") in this action.

5 The materials to be exchanged throughout the course of the litigation between the  
6 parties may contain trade secret or other confidential research, technical, cost, price,  
7 marketing or other commercial information, as is contemplated by Federal Rule of Civil  
8 Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such  
9 materials as much as practical during the litigation. THEREFORE:

10 DEFINITIONS

11 1. The term "confidential information" will mean and include information  
12 contained or disclosed in any materials, including documents, portions of documents,  
13 answers to interrogatories, responses to requests for admissions, trial testimony, deposition  
14 testimony, and transcripts of trial testimony and depositions, including data, summaries,  
15 and compilations derived therefrom that is deemed to be confidential information by any  
16 party to which it belongs.

17 2. The term "materials" will include, but is not be limited to: documents;  
18 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other  
19 material that identify customers or potential customers; price lists or schedules or other  
20 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;  
21 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk  
22 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;  
23 compilations from which information can be obtained and translated into reasonably usable  
24 form through detection devices; sketches; drawings; notes (including laboratory notebooks  
25 and records); reports; instructions; disclosures; other writings; models and prototypes and  
26 other physical objects.

27 3. The term "counsel" will mean outside counsel of record, and other attorneys,  
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1 paralegals, secretaries, and other support staff employed in the law firms identified below:  
2 Strategic Legal Practices, APC and Gates, Gonter, Guy, Proudfoot & Muench LLP.

3 GENERAL RULES

4 4. Each party to this litigation that produces or discloses any materials, answers  
5 to interrogatories, responses to requests for admission, trial testimony, deposition  
6 testimony, and transcripts of trial testimony and depositions, or information that the  
7 producing party believes should be subject to this Protective Order may designate the same  
8 as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

9 a. Designation as "CONFIDENTIAL": Any party may designate information as  
10 "CONFIDENTIAL" only if, in the good faith belief of such party and its counsel, the  
11 unrestricted disclosure of such information could be potentially prejudicial to the business  
12 or operations of such party.

13 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any party  
14 may designate information as "CONFIDENTIAL - FOR COUNSEL ONLY" only if, in the  
15 good faith belief of such party and its counsel, the information is among that considered to  
16 be most sensitive by the party, including but not limited to trade secret or other confidential  
17 research, development, financial or other commercial information.

18 5. In the event the producing party elects to produce materials for inspection, no  
19 marking need be made by the producing party in advance of the initial inspection. For  
20 purposes of the initial inspection, all materials produced will be considered as  
21 "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as such pursuant to the  
22 terms of this Order. Thereafter, upon selection of specified materials for copying by the  
23 inspecting party, the producing party must, within a reasonable time prior to producing  
24 those materials to the inspecting party, mark the copies of those materials that contain  
25 confidential information with the appropriate confidentiality marking.

26 6. Whenever a deposition taken on behalf of any party involves a disclosure of  
27 confidential information of any party:  
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1 a. the deposition or portions of the deposition must be designated as  
2 containing confidential information subject to the provisions of this  
3 Order; such designation must be made on the record whenever possible,  
4 but a party may designate portions of depositions as containing  
5 confidential information after transcription of the proceedings; [A]  
6 party will have until fourteen (14) days after receipt of the deposition  
7 transcript to inform the other party or parties to the action of the  
8 portions of the transcript to be designated "CONFIDENTIAL" or  
9 "CONFIDENTIAL - FOR COUNSEL ONLY."

10 b. the disclosing party will have the right to exclude from attendance at  
11 the deposition, during such time as the confidential information is to be  
12 disclosed, any person other than the deponent, counsel (including their  
13 staff and associates), the court reporter, and the person(s) agreed upon  
14 pursuant to paragraph 8 below; and

15 c. the originals of the deposition transcripts and all copies of the  
16 deposition must bear the legend "CONFIDENTIAL" or  
17 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate, and the  
18 original or any copy ultimately presented to a court for filing must not  
19 be filed unless it can be accomplished under seal, identified as being  
20 subject to this Order, and protected from being opened except by order  
21 of this Court.

22 7. All confidential information designated as "CONFIDENTIAL" or  
23 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving party  
24 to anyone other than those persons designated within this order and must be handled in the  
25 manner set forth below and, in any event, must not be used for any purpose other than in  
26 connection with this litigation, unless and until such designation is removed either by  
27 agreement of the parties, or by order of the Court.

