UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

TESLA MOTORS, INC.,
a Delaware corporation

Plaintiff,

v.

RUTH JOHNSON, in her official capacity as Secretary of State and Chief Motor Vehicle Administrator, BILL SCHUETTE, in his official capacity as Attorney General, and RICK SNYDER, in his official capacity as Governor,

Defendants.
_____/

Case No. 1:16-cv-01158-JTN-ESC
Hon. Janet T. Neff

ORAL ARGUMENT REQUESTED

MOTION TO QUASH AND FOR PROTECTIVE ORDER

Non-party subpoena recipients Ann Arbor Automotive, Serra Automotive, and Shaheen Chevrolet (collectively, "Dealers"), through counsel and pursuant to FRCP 26 and 45(d), file this motion asking this Court to quash in part or modify the Feb. 22, 2017 subpoenas served on them by Plaintiff Tesla Motors, Inc. ("Tesla"), and enter a protective order limiting Tesla from obtaining certain materials. In support, the Dealers state:

1. In this action, Tesla asserts that MICH. COMP. LAWS § 445.1574 violates its rights under various provisions of the U.S. Constitution by, among other things, requiring it to sell its vehicles through licensed dealers, like every other auto manufacturer. It has not sued the State of Michigan, the Legislature, nor any of its members, but rather has sued Secretary of State Ruth Johnson, Attorney General Bill Schuette, and Gov. Rick Snyder (collectively, "Defendants").

2. In their Rule 26(a)(1)(A) disclosures, Defendants set forth a variety of information they will offer in defense of the challenged legislation, and identified the three Dealers as providing relevant testimony on certain points. None of those points involve Dealer political activity, alone

or in connection with any trade groups to which they belong. *Id.* Similarly, Defendants did not indicate that any Dealer would offer testimony as to enactment of the legislation Tesla challenges, no doubt because it plainly would be irrelevant to the issues raised in this action.

3. Tesla on February 22, 2017 issued each Dealer a substantially identical subpoena requesting 20 categories of documents, electronically stored information, and tangible things. Subpoenas, **Tab 3** to brief.

4. Pursuant to FED. R. CIV. P. 45(d)(2)(B), each Dealer on March 8, 2017 timely served substantially identical Objections to the Subpoena. **Tab 4** to brief. Despite their objections, however, the Dealers are not opposed to producing some of the material requested. As detailed in the accompanying Certificate being filed with this motion, Tesla and the Dealers have conferred several times via telephone and email in a good-faith effort to narrow the areas of disagreement, and have narrowed those areas to some extent. The objections the Dealers raise in this motion are those that remain unresolved, and relate to Request Nos. 1-3, 6-10, and 19.

5. Upon timely motion, the Court must quash or modify a subpoena that a) requires disclosure of privileged or other protected matter, if no exception or waiver applies, or b) subjects a person to under burden. FED. R. CIV. P. 45(d)(3)(A)(iii) & (iv). As the accompanying brief explains, the Subpoena to each Dealer seeks disclosure of privileged or other protected matter, not subject to any exception or waiver, and also subjects each Dealer to undue burden in complying.

6. Additionally, the Court may quash or modify a subpoena that requires disclosure of confidential research, development, or commercial information. FED. R. CIV. P. 45(d)(3)(B)(i). As the brief explains, Request No. 19 seeks confidential commercial information.

7. At the Dealers' request, Tesla extended the original March 24, 2017 return date on its Subpoenas by one week, to March 31. Tesla is filing and serving this motion and accompanying

brief (along with responsive documents, privilege logs, and Amended Objections) by that date, thus the motion is timely.

8. Pursuant to W.D. Mich. LCivR 7.1(d) and as detailed in the Certificate being filed with this motion, the Dealers have conferred with Tesla through counsel in an effort to obtain agreement on these issues but it has not been forthcoming, necessitating the motion's filing.

9. Pursuant to W.D. Mich. LCivR 7.1(a), the Dealers submit the accompanying brief in support.

WHEREFORE, the Dealers pursuant to FRCP 26 and 45(d) request that the Court quash Tesla's subpoenas as to Request Nos. 1-3, 6-10, and 19, and enter an appropriate protective order.

Respectfully submitted,

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Dated: March 31, 2017

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

/s Michelle Musial
Michelle Musial

Dated: March 31, 2017

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

TESLA MOTORS, INC.,
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Plaintiff,

v.

