



1 to an order of this Court dated January 23, 2002, Plaintiffs in this action have already filed  
2 certain documents under seal with this Court because the Plaintiffs contend that the documents  
3 contain Confidential Information.

4 Plaintiffs and Non-Party automobile manufacturers are engaged in commercial  
5 transactions within industries that are highly competitive and involve protected technical  
6 information, the disclosure of which could enable a competitor to gain an unfair commercial  
7 advantage.

8 The Parties believe that this Stipulation and Protective Order Regarding Handling  
9 of Confidential Information, which restricts the Parties' use and dissemination of Confidential  
10 Information, is necessary and appropriate to facilitate discovery of both parties and non-parties in  
11 this matter and to facilitate the Defendant's access to the documents filed under seal.

12 ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED that:

13 This Stipulation and Protective Order Regarding Handling of Confidential  
14 Information shall govern handling of all Confidential Information obtained by Plaintiffs' or  
15 Defendant's Counsel in this matter, whether obtained directly or indirectly, and whether  
16 produced by or obtained from any Party, any Non-Party, or any other company, organization, or  
17 person.

18 1. Definitions. For purposes of this Stipulation and Protective Order, the following  
19 terms shall have the meanings provided below.

20 a. "Confidential Information" shall mean all information in documentary,  
21 computer, electronic and other material forms, whether obtained directly or indirectly  
22 from a Party or Non-Party:

23 (1) which the Party or Non-Party who produced, provided or generated  
24 such information (a) considers to contain confidential business information, trade  
25 secrets or proprietary information; or (b) considers to be protected by one or more  
statutory or other legal privileges or other protections from disclosure;

26 (2) including, but not limited to: (a) competitively sensitive onboard  
27 diagnostic emission designs and formulations; (b) product plans; (c) emissions  
28 compliance strategies; (d) costing information; (e) competitively sensitive design  
formulations; (f) manufacturing techniques; (g) future manufacturing plans,  
marketing plans or strategies; (h) all competitively sensitive materials related to  
(a)-(g) above;

1  
2 (3) and which the Party or Non-Party designated as confidential under (a)  
3 the Public Records Act (California Government Code § 6254.7) and/or (b) the  
4 Uniform Trade Secrets Act (California Civil Code §§ 3426 et seq.), and/or (c)  
5 designated as confidential under any other statute or regulation which may restrict  
6 disclosure, and/or (f) designated as confidential pursuant to Paragraph 4, below.

7 b. "Plaintiffs' Counsel" shall mean Plaintiffs' outside counsel of record  
8 (listed below) and their office staff.

9 c. "Stipulation and Protective Order" shall mean this Stipulation and  
10 Protective Order Regarding Handling of Confidential Information.

11 d. "Non-Party" or "Non-Parties" shall mean each company, other than  
12 Plaintiffs in this action, that has generated or maintains during the normal course of  
13 government regulatory programs Confidential Information.

14 e. "Parties" shall mean Plaintiffs and Defendant.

15 2. Confidential Information shall be used by the Parties solely for the purpose of  
16 preparing for and/or conducting prehearing, hearing and post-hearing proceedings in this matter,  
17 and for no other purpose. However, if there is Confidential Information that is already in the  
18 possession of the California Air Resources Board ("ARB"), or Confidential Information that a  
19 Party or Non-Party submits to the ARB in the future for purposes independent of this litigation,  
20 then otherwise permitted uses by the Defendant and/or ARB staff are not affected by this  
21 Stipulation and Protective Order. Upon entry of this Stipulation and Order by the Court, Counsel  
22 for Plaintiffs agrees to immediately provide Counsel for the Defendant with copies of all  
23 documents filed under seal in this action.

24 3. Each Party or Non-Party may have in the past designated information, data,  
25 documents and other material as Confidential Information within the meaning of this Stipulation  
26 and Protective Order. Such designation may have been made by separate written notice;  
27 incorporated into, attached to, stamped on or otherwise made part of the subject material  
28 designated as Confidential Information; or by a statement on the record or in a transmittal letter  
or other document. All such past designations shall operate to bring any information so  
designated within the definition of Confidential Information and to require the Parties to treat

1 such designated information as Confidential Information under the terms of this Stipulation and  
2 Protective Order.

3         4. Any Party or Non-Party may designate, in the future, any information or  
4 documents previously provided directly or indirectly to Plaintiffs' or to Defendant's Counsel as  
5 Confidential Information, by providing written notice to the Parties' counsel of record. This  
6 notice must specifically describe the information or document to be designated as Confidential  
7 Information so that Plaintiffs' and Defendant's Counsel can identify each item of information  
8 and each page or part of such information or document that is so designated. All such  
9 information or documents shall be marked "Confidential" in a readily visible or noticeable  
10 manner. In the case of documents, confidential material shall be designated by a stamp or  
11 designation on each such document. Any person photocopying or otherwise duplicating  
12 documents marked as confidential shall ensure that the confidential designation appears clearly  
13 on any such copies or duplicates.

