

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NICLAS FOSTER,

Plaintiff,

v.

AMERICAN HONDA MOTOR  
COMPANY, INC., *et al.*,

Defendants.

CASE NO. C17-1727-JCC

STIPULATED PROTECTIVE  
ORDER

This matter comes before the Court on the parties' stipulated motion for protective order (Dkt. No. 11). Having thoroughly considered the stipulation, the Court ENTERS the following Order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to

1 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
2 parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material may include documents involving the design, testing,  
5 manufacturing, marketing and/or after-sale reporting related to the 2012-2016 Honda CR-V.

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential material (as  
8 defined above), but also (1) any information copied or extracted from confidential material; (2)  
9 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
10 conversations, or presentations by parties or their counsel that might reveal confidential material.  
11

12 However, the protections conferred by this agreement do not cover information that is in  
13 the public domain or becomes part of the public domain through trial or otherwise.

14 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

15 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
16 or produced by another party or by a non-party in connection with this case only for prosecuting,  
17 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
18 the categories of persons and under the conditions described in this agreement. Confidential  
19 material must be stored and maintained by a receiving party at a location and in a secure manner  
20 that ensures that access is limited to the persons authorized under this agreement.  
21

22 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
23 ordered by the Court or permitted in writing by the designating party, a receiving party may  
24 disclose any confidential material only to:  
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1 (a) the receiving party's counsel of record in this action, as well as employees  
2 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

3 (b) the officers, directors, and employees (including in-house counsel) of the  
4 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
5 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
6 designated;

7 (c) experts and consultants to whom disclosure is reasonably necessary for  
8 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
9 A);

10 (d) the Court, court personnel, and court reporters and their staff;

11 (e) copy or imaging services retained by counsel to assist in the duplication of  
12 confidential material, provided that counsel for the party retaining the copy or imaging service  
13 instructs the service not to disclose any confidential material to third parties and to immediately  
14 return all originals and copies of any confidential material;

15 (f) during their depositions, witnesses in the action to whom disclosure is  
16 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
17 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of  
18 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
19 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
20 under this agreement;

21 (g) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or knew the information; and  
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1 (h) lawyers who have a personal injury or wrongful death case against a  
2 Honda entity in which it is alleged that a non-collision fire in a 2012-2016 Honda CR-V was  
3 caused by a design or manufacturing defect.

4 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
5 referencing such material in court filings, the filing party shall confer with the designating party  
6 to determine whether the designating party will remove the confidential designation, whether the  
7 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
8 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
9 standards that will be applied when a party seeks permission from the Court to file material  
10 under seal.  
11

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
14 or non-party that designates information or items for protection under this agreement must take  
15 care to limit any such designation to specific material that qualifies under the appropriate  
16 standards. The designating party must designate for protection only those parts of material,  
17 documents, items, or oral or written communications that qualify, so that other portions of the  
18 material, documents, items, or communications for which protection is not warranted are not  
19 swept unjustifiably within the ambit of this agreement.  
20

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
22 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
23 unnecessarily encumber or delay the case development process or to impose unnecessary  
24 expenses and burdens on other parties) expose the designating party to sanctions.  
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1 If it comes to a designating party's attention that information or items that it designated  
2 for protection do not qualify for protection, the designating party must promptly notify all other  
3 parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
5 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
7 be clearly so designated before or when the material is disclosed or produced.  
8

9 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
10 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
11 proceedings), the designating party must affix the words "CONFIDENTIAL—Foster v. Honda  
12 case—Western District of Washington" to each page that contains confidential material. If only  
13 a portion or portions of the material on a page qualifies for protection, the producing party also  
14 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the  
15 margins).  
16

17 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
18 and any participating non-parties must identify on the record, during the deposition or other  
19 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
20 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
21 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
22 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
23 confidential information at trial, the issue should be addressed during the pre-trial conference.  
24