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Defendants.
_____/

Case No. 1:16-cv-01158-JTN-ESC
Hon. Janet T. Neff

ORAL ARGUMENT REQUESTED

BRIEF IN SUPPORT OF MOTION TO QUASH NON-PARTY SUBPOENAS AND FOR PROTECTIVE ORDER

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Date: March 31, 2017

STATEMENT OF QUESTIONS PRESENTED

I. Should Tesla's subpoena Request Nos. 1, 3, and 6-9 be quashed, and a protective order entered, because they seek privileged material impacting the Dealer's First Amendment associational and privacy rights; material that is clearly irrelevant and thus imposes and undue burden on the Dealers; and, in the case of No. 9, information that is available from a party?

II. Should Request No. 2 be quashed in part, and a protective order entered, to the extent it seeks material protected by attorney-client privilege?

IIII. Should Request No. 10 be quashed, and a protective order entered, because it is unduly burdensome?

IV. Should Request No. 19 be quashed, and a protective order entered, because it improperly seeks competitors' sensitive commercial information, and is unduly burdensome by requesting material clearly irrelevant to any claim or defense?

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[1] All cases have been citechecked via Westlaw and are valid in relevant part through March 31, 2017.

Cases (cont'd)

Constitutional provisions and statutes

Court rules

Other authorities

In this action, Plaintiff Tesla alleges that Michigan's auto-dealer franchise law violates the Constitution's Due Process, Equal Protection, and Commerce clauses. R 33, Page ID # 267. Specifically, Tesla claims that MCL § 445.1574, as amended in 2014, improperly bars auto manufacturers from selling vehicles directly to consumers, and prevents Tesla from servicing and repairing vehicles in Michigan. *Id*. Tesla did not sue the Legislature nor any of its members, but instead sued Michigan's three statewide constitutional officers. *Id*.

Defendants' Rule 26 disclosures named three auto dealers who may testify in several broad categories: Ann Arbor Automotive, Inc., Serra Automotive, Inc., and Shaheen Chevrolet ("the Dealers"). **Tab 1**, Defs.' Disclosures; *also* Addendum A. None of those areas involves Dealer political activity, alone or in connection with any trade group to which they belong. *Id.* Similarly, Defendants did not indicate that any Dealer would offer testimony as to enactment of the legislation Tesla challenges. *Id*. Tesla's Rule 26 Disclosure listed no Dealer. **Tab 2**.

Tesla on February 22, 2017 served each Dealer a substantially identical subpoena for 20 broad categories of items. **Tab 3**. The Dealers timely served objections under FRCP 45(d)(2)(B). **Tab 4**. Despite their objections, the Dealers are not opposed to producing some of the requested material, and after conferring, Tesla and the Dealers have narrowed the issues and the Dealers are producing various documents, along with privilege logs and updated Objections. This motion addresses the unresolved issues on Tesla's Requests No. 1-3, 6-9, 10, and 19 (Addendum B hereto).

ARGUMENT

I. Requests 1, 3, and 6-9 impinge on the Dealers' First Amendment associational/ privacy rights, and impose an undue burden by seeking clearly irrelevant material.

A. The requests would chill the Dealers' First Amendment associational rights.

"[T]he right to engage in activities protected by the First Amendment implies a corresponding right to associate with others in pursuit of a wide variety of political, social,

economic, educational, religious, and cultural ends." *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 548 (1987) (internal punctuation omitted), *quoting Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984); *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907-909, 932-933 (1982). "The First Amendment extends beyond the right to speak to encompass the 'right of expressive association,' *i.e.*, the 'right to associate for the purpose of speaking.'" *Miller v. City of Cincinnati*, 622 F.3d 524, 537 (6th Cir.2010), quoting *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 68 (2006).

"Joining organizations that participate in public debate, making contributions to them, and attending their meetings are activities that enjoy substantial First Amendment protection." *In re Asbestos School Litig.*, 46 F.3d 1284, 1294 (3d Cir. 1994), *citing, inter alia, Buckley v. Valeo*, 424 U.S. 1, 14-25 (1976) and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958). Indeed, "[f]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of freedom of speech." *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 295 (6th Cir. 1998), *citing NAACP*, 357 U.S. at 460. First Amendment associational rights also have a privacy component. *In re GlaxoSmithKline PLC*, 732 N.W.2d 257, 268 (Minn. 2007) (citations omitted).

