

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CHRYSLER-DODGE-JEEP
“ECODIESEL” MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No: MDL No. 17-MD-2777-EMC

~~[PROPOSED]~~ PRETRIAL ORDER NO. ¹⁵
STIPULATION AND ORDER RELATING
TO TESTIFYING EXPERT DISCOVERY
PROTOCOL

The Honorable Edward M. Chen

I. GENERAL PROVISIONS

This Order applies to the following Parties to the Action: (a) the consumer and reseller dealer class plaintiffs (“Class Plaintiffs”); (b) the Department of Justice, on behalf of the United States Environmental Protection Agency (hereinafter the “United States”) (together with Class Plaintiffs, “Plaintiffs”); (c) Fiat Chrysler Automobiles N.V., FCA US LLC, V.M. Motori S.p.A., V.M. North America, Inc., and Sergio Marchionne (collectively, the “FCA Defendants”); and (d) Robert Bosch LLC and Robert Bosch GmbH (collectively, the “Bosch Defendants”) (together with the FCA Defendants, “Defendants”).¹ This Order provides the protocols applicable to conducting discovery relating to testifying expert witnesses (hereafter “Experts”), including

¹ Unless otherwise specified, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Pretrial Order No. 10: Stipulated Protective Order (Docket No. 212) (“PTO 10”).

1 depositions of Experts, in this Action. Nothing in this Order shall preclude any Party from
2 seeking to modify it later for good cause; prior to doing so, however, Counsel for the Parties shall
3 meet and confer among themselves in a good-faith effort to reach agreement as to the appropriate
4 scope of any modifications or revisions to this Order.

5 **II. GOVERNING LAW**

6 Expert discovery shall be governed by the applicable provisions of the Federal Rules of
7 Civil Procedure and the Local Rules of the U.S. District Court for the Northern District of
8 California (the “Local Rules”), except as otherwise provided herein or in any other order in this
9 Action. Unless specifically modified herein, nothing in this Order shall be construed to abrogate,
10 modify, or enlarge the scope of expert discovery permissible under the Federal Rules of Civil
11 Procedure or the Local Rules. This Order does not supersede prior pretrial orders entered in this
12 Action. To the extent anything contained in prior pretrial orders is inconsistent with the
13 provisions set forth herein, this Order shall control with respect to Expert discovery.

14 **III. DISCOVERY RELATING TO EXPERTS**

15 **A. Sequence for Expert Reports**

16 Expert reports related to class certification shall be exchanged in accordance with Pretrial
17 Order No. 12: Stipulated Discovery Schedule.

18 Expert reports unrelated to class certification shall be served sequentially: first, Plaintiffs
19 shall serve Expert reports; then, Defendants shall serve Expert reports; then, Plaintiffs shall serve
20 any appropriate rebuttal Expert reports. The Parties shall meet and confer regarding a specific
21 schedule for the exchange of Expert reports unrelated to class certification.

22 **B. Non-Discoverability of Certain Expert Related Materials**

23 i. With respect to Experts who must provide a written report pursuant to Fed.
24 R. Civ. P. 26(a)(2)(B), the following materials shall not be subject to discovery or production:

25 1. Unless utilized as a basis to form any opinions rendered in this
26 Action, any notes taken by, for, or at the direction of an Expert, the Expert’s staff, or others,
27 including consultants, retained to assist the Expert during the course of the Expert’s work in
28 connection with the Action.

1 2. Unless utilized as a basis to form any opinions rendered in this
2 Action, communications between and among an Expert and that Expert's staff, or others,
3 including consultants, retained to assist the Expert;

4 3. Unless utilized as a basis to form any opinions rendered in this
5 Action, communications between and among Counsel for a Party and Experts retained on behalf
6 of that Party, those Experts' staff, or others, including consultants, retained to assist such Experts.

7 4. Drafts of Expert reports or portions thereof.

8 ii. The Parties are not required to produce or exchange privilege logs
9 reflecting any of the aforementioned items that are not subject to discovery or production
10 pursuant to this Order.