14         5. Any Party or Non-Party may withdraw its designation of any information or  
15 document as Confidential Information by providing written notice to Plaintiffs' and Defendant's  
16 Counsel.

17         6. The Parties may disclose Confidential Information under this Stipulation and  
18 Protective Order to other Parties' Counsel. Such disclosure shall not constitute a violation of the  
19 Public Records Act (California Government Code § 6254.7), the Uniform Trade Secrets Act  
20 (California Civil Code §§ 3426 et seq.) and/or any other statute or regulation which may restrict  
21 disclosure. If any document or information designated as Confidential Information becomes  
22 subject to a subpoena or a California Public Records Act request, the Defendant shall promptly  
23 notify the Plaintiffs' Counsel and will respond to the subpoena or request by following the  
24 procedures regarding the Public Records Act in Title 17, section 91022, of the California Code of  
25 Regulations. The party asserting the designation of such document or information as  
26 Confidential Information bears the burden of establishing that such document or information is  
27 entitled to confidential status.

28         7. Plaintiffs' and Defendant's Counsel, including Department of Justice and Air

1 Resources Board Staff Attorneys, may disclose or make available Confidential Information only  
2 to the following persons subject to any identified conditions of disclosure:

3 a. Attorneys, paralegals and office assistants employed by the Parties'  
4 counsel;

5 b. Air Resources Board staff members working on this litigation, including  
6 specifically Charles Shulock, Analisa Bevan and Steven Albu.

7 c. any expert witness, consulting expert, consultant or other person not  
8 employed by either Parties' Counsel who is expressly retained or authorized to assist in  
9 the preparation of this matter, to testify at trial or for any other proceedings in this matter;  
10 provided, however, that the Parties' Counsel may disclose or make available any  
11 Confidential Information to such persons only after receiving written authorization to do  
12 so from the Party or Non-Party which designated such information or documents as  
13 Confidential Information, or after such Party or Non-Party has received prior written  
14 notice of such proposed disclosure and has had an opportunity to object to such  
15 disclosure;

16 d. any other person to whom such disclosure is approved in writing by the  
17 Party or Non-Party which has designated the documents or materials as Confidential  
18 Information;

19 e. any other person as to whom the Court has directed or authorized such  
20 disclosure (after providing the Party or Non-Party notice and an opportunity to object);  
21 and

22 f. the United States District Judge and/or United States Magistrate Judge  
23 assigned to this matter (and their staff or other court personnel), whether temporarily or  
24 not; provided, however, that such disclosure shall only be made under seal.

25 8. The Parties' Counsel shall, for each person to whom any Confidential Information  
26 is disclosed or made available under this First Stipulation and Protective Order:

27 a. specifically inform that person that disclosure of the Confidential  
28 Information is pursuant to and subject to the restrictions and provisions of this Stipulation

1 and Protective Order; and

2 b. give that person a copy of this Stipulation and Protective Order.

3 9. Each person to whom any Confidential Information is disclosed or made available  
4 under this Stipulation and Protective Order shall sign a Confidentiality Agreement in the form  
5 appended hereto as Exhibit A. The Party obtaining such Confidentiality Agreement shall serve a  
6 copy of the signed Confidentiality Agreement on counsel for each Non-Party that generated the  
7 Confidential Information being disclosed to such person, provided such Non-Party agrees not to  
8 disclose such Confidentiality Agreement or any information contained therein to the other Party.

9 10. Nothing in Paragraph 7 of this Stipulation and Protective Order shall authorize  
10 Plaintiffs' or Defendant's Counsel to disclose any Confidential Information to any employee of,  
11 or consultant to, any other company involved in the manufacture or sale of automobiles or any  
12 automotive components without express written permission of the Party or Non-Party which  
13 designated the documents or material as Confidential Information, absent Court permission,  
14 authorization or a directive to do so after the owner of the Confidential Information has had  
15 notice and an opportunity to object.

16 11. Any inadvertent failure to designate any document or material or other  
17 information as Confidential Information before or at the time of production or disclosure of such  
18 Confidential Information shall not operate as a waiver of such right to designate such document  
19 or material or other information as Confidential Information subsequent to such disclosure by  
20 providing written notice to the Parties' counsel of record.