The First Amendment's guarantee of the right to associate to engage in protected activities applies in the context of discovery orders. *In re Motor Fuel Temp. Sales Litig.*, 707 F. Supp. 2d 1145, 1151-52 (D. Kan. 2010), *app dismissed*, 641 F.3d 470 (10th Cir. 2011), *citing Grandbouche v. Clancy*, 825 F.2d 1463, 1466 (10th Cir. 1987) (privilege applies "even if all the litigants are private entities"); *accord Sierra Club v. Union Elec. Co.*, 2015 WL 9583394, *2 (E.D. Mo. Dec. 31, 2015) and *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 n.5 (9th Cir. 2010) (citation omitted). "Specifically, the Supreme Court has recognized that in the context of discovery, the First Amendment creates a qualified privilege from disclosure of certain associational information." *In*

re Motor Fuel Temp. Sales Litig., 707 F. Supp. 2d at 1152, *citing NAACP*, 357 U.S. at 462. Because compelled disclosure of political associations can have a chilling effect, it is subject to "exacting scrutiny." *Perry*, 591 F.3d at 1160, *citing Buckley*, 424 U.S. at 64.

Tesla's subpoenas demand six types of information that impacts the Dealers' right to associate with others, both directly and through the Michigan Automobile Dealers Association (MADA), to advance their interests. They range far beyond the Dealers' identified area of testimony, and seek to chill their exercise of associational rights. They should be quashed.

1. The Dealers have made a prima-face showing that the privilege applies.

In evaluating discovery-related associational privilege claims, the party asserting privilege first must make a prima-facie showing that it applies. *In re Motor Fuel Temp. Sales Litig.*, 707 F. Supp. 2d at 1152-53, *citing Perry*, 591 F.3d at 1160; *In re GlaxoSmithKline*, 732 N.W.2d at 269-270, and *McCormick v. City of Lawrence*, 2005 WL 1606595, *7 (D. Kan. July 8, 2005).[2] "The burden in making that *prima facie* case is light." *Alliance of Auto. Mfrs., Inc. v. Jones*, 2013 WL 4838764, *4 (M.D. Fla. Sept. 11, 2013) (*Jones II*), *citing Christ Covenant Church v. Town of Sw. Ranches*, 2008 WL 2686860, *6 (S.D. Fla. June 29, 2008). The party asserting the privilege need only "demonstrate an objectively reasonable probability that compelled disclosure will chill associational rights, *i.e.* that disclosure will deter membership due to fears of threats, harassment or reprisal from either governmental officials or private parties which may affect members' physical well-being, political activities or economic interests." *In re Motor Fuel Temp. Sales Litig.*, 707 F. Supp. 2d at 1153 (emphasis added), *citing, inter alia*, *NAACP*, 357 U.S. at 462-463; *Perry*, 591 F.3d at 1160; and *GlaxoSmithKline*, 732 N.W.2d at 270.

[2] The Dealers' research has discovered no Sixth Circuit precedent discussing either the associational privilege or the Ninth Circuit's seminal *Perry* decision applying it.

The Dealers have made that showing. Each Dealer, who also is a past MADA President, testifies that forced disclosure of their communications with MADA – the primary means by which they interact with legislators and regulators – will result in them reducing involvement with, and political activities through, the association. Declarations, **Tabs 5-7**. It will result in MADA curtailing activities on behalf of, and communications with, their dealership(s) and other dealers. *Id*. It will chill dealers' ability to interact with lawmakers and regulators through MADA. *Id.* In addition, given that the franchise-dealer law is designed to protect dealers from manufacturer oppression, two Dealers fear that compelled disclosure will expose them to economic retaliation from manufacturer(s), who hold immense economic power over dealers. Fox Decl., ¶ 5; Shaheen Decl, ¶ 6. The Dealers have established not just one of the requisite harms, but several. *Jones II*, at *4 (*prima facie* application of privilege established by testimony showing disclosure "would chill a willingness to participate in the political process, cause a fear of retaliation, chill the free flow of information, and…discourage members of FADA from participation").

2. Dealer communications regarding political activities are not rationally related to any compelling Tesla interest, nor is subpoenaing them the least restrictive means of obtaining what Tesla claims to seek.

Tesla thus must prove the information it seeks is rationally related to a compelling interest, and that a subpoena is the least restrictive means of obtaining it. *Perry*, 591 F.3d at 1161. It must establish the information as "*highly relevant* to the claims or defenses in the litigation – a more demanding standard of relevance than that under [FRCP] 26(b)(1)." *Id*. (emphasis added). "The request must also be carefully tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable." *Id.* Relevant factors include the litigation's importance, the centrality of the information to the case's issues, the existence of less intrusive means, and the substantiality of the First Amendment interests. *Id.* (citation omitted).

