

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION
4

5 DENNIS MACDOUGALL, RAY SEOW,
6 PRABHANJAN KAVURI, RICHARD
7 FRICK, JOSEPH RYAN PARKER, and
8 BRYAN LENTZ, individually and on
behalf of all others similarly situated,

) Case No. 8:17-cv-01079-AG (DFMx)

) **PROTECTIVE ORDER**

9
10 Plaintiffs,

11
12 v.

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14 AMERICAN HONDA MOTOR CO.,
15 INC., and HONDA NORTH AMERICA,
16 INC.,

17 Defendants.
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21 **1. PURPOSE AND LIMITS OF THIS ORDER**

22 Discovery in this action is likely to involve confidential, proprietary, or private
23 information requiring special protection from public disclosure and from use for any
24 purpose other than this litigation. Thus, the Court enters this Protective Order. This Order
25 does not confer blanket protections on all disclosures or responses to discovery, and the
26 protection it gives from public disclosure and use extends only to the specific material
27 entitled to confidential treatment under the applicable legal principles. This Order does
28 not automatically authorize the filing under seal of material designated under this Order.

1 Instead, the parties must comply with L.R. 79-5.1 if they seek to file anything under seal.
2 This Order does not govern the use at trial of material designated under this Order.

3 **2. DESIGNATING PROTECTED MATERIAL**

4 **2.1. Over-Designation Prohibited.** Any party or non-party who designates
5 information or items for protection under this Order as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEY EYES ONLY,” must only designate specific material
7 that qualifies under the appropriate standards. To the extent practicable, only those parts
8 of documents, items, or oral or written communications that require protection shall be
9 designated. Designations with a higher confidentiality level when a lower level would
10 suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited.
11 Unjustified designations expose the designator to sanctions, including the Court’s striking
12 all confidentiality designations made by that designator. Designation under this Order is
13 allowed only if the designation is necessary to protect material that, if disclosed to persons
14 not authorized to view it, would cause competitive or other recognized harm. Material
15 may not be designated if it has been made public, or if designation is otherwise
16 unnecessary to protect a secrecy interest. If a designator learns that information or items
17 that it designated for protection do not qualify for protection at all or do not qualify for the
18 level of protection initially asserted, that designator must promptly notify all parties that
19 it is withdrawing the mistaken designation.

20 **2.2. Manner and Timing of Designations.** Designation under this Order requires
21 the designator to affix the applicable legend (“CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that contains protected
23 material. For testimony given in deposition or other proceeding, the designator shall
24 specify all protected testimony. It may make that designation during the deposition or
25 proceeding, or may invoke, on the record or by written notice to all parties on or before
26 the next business day, a right to have up to 30 days from the deposition or proceeding to
27 make its designation.
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1 2.2.1. A party or non-party that makes original documents or materials
2 available for inspection need not designate them for protection until after
3 the inspecting party has identified which material it would like copied and
4 produced. During the inspection and before the designation, all material
5 shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES
6 ONLY. After the inspecting party has identified the documents it wants
7 copied and produced, the producing party must designate the documents, or
8 portions thereof, that qualify for protection under this Order.

9 2.2.2. Parties shall give advance notice if they expect a deposition or other
10 proceeding to include designated material so that the other parties can
11 ensure that only authorized individuals are present at those proceedings
12 when such material is disclosed or used. The use of a document as an exhibit
13 at a deposition shall not in any way affect its designation. Transcripts
14 containing designated material shall have a legend on the title page noting
15 the presence of designated material, and the title page shall be followed by
16 a list of all pages (including line numbers as appropriate) that have been
17 designated, and the level of protection being asserted. The designator shall
18 inform the court reporter of these requirements. Any transcript that is
19 prepared before the expiration of the 30-day period for designation shall be
20 treated during that period as if it had been designated HIGHLY
21 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed.
22 After the expiration of the 30-day period, the transcript shall be treated only
23 as actually designated.

24 2.3. **Inadvertent Failures to Designate.** An inadvertent failure to designate does
25 not, standing alone, waive protection under this Order. Upon timely assertion or correction
26 of a designation, all recipients must make reasonable efforts to ensure that the material is
27 treated according to this Order.

1 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 All challenges to confidentiality designations shall proceed under L.R. 37-1 through
3 L.R. 37-4.