21 12. If a Party or Non-Party subsequently designates any document or material or other  
22 information as Confidential Information after inadvertent disclosure as described in the  
23 preceding Paragraph 11, the Parties shall:

24 a. employ all reasonable efforts to ensure that all such inadvertently  
25 disclosed Confidential Information is thereafter treated as such;

26 b. treat each such inadvertently disclosed item as Confidential Information as  
27 soon as the Parties' Counsel receive written notice;

28 c. properly identify and mark the inadvertently disclosed documents or

1 materials as Confidential Information.

2 13. The disclosure, before receiving written notice pursuant to Paragraph 12 of this  
3 First Stipulation and Protective Order, of inadvertently disclosed Confidential Information to  
4 persons not authorized to receive Confidential Information under this First Stipulation and  
5 Protective Order shall not be deemed a violation of this Stipulation and Protective Order.

6 14. Judicial Filing of Confidential Information

7 a. Any Party may file with or submit to the Court any Confidential  
8 Information, any information derived from Confidential Information, or any papers  
9 containing or making reference to the specific content of such Confidential Information,  
10 only in sealed envelopes on which shall be endorsed the caption of this case and a  
11 statement substantially in the following form:

12 CONFIDENTIAL

13 **This envelope contains documents that are subject to a Protective Order governing**  
14 **discovery and the use of confidential materials entered by the Presiding Officer in**  
15 **this matter. The envelope shall not be opened nor its contents displayed or revealed**  
**except by Order of the Court or the written consent of the Party or Non-Party**  
**making a claim of confidentiality.**

16 b. Before filing any Confidential Information of a Non-Party with the Court  
17 under Subparagraph 14(a), the Party seeking to file such information shall provide written  
18 notice to the Non-Party that generated such Confidential Information so that such Non-  
19 Party may make further objection, if any.

20 c. If the Court refuses to place a document containing Confidential  
21 Information under seal or otherwise refuses the Plaintiffs' or Defendant's request to  
22 submit or file Confidential Information documents as "Confidential", the party who  
23 submitted the documents shall immediately give notice by facsimile or telephone to  
24 counsel for the owner of the Confidential Information who shall be responsible for  
25 arguing or defending the merits of the "Confidential" designation to the Court.

26 15. Reservations.

27 a. Entering into, agreeing to or complying with the provisions of this  
28

1 Stipulation and Protective Order shall not: (1) operate as an admission by any party,  
2 entity or person that any particular material contains Confidential Information; or  
3 (2) prejudice in any way the right of a party, entity or person to seek a determination by  
4 the Court (a) whether particular material should be produced or (b) if produced, whether  
5 such material should be subject to the provisions of this Stipulation. However, all  
6 documents and information designated as Confidential Information will be treated by the  
7 Defendant as confidential unless otherwise prohibited by the terms of the Public Records  
8 Act or any other state law or any court order; where the owner of such Confidential  
9 Information agrees, in writing, to withdraw their confidential designation; or where the  
10 Defendant has successfully challenged the designation of a document as confidential  
11 pursuant to the provisions of paragraph 15.b.

12 b. The Defendant expressly retains the right to challenge any confidential  
13 designation made by Plaintiffs by submitting such a challenge to the Plaintiffs in writing.  
14 When such a challenge is made, the Plaintiffs have 15 days to respond. If no response is  
15 made within 15 days of service of the Defendant's challenge, the document or  
16 information shall no longer be entitled to confidential treatment. If the Parties are unable  
17 to resolve such a dispute, then they shall submit the dispute to the U.S. Magistrate Judge  
18 assigned to the case.

19 16. Before offering any testimony or documents at trial, either Party (or any Non-  
20 Party that generated the testimony or documents) may request judicial designation of such  
21 testimony or documents as Confidential Information. If the Court designates any such testimony  
22 or documents as Confidential Information, either Party (or the Non-Party that generated such  
23 testimony or documents) may request that the Court exclude from the courtroom any person who  
24 has not agreed to be bound by the terms of this Stipulation and Protective Order. If testimony is  
25 elicited or documents are referred to that are similarly sensitive, either Party (or the Non-Party  
26 that generated such testimony or documents) may also request the Court to designate the  
27 testimony just received or the documents just referred to as Confidential Information.  
28 Furthermore, within seven days of the time any transcript of these proceedings is produced, a



1 Party or Non-Party may request that the Court declare that relevant portions of the transcript be  
2 designated as Confidential Information and placed under seal.

3 17. Any materials designated Confidential Information in accordance with this  
4 Stipulation and Protective Order shall be filed with the Court in this matter, if at all, only under  
5 seal. All Parties hereby agree that any Confidential Information that is filed with a court  
6 conducting judicial review or an appeal also be filed under seal.