None of those factors favor Tesla. This is a civil case, not criminal with the heightened interests such matters entail. *Perry*, 591 F.3d at 1161 (citation omitted). To the extent Tesla wants to know what motivated lawmakers, it can take the far less intrusive step of asking them. *Id.*, *citing Grandbouche*, 825 F.2d at 1466. The threat its subpoenas pose to Dealer rights is substantial. *Id*. (citation omitted) (argument for upholding privilege "will ordinarily grow stronger as the danger to rights of expression and association increases"). And most important, the material Tesla seeks not only is not central to this case's issues, it is of minimal to no relevance.

Jones II is directly on point. There, a national auto manufacturers' group sued Florida's motor-vehicle Director, challenging the constitutionality of three amendments to the State dealer-franchise law. *Alliance of Auto. Mfrs., Inc. v. Jones*, 897 F. Supp. 2d 1241, 1246-48 (N.D. Fla. 2012) ("*Jones I*"). The Florida Automobile Dealers Association (FADA) intervened, and after the Alliance served it a broad-ranging notice for 19 areas of testimony, FADA sought a protective order as to six, dealing with its involvement in the amendments' enactment, communications regarding those efforts, its support for political candidates, etc. *Jones II* at *1. After FADA established *prima facie* application of the associational-rights privilege, the manufacturers' group argued that the information was relevant to the alleged improper motivation behind the statute – "the origin of the Amendments, the context of their adoption, and what their actual purpose may be notwithstanding their state[d] purpose." *Id*. at *2.

The District Court roundly rejected that rationale:

> The information is not relevant to the heart of the matter in dispute. Questions concerning the constitutionality of state law are not decided upon review of campaign contributions, candidate support, a citizen's view of the law, or the like. Information which helps form legislative opinion will be relevant to a statute's purpose and intent, but such information is gleaned from legislative history as available through the public records of the State of Florida. A decision on the merits of these claims does not hinge on the opinions or activities of FADA or even the

> motives or opinions of the legislators in passing the Amendments. [*Id.* at 4 (citations omitted)].

The Court also rejected the Alliance's claim that the information was made relevant by the legislative history's silence as to the need or purpose for the amendments:

> While such absence *may* be relevant to the merits issue, finding an absence of support from the State does not entitle a challenger to seek out facts and opinions from those persons who participate in the legislative process….Legislative history is the primary source for determining legislative intent and determining, for example, whether a statute "is rationally or reasonably related to furthering a legitimate state objective." [*Id*. at *5 (emphasis in original)(citation omitted)].

As the Court concluded:

> While the Supreme Court permits courts to probe beyond assertions of legislative purpose in determining the "actual purpose," the Court has not permitted probing into the political affairs of citizens, lobbyists, or other proponents of legislation. *Participants in the legislative process should have input into laws which govern areas of concern, but the responsibility for statutory language enacted by Florida's Legislature rests with the Legislature. It is primarily from the Legislature that discovery is obtained to inquire into a statute's purpose and intent*. [*Id*. (emphasis added)].

The Court deemed the material both irrelevant and privileged. *Id*; *see also Perry*, 591 F.3d at 1165 n.12 (privilege protects internal communications on formulation of strategy and messages of group seeking voter approval of California constitutional amendment banning gay marriage).

The same analysis applies here. Tesla seeks to prove that Michigan's dealer-franchise law violates its constitutional rights by delving into the genesis of a 2014 amendment that added the word "its" to the statute. Leaving aside that the addition is immaterial, since the statute even *pre-amendment* required manufacturers to sell through franchised dealers, no responsive information any Dealer has can possibly shed light on that issue. As in *Jones II*, the statute's constitutionality turns on its text, drafting and legislative history, and other commonly accepted indicia of statutory meaning. The motives or opinions *even of the lawmakers who passed the 2014 amendment* are of

minimal relevance,[3] and to the extent they are, they should be sought directly from them. The motives or opinions of those who advanced (or opposed) the legislation are of no moment whatsoever. With its subpoena, Tesla simply seeks to chill the ability of the Dealers and their statewide trade group to associate with one another to participate in the political process.