4 **4. ACCESS TO DESIGNATED MATERIAL**

5 4.1. **Basic Principles.** A receiving party may use designated material only for this
6 litigation. Designated material may be disclosed only to the categories of persons and
7 under the conditions described in this Order.

8 4.2. **Disclosure of CONFIDENTIAL Material Without Further Approval.**
9 Unless otherwise ordered by the Court or permitted in writing by the designator, a
10 receiving party may disclose any material designated CONFIDENTIAL only to:

11 4.2.1. The receiving party's outside counsel of record in this action and
12 employees of outside counsel of record to whom disclosure is reasonably
13 necessary;

14 4.2.2. The receiving party's in-house counsel, including those individuals
15 working in the legal departments of a party or its parent, subsidiaries or
16 affiliates, including the legal department's staff or contract attorneys,
17 paralegals, investigative, technical, secretarial, and clerical personnel;

18 4.2.3. The officers, directors, and employees of the receiving party to whom
19 disclosure is reasonably necessary;

20 4.2.4. Experts retained by the receiving party's outside counsel of record to
21 whom disclosure is reasonably necessary, and who have signed the
22 Agreement to Be Bound (Exhibit A);

23 4.2.5. The Court and its personnel;

24 4.2.6. Outside court reporters and their staff, professional jury or trial
25 consultants, and professional vendors to whom disclosure is reasonably
26 necessary, and who have signed the Agreement to Be Bound (Exhibit A);
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1 4.2.7. During their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the Agreement to Be Bound
3 (Exhibit A); and

4 4.2.8. The author or recipient of a document containing the material, or a
5 custodian or other person who otherwise possessed or knew the information.

6 **4.3. Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**
7 Without Further Approval. Unless permitted in writing by the designator, a receiving party
8 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES
9 ONLY without further approval only to:

10 4.3.1. The receiving party’s outside counsel of record in this action and
11 employees of outside counsel of record to whom it is reasonably necessary
12 to disclose the information;

13 4.3.2. The receiving party’s in-house counsel, including those individuals
14 working in the legal departments of a party or its parent, subsidiaries or
15 affiliates, including the legal department’s staff or contract attorneys,
16 paralegals, investigative, technical, secretarial, and clerical personnel;

17 4.3.3. The Court and its personnel;

18 4.3.4. Outside court reporters and their staff, professional jury or trial
19 consultants, and professional vendors to whom disclosure is reasonably
20 necessary, and who have signed the Agreement to Be Bound (Exhibit A);
21 and

22 4.3.5. The author or recipient of a document containing the material.

23 **4.4. Procedures for Approving or Objecting to Disclosure of HIGHLY**
24 **CONFIDENTIAL – ATTORNEY EYES ONLY to Experts.** Unless agreed to in
25 writing by the designator:

26 4.4.1. A party seeking to disclose to an expert retained by outside counsel of
27 record any information or item that has been designated HIGHLY
28 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written

1 request to the designator that (1) identifies the general categories of
2 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY information that
3 the receiving party seeks permission to disclose to the expert, (2) sets forth
4 the full name of the expert and the city and state of his or her primary
5 residence, (3) attaches a copy of the expert’s current resume, (4) identifies
6 the expert’s current employer(s), (5) identifies each person or entity from
7 whom the expert has received compensation or funding for work in his or
8 her areas of expertise (including in connection with litigation) in the past
9 five years, and (6) identifies (by name and number of the case, filing date,
10 and location of court) any litigation where the expert has offered expert
11 testimony, including by declaration, report, or testimony at deposition or
12 trial, in the past five years. If the expert believes any of this information at
13 (4) - (6) is subject to a confidentiality obligation to a third party, then the
14 expert should provide whatever information the expert believes can be
15 disclosed without violating any confidentiality agreements, and the party
16 seeking to disclose the information to the expert shall be available to meet
17 and confer with the designator regarding any such confidentiality
18 obligations.

19 4.4.2. A party that makes a request and provides the information specified in
20 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified
21 expert unless, within seven days of delivering the request, the party receives a
22 written objection from the designator providing detailed grounds for the
23 objection.

24 4.4.3. All challenges to objections from the designator shall proceed under
25 L.R. 37-1 through L.R. 37-4.
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1 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 5.1. **Subpoenas and Court Orders.** This Order in no way excuses non-
4 compliance with a lawful subpoena or court order. The purpose of the duties described in
5 this section is to alert the interested parties to the existence of this Order and to give the
6 designator an opportunity to protect its confidentiality interests in the court where the
7 subpoena or order issued.