1           8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must  
2 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by  
3 independent experts under the conditions set forth in this Paragraph. The right of any  
4 independent expert to receive any confidential information will be subject to the advance  
5 approval of such expert by the producing party or by permission of the Court. The party  
6 seeking approval of an independent expert must provide the producing party with the name  
7 and curriculum vitae of the proposed independent expert, and an executed copy of the form  
8 attached hereto as Exhibit A, in advance of providing any confidential information of the  
9 producing party to the expert. Any objection by the producing party to an independent  
10 expert receiving confidential information must be made in writing within fourteen (14)  
11 days following receipt of the identification of the proposed expert. Confidential  
12 information may be disclosed to an independent expert if the fourteen (14) day period has  
13 passed and no objection has been made. The approval of independent experts must not be  
14 unreasonably withheld.

15           9. Information designated "confidential" must be viewed only by counsel (as  
16 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the  
17 terms of paragraph 8), by court personnel, and by the additional individuals listed below,  
18 provided each such individual has read this Order in advance of disclosure and has agreed  
19 in writing to be bound by its terms:

- 20           a) Executives who are required to participate in policy decisions with  
21 reference to this action;
- 22           b) Technical personnel of the parties with whom Counsel for the parties  
23 find it necessary to consult, in the discretion of such counsel, in  
24 preparation for trial of this action; and
- 25           c) Stenographic and clerical employees associated with the individuals  
26 identified above.

27           10. With respect to material designated "CONFIDENTIAL" or  
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1 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of the  
2 document to be its originator, author or a recipient of a copy of the document, may be  
3 shown the same.

4 11. All information which has been designated as "CONFIDENTIAL" or  
5 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party, and  
6 any and all reproductions of that information, must be retained in the custody of the counsel  
7 for the receiving party identified in paragraph 3, except that independent experts authorized  
8 to view such information under the terms of this Order may retain custody of copies such  
9 as are necessary for their participation in this litigation.

10 12. Before any materials produced in discovery, answers to interrogatories,  
11 responses to requests for admissions, deposition transcripts, or other documents which are  
12 designated as confidential information are filed with the Court for any purpose, the party  
13 seeking to file such material must seek permission of the Court to file the material under  
14 seal.

15 13. No document may be filed under seal, except pursuant to a court order that  
16 authorizes the sealing of the particular document, or portion of the document. A sealing  
17 order may issue only upon a showing that the information is privileged or protectable under  
18 the law. **The request must be narrowly tailored to seek sealing only of the confidential**  
19 **or privileged material.**

20  
21 To file a document under seal, the parties must comply with the procedures explained in  
22 Section 2.j of the Electronic Case Filing Administrative Policies and Procedures Manual  
23 for the United States District Court for the Southern District of California and Civil Local  
24 Rule 79.2. In addition, a party must file a redacted version of any document that it seeks to  
25 file under seal. The document must be titled to show that it corresponds to an item filed  
26 under seal, e.g., ‘Redacted Copy of Sealed Declaration of John Smith in Support of Motion  
27 for Summary Judgment.’ The party should file the redacted document(s) simultaneously  
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1 with a joint motion or ex parte application requesting that the confidential portions of the  
2 document(s) be filed under seal and setting forth good cause for the request.

3 14. At any stage of these proceedings, any party may object to a designation of  
4 the materials as confidential information. The party objecting to confidentiality must  
5 notify, in writing, counsel for the designating party of the objected-to materials and the  
6 grounds for the objection. If the dispute is not resolved consensually between the parties  
7 within seven (7) days of receipt of such a notice of objections, the objecting party may  
8 move the Court for a ruling on the objection. The materials at issue must be treated as  
9 confidential information, as designated by the designating party, until the Court has ruled  
10 on the objection or the matter has been otherwise resolved.

11 15. All confidential information must be held in confidence by those inspecting  
12 or receiving it, and must be used only for purposes of this action. Counsel for each party,  
13 and each person receiving confidential information must take reasonable precautions to  
14 prevent the unauthorized or inadvertent disclosure of such information. If confidential  
15 information is disclosed to any person other than a person authorized by this Order, the  
16 party responsible for the unauthorized disclosure must immediately bring all pertinent facts  
17 relating to the unauthorized disclosure to the attention of the other parties and, without  
18 prejudice to any rights and remedies of the other parties, make every effort to prevent  
19 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

20 16. No party will be responsible to another party for disclosure of confidential  
21 information under this Order if the information in question is not labeled or otherwise  
22 identified as such in accordance with this Order.