25 (c) Other tangible items: the producing party must affix in a prominent place  
26 on the exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
2 the producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the designating party’s  
5 right to secure protection under this agreement for such material. Upon timely correction of a  
6 designation, the receiving party must make reasonable efforts to ensure that the material is  
7 treated in accordance with the provisions of this agreement.  
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9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
11 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
15 original designation is disclosed.  
16

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
18 regarding confidential designations without court involvement. Any motion regarding  
19 confidential designations or for a protective order must include a certification, in the motion or in  
20 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
21 conference with other affected parties in an effort to resolve the dispute without court action.  
22 The certification must list the date, manner, and participants to the conference. A good faith  
23 effort to confer requires a face-to-face meeting or a telephone conference.  
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25 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
26 intervention, the designating party may file and serve a motion to retain confidentiality under

1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
3 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
4 other parties) may expose the challenging party to sanctions. All parties shall continue to  
5 maintain the material in question as confidential until the court rules on the challenge.

6 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
7 LITIGATION

8 If a party is served with a subpoena or a court order issued in other litigation that compels  
9 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
10 party must:

11 (a) promptly notify the designating party in writing and include a copy of the  
12 subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to  
14 issue in the other litigation that some or all of the material covered by the subpoena or order is  
15 subject to this agreement. Such notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued  
17 by the designating party whose confidential material may be affected.

18 19 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
21 material to any person or in any circumstance not authorized under this agreement, the receiving  
22 party must immediately (a) notify in writing the designating party of the unauthorized  
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
24 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
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1 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently  
6 produced material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
8 provision is not intended to modify whatever procedure may be established in an e-discovery  
9 order or agreement that provides for production without prior privilege review. The parties agree  
10 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 10. NON TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving  
13 party must return all confidential material to the producing party, including all copies, extracts  
14 and summaries thereof, or shall shred and recycle all paper copies, or delete and destroy all  
15 electronic copies.  
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17 Notwithstanding this provision, counsel is entitled to retain one archival copy of all  
18 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
19 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
20 work product, even if such materials contain confidential material.  
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22 The confidentiality obligations imposed by this agreement shall remain in effect until a  
23 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 KELLER ROHRBACK L.L.P.

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5 DATED: December 13, 2017

By/s/ David J. Russell

6 David J. Russell, WSBA #17289  
7 1201 Third Avenue, Suite 3200  
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9 drussell@kellerrohrback.com  
Attorneys for Defendants American Honda  
Motor Co., Inc., Honda North America, Inc., and  
Honda R&D Americas, Inc.

10 SCHROETER GOLDMARK & BENDER

11  
12 DATED: December 13, 2017

By/s/ Peter O'Neil (by email authority)

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Attorneys for Plaintiff

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED; and

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.  
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8 DATED this 27th day of December, 2017.

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12 John C. Coughenour  
13 UNITED STATES DISTRICT JUDGE  
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1 **EXHIBIT A**

2  
3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4 I, \_\_\_\_\_ [print or type full name], of

5 \_\_\_\_\_ [print or type full address], declare under penalty of

6 perjury that I have read in its entirety and understand the Stipulated Protective Order that was

7 issued by the United States District Court for the Western District of Washington on

8 \_\_\_\_\_ in the case of *Niclas Foster v. American Honda Motor Co., Inc., et al.*, Cause

9 No. 17-cv-01727-JCC. I agree to comply with and to be bound by all the terms of this Stipulated

10 Protective Order and I understand and acknowledge that failure to so comply could expose me to

11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose

12 in any manner any information or item that is subject to this Stipulated Protective Order to any

13 person or entity except in strict compliance with the provisions of this Order.

14  
15 I further agree to submit to the jurisdiction of the United States District Court for the

16 Western District of Washington for the purpose of enforcing the terms of this Stipulated

17 Protective Order, even if such enforcement proceedings occur after termination of this action.

18  
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20 Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

21 City and State where signed: \_\_\_\_\_