8 5.2. **Notification Requirement.** If a party is served with a subpoena or a court
9 order issued in other litigation that compels disclosure of any information or items
10 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
11 ATTORNEY EYES ONLY,” that party must:

12 5.2.1. Promptly notify the designator in writing. Such notification shall
13 include a copy of the subpoena or court order;

14 5.2.2. Promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Order. Such notification shall include a
17 copy of this Order; and

18 5.2.3. Cooperate with all reasonable procedures sought by the designator
19 whose material may be affected.

20 5.3. **Wait For Resolution of Protective Order.** If the designator timely seeks a
21 protective order, the party served with the subpoena or court order shall not produce any
22 information designated in this action as CONFIDENTIAL before a determination by the
23 court where the subpoena or order issued, unless the party has obtained the designator’s
24 permission. The designator shall bear the burden and expense of seeking protection of its
25 confidential material in that court.

26 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

27 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
28 designated material to any person or in any circumstance not authorized under this Order,

1 it must immediately (1) notify in writing the designator of the unauthorized disclosures,
2 (2) use its best efforts to retrieve all unauthorized copies of the designated material, (3)
3 inform the person or persons to whom unauthorized disclosures were made of all the terms
4 of this Order, and (4) use reasonable efforts to have such person or persons execute the
5 Agreement to Be Bound (Exhibit A).

6 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
7 **PROTECTED MATERIAL**

8 When a producing party gives notice that certain inadvertently produced material is
9 subject to a claim of privilege or other protection, the obligations of the receiving parties
10 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not
11 intended to modify whatever procedure may be established in an e-discovery order that
12 provides for production without prior privilege review pursuant to Federal Rule of
13 Evidence 502(d) and (e).

14 **8. FILING UNDER SEAL**


15 Without written permission from the designator or a Court order, a party may not
16 file in the public record in this action any designated material. A party seeking to file under
17 seal any designated material must comply with L.R. 79-5.1. Filings may be made under
18 seal only pursuant to a court order authorizing the sealing of the specific material at issue.
19 The fact that a document has been designated under this Order is insufficient to justify
20 filing under seal. Instead, parties must explain the basis for confidentiality of each
21 document sought to be filed under seal. Because a party other than the designator will
22 often be seeking to file designated material, cooperation between the parties in preparing,
23 and in reducing the number and extent of, requests for under seal filing is essential. If a
24 *receiving party's* request to file designated material under seal pursuant to L.R. 79-5.1 is
25 denied by the Court, then the receiving party *may file the material in the public record*
26 unless (1) *the designator* seeks reconsideration within four days of the denial, or (2) as
27 otherwise instructed by the Court.

1 **9. FINAL DISPOSITION**

2 Within 60 days after the final disposition of this action, each party shall return all
3 designated material to the designator or destroy such material, including all copies,
4 abstracts, compilations, summaries, and any other format reproducing or capturing any
5 designated material. The receiving party must submit a written certification to the
6 designator by the 60-day deadline that (1) identifies (by category, where appropriate) all
7 the designated material that was returned or destroyed, and (2) affirms that the receiving
8 party has not retained any copies, abstracts, compilations, summaries, or any other format
9 reproducing or capturing any of the designated material. This provision shall not prevent
10 counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition,
11 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
12 expert reports, attorney work product, and consultant and expert work product, even if
13 such materials contain designated material. Any such archival copies remain subject to
14 this Order.

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16 IT IS SO ORDERED.

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18 DATED: December 29, 2017



Honorable Douglas F. McCormick
United States Magistrate Judge

EXHIBIT A
AGREEMENT TO BE BOUND

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3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Protective Order that was issued by the United
6 States District Court for the Central District of California on _____ [date] in the case of
7 *MacDougall, et al. v. American Honda Motor Co., Inc., et al.*, 8:17-cv-01079-AG
8 (DFMx). I agree to comply with and to be bound by all the terms of this Protective Order,
9 and I understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment for contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Protective Order to any person or entity
12 except in strict compliance with this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Central District of California for the purpose of enforcing this Order, even if such
15 enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or
19 any proceedings related to enforcement of this Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25 [printed name]

26
27 Signature: _____

28 [signature]