7 18. Subject to subparagraph c below, within ninety days of the final conclusion of this  
8 matter (*i.e.*, when all appeals following judicial review have been completed or when the time for  
9 taking all appeals has expired), Counsel for each Party:

10 a. shall retrieve all Confidential Information from all persons to whom  
11 Counsel has disclosed or made available such Confidential Information under Paragraph  
12 7; and

13 b. either shall return all Confidential Information to the party that provided  
14 such information, or shall certify that such Confidential Information has been destroyed.

15 c. However, if Confidential Information has been submitted to ARB by a  
16 Party or Non-Party for purposes independent of this litigation, then ARB may retain such  
17 Confidential Information in accordance with its normal practices for the handling and  
18 retention of confidential or trade secret information.

19 19. Any party, entity or person covered by this Stipulation may at any time apply to  
20 the Court for relief from any provision of this Stipulation.

21 20. Other entities or persons may be included in this Stipulation by acceding to its  
22 provisions in a writing served upon the Parties' counsel of record, with such writings to be filed  
23 with the Court if so directed.

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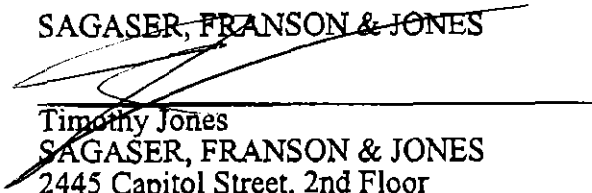
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**STIPULATED AND AGREED:**

~~SAGASER, FRANSON & JONES~~

By:

  
Timothy Jones  
~~SAGASER, FRANSON & JONES~~  
2445 Capitol Street, 2nd Floor  
Post Office Box 1632  
Fresno, California 93717-1632  
(559) 233-4800  
(559) 233-8330 (fax)

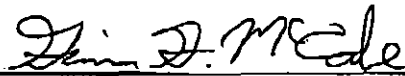
10/15/2002  
Date

Stuart A.C. Drake, Esq.  
Andrew B. Clubok, Esq.  
KIRKLAND & ELLIS  
655 Fifteenth St., N.W.  
Washington, D.C. 20005  
(202) 879-5000  
(202) 879-5200 (fax)

Co-Counsel for Plaintiffs

**OFFICE OF THE CALIFORNIA ATTORNEY GENERAL**

By:

  
Gavin G. McCabe, Esq.  
Deputy Attorney General  
Office of Attorney General  
455 Golden Gate Avenue  
San Francisco, CA 94708  
(415) 703-5605  
(415) 703-5480 (fax)

10/11/02  
Date

Attorneys for Defendant

**IT IS SO ORDERED**

this 15<sup>th</sup> day of October 2002

  
United States Magistrate Judge

United States District Court  
for the  
Eastern District of California  
October 17, 2002

\* \* CERTIFICATE OF SERVICE \* \*

1:02-cv-05017

Central

v.

California Air

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on October 17, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Timothy Jones  
Sagaser Franson and Jones  
PO Box 1632  
2445 Capitol Street  
Second Floor  
Fresno, CA 93717-1632

REC SMS

Stuart A C Drake  
PRO HAC VICE  
Kirkland and Ellis  
655 Fifteenth Street, NW  
Suite 1200  
Washington, DC 20005

Granta Y Nakayama  
PRO HAC VICE  
Kirkland and Ellis  
655 Fifteenth Street, NW  
Suite 1200  
Washington, DC 20005

Andrew B Clubok  
PRO HAC VICE  
Kirkland and Ellis  
655 Fifteenth Street, NW  
Suite 1200

John Gibson Mullan  
PRO HAC VICE  
Kirkland and Ellis  
655 Fifteenth Street, NW  
Suite 1200  
Washington, DC 20005

Gregory F Corbett  
Kirkland and Ellis  
655 Fifteenth Street, NW  
Suite 1200  
Washington, DC 20005

Gavin Geraghty McCabe  
Office of Attorney General  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94109-7004

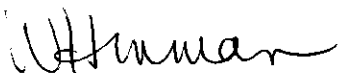
Mark William Poole  
Attorney General's Office of the State of California  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94102-3664

Marc N Melnick  
Attorney General's Office of the State of California  
PO Box 70550  
Oakland, CA 94612-0550

Peter E Seley  
PRO HAC VICE  
Gibson Dunn and Crutcher  
1050 Connecticut Avenue Northwest  
Suite 900  
Washington, DC 20036-5303

Raymond B Ludwiszewski  
PRO HAC VICE  
Gibson Dunn and Crutcher  
1050 Connecticut Avenue Northwest  
Suite 900  
Washington, DC 20036-5303

Jack L. Wagner, Clerk

BY:   
Deputy Clerk