11 **C. Expert-Related Materials to be Disclosed**

12 i. An Expert who must provide a written report pursuant to Fed. R. Civ. P.
13 26(a)(2)(B) shall disclose the information identified in Fed. R. Civ. P. 26(a)(2)(B)(i) – (vi) in his
14 or her Expert report or rebuttal Expert report. Any mathematical calculations or supporting data
15 disclosed pursuant to this provision shall be provided in native format. The Parties shall meet and
16 confer regarding disclosure of any mathematical calculations or supporting data that use or rely
17 on computer software or programs other than retail software.

18 ii. The Parties shall meet and confer concerning any witnesses providing
19 expert testimony who are not required to provide a written report pursuant to Fed. R. Civ. P.
20 26(a)(2)(C).

21 iii. Notwithstanding Section III.B, upon request, a Party shall disclose the
22 information identified in Fed. R. Civ. P. 26(b)(4)(C)(i) – (iii).

23 **D. Expert Depositions**

24 i. Except as otherwise provided in this Order, or otherwise agreed by the
25 Parties, Pretrial Order No: ¹⁴ ~~13~~: Stipulation and Order Relating to Deposition Protocol shall govern
26 the processes and procedures with which the Parties shall comply in connection with the taking of
27 Expert depositions.

1 DATED: October 27, 2017

UNITED STATES DEPARTMENT OF JUSTICE

2 By: /s/ Leigh P. Rendé

3 Leigh P. Rendé

4 United States Department of Justice

5 Environmental Enforcement Section

6 Environment and Natural Resources Division

7 P.O. Box 7611, Ben Franklin Station

8 Washington, D.C. 20044-7611

9 Telephone: (202) 514-1461

10 Facsimile: (202) 514-0097

11 Leigh.rende@usdoj.gov

12 *Government Coordinating Counsel*

13 DATED: October 27, 2017

SULLIVAN & CROMWELL LLP

14 By: /s/ Robert J. Giuffra, Jr.

15 Robert J. Giuffra, Jr.

16 William B. Monahan

17 Darrell S. Cafasso

18 Sullivan & Cromwell LLP

19 125 Broad Street

20 New York, New York 10004

21 Telephone: (212) 558-4000

22 Facsimile: (212) 558-3588

23 giuffrar@sullcrom.com

24 monahanw@sullcrom.com

25 cafassod@sullcrom.com

26 *Counsel for Fiat Chrysler Automobiles N.V.,*

27 *FCA US LLC, V.M. Motori S.p.A., V.M.*

28 *North America, Inc., and Sergio Marchionne.*

19 DATED: October 27, 2017

CLEARY GOTTlieb STEEN & HAMILTON LLP

20 By: /s/ Matthew D. Slater

21 Matthew D. Slater

22 Cleary Gottlieb Steen & Hamilton LLP

23 2000 Pennsylvania Ave., N.W.

24 Washington, DC 20006

25 Telephone: (202) 974-1500

26 Facsimile: (202) 974-1999

27 mslater@cgsh.com

28 *Counsel for Robert Bosch LLC and Robert Bosch GmbH*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))

In accordance with Civil Local Rule 5-1(i)(3), I attest the concurrence in the filing of this document has been obtained from the signatories.

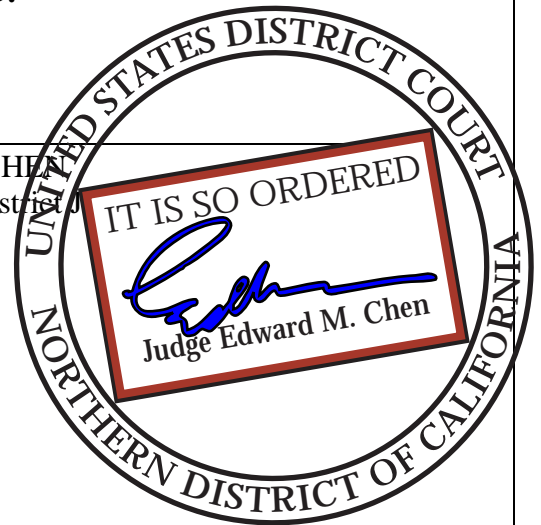
Dated: October 27, 2017

/s/Elizabeth J. Cabraser

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 3, 2017

EDWARD M. CHEN
United States District Judge



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 27, 2017, a true and correct copy of the foregoing was electronically filed and served electronically via the Court’s CM/ECF system, which will automatically serve notice to all registered counsel of record.

/s/ Elizabeth J. Cabraser