23 17. If a party, through inadvertence, produces any confidential information  
24 without labeling or marking or otherwise designating it as such in accordance with this  
25 Order, the designating party may give written notice to the receiving party that the  
26 document or thing produced is deemed confidential information, and that the document or  
27 thing produced should be treated as such in accordance with that designation under this  
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1 Order. The receiving party must treat the materials as confidential, once the designating  
2 party so notifies the receiving party. If the receiving party has disclosed the materials before  
3 receiving the designation, the receiving party must notify the designating party in writing  
4 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner  
5 of labeling or marking the inadvertently produced materials as "CONFIDENTIAL" or  
6 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE ORDER.

7 18. Nothing within this order will prejudice the right of any party to object to the  
8 production of any discovery material on the grounds that the material is protected as  
9 privileged or as attorney work product.

10 19. Nothing in this Order will bar counsel from rendering advice to their clients  
11 with respect to this litigation and, in the course thereof, relying upon any information  
12 designated as confidential information, provided that the contents of the information must  
13 not be disclosed.

14 20. This Order will be without prejudice to the right of any party to oppose  
15 production of any information for lack of relevance or any other ground other than the mere  
16 presence of confidential information. The existence of this Order must not be used by either  
17 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil  
18 Procedure.

19 21. Nothing within this order will be construed to prevent disclosure of  
20 confidential information if such disclosure is required by law or by order of the Court.

21 22. Upon final termination of this action, including any and all appeals, counsel  
22 for each party must, upon request of the producing party, return all confidential information  
23 to the party that produced the information, including any copies, excerpts, and summaries  
24 of that information, or must destroy same at the option of the receiving party, and must  
25 purge all such information from all machine-readable media on which it resides; except  
26 that counsel for each Party may maintain in its files, in continuing compliance with the  
27 terms of this Stipulation and Protective Order, all work product, and one copy of each  
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1 pleading filed with the Court and one copy of each deposition together with the exhibits  
2 marked at the deposition. Notwithstanding the foregoing, counsel for each party may retain  
3 all pleadings, briefs, memoranda, motions, and other documents filed with the Court that  
4 refer to or incorporate confidential information, and will continue to be bound by this Order  
5 with respect to all such retained information. Further, attorney work product materials that  
6 contain confidential information need not be destroyed, but, if they are not destroyed, the  
7 person in possession of the attorney work product will continue to be bound by this Order  
8 with respect to all such retained information.

9       23. The restrictions and obligations set forth within this order will not apply to  
10 any information that: (a) the parties agree should not be designated confidential  
11 information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the  
12 parties agree, or the Court rules, has become public knowledge other than as a result of  
13 disclosure by the receiving party, its employees, or its agents in violation of this Order; or  
14 (d) has come or will come into the receiving party's legitimate knowledge independently  
15 of the production by the designating party. Prior knowledge must be established by pre-  
16 production documentation.

17       24. The restrictions and obligations within this order will not be deemed to  
18 prohibit discussions of any confidential information with anyone if that person already has  
19 or obtains legitimate possession of that information.

20       25. Transmission by email or some other currently utilized method of  
21 transmission is acceptable for all notification purposes within this Order.

22       26. This Order may be modified by agreement of the parties, subject to approval  
23 by the Court.

24       27. The Court may modify the terms and conditions of this Order for good cause,  
25 or in the interest of justice, or on its own order at any time in these proceedings. The parties  
26 prefer that the Court provide them with notice of the Court's intent to modify the Order and  
27 the content of those modifications, prior to entry of such an order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: February 28, 2022

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4 Karin Kuemerle  
Attorneys for Plaintiff GIAVANNI M. BAUMANN S

5 DATED: February 28, 2022

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\_\_\_\_\_

7 Matthew Proudfoot  
Attorneys for Defendant FCA US LLC

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10 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED, this 1st day of March, 2022,

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15 Honorable Michael S. Berg  
16 United States Magistrate Judge

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**EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I hereby acknowledge that I, \_\_\_\_, \_\_\_\_ [POSITION AND EMPLOYER], am about to receive Confidential Materials supplied in connection with the Proceeding, (3:21-cv-01054-JLS-MSB). I certify that I understand that the Confidential Materials are provided to me subject to the terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have been given a copy of the Stipulation and Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulation and Protective Order, including any notes or other records that may be made regarding any such materials, shall not be Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the purposes of this Proceeding, any Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to me in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my personal custody until termination of my participation in this proceeding, whereupon the copies of such Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this \_\_ day of \_\_, 20\_\_, at \_\_\_\_.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Signature

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_