Tesla may cite *Wal-Mart Stores, Inc. v. Texas Alcoholic Bev. Comm'n*, 2016 WL 5922315 (W.D. Tex. Oct. 11, 2016), involving a challenge to Texas's law banning corporations from holding liquor licenses. Enforcing Wal-Mart's discovery requests seeking statements made by intervenor Texas Package Store Association (TPSA) and others directly to lawmakers during debate over the statute, the court dismissed *Jones II* as an "outlier." But Wal-Mart sought "lobbying conversations," i.e. discussions *directly with lawmakers*. *Id.* at **4-6. Further, the retailers made no evidentiary showing that disclosure would chill their associational rights, or subject them to economic oppression. *Id.* at *7. Here, in contrast, there are no "lobbying statements," and the Dealers have made the precise evidentiary showing of a chilling impact the Florida dealers made in *Jones II*, and which the TPSA failed to make.[4]

In trying to force disclosure of associational activities, Tesla follows in dubious footsteps. Alabama during its "massive resistance" era was not allowed to pry such information from the NAACP, 357 U.S. 449, and foes of California's Proposition 8 were blocked from their campaign

[3] Because "dozens if not hundreds of legislators have their own subjective views on the minutiae of bills they are voting on – or perhaps no views at all because they are wholly unaware of the minutiae," the notion of collective intent is "pure fiction." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul, MN: Thomson/West, 2012), p 392 (citations omitted).

[4] Tesla also may argue that the material can be designated to bar its dissemination beyond counsel. Leaving aside whether the Stipulated Protective Order's terms will actually accomplish that, such measures are insufficient: it is not the *unlimited* nature of disclosure that chills willingness to participate in political activities, but rather the fact of *any* disclosure. *Perry*, 591 F.3d at 1160 n.6 (citation omitted) (emphasis in original).

of intimidation against those who sought to put it on the ballot, *Perry*, 591 F.3d 1147 – and in those cases, the information was sought from a party to litigation. Tesla's attempt to chill non-parties who support the democratically enacted law it wants to ignore should likewise be rejected.

B. Nos. 1-3 and 6-9 also impose an undue burden by seeking information clearly irrelevant to any claim or defense.

A subpoena issuer "must take reasonable steps to avoid imposing undue burden or expense" on its recipient, and the Court "*must* enforce this duty and impose an appropriate sanction on a party who fails to comply." *Aslani v. Sparrow Health Sys.*, 2009 WL 5892914, * 2 (W.D. Mich. Nov. 30, 2009), *quoting* FRCP 45(c)(1) (court's emphasis; internal punctuation omitted).

A subpoena "may be quashed if it calls for clearly irrelevant matter." Wright & Miller, *Federal Practice & Procedure*, § 2459; *see also S.E.C. v. Fuhlendorf*, 2010 WL 2159361 (W.D. Wash. 2010) (production of irrelevant documents would impose an undue burden); *Zorn v. Principal Life Ins. Co.*, 2010 WL 3282982 (S.D. Ga. 2010) (relevance is implicitly a ground for quashing subpoena). As discussed above, Nos. 1-3 and 6-9, by targeting the Dealers' political activities, are completely irrelevant to Tesla's claims that Michigan's Act is unconstitutional.

C. No. 9 also seeks information available from a party

A subpoena seeking items that could be obtained from a party imposes an undue burden and should be quashed. *Xcaliber Int'l Ltd., LLC v. Ieyoub*, 2006 WL 3412265 (E.D. La. Nov. 27, 2006); *Travelers Indem. Co. v. Met. Life Ins. Co.*, 228 F.R.D. 111, 114 (D. Conn. 2005). No. 9 seeks information on "all financial contributions" by Dealers to any Michigan legislator or Gov. Snyder. Defendant Johnson by law maintains that information; Tesla should get it from her.

II. Request No. 2 in part seeks information protected by the attorney-client privilege.

No. 2 seeks "[a]ll documents concerning [this] litigation…" including "documents concerning the substance of any testimony you may provide…." To the extent that includes

documents between any Dealer and its counsel, it must be quashed. *Avis Rent A Car Sys., LLC v. Dayton*, 2013 WL 3778922, *10 (S.D. Ohio July 18, 2013), *citing* FRCP 45(c)(3)(A)(iii).

III. Request No. 10 is ambiguous, overly broad, and unduly burdensome twice over.

A request for irrelevant items imposes undue burden. *Fuhlendorf.* In commanding Dealers to produce "[a]ll documents concerning 'the role [independent car dealers] play in the relevant market and their local business community," Tesla seeks information that does nothing to establish any claim or defense. Moreover, it is overbroad and imposes an unreasonable burden, since it arguably would require photocopying and/or downloading every document the Dealers have. Rule 45 in no way imposes that burden on a non-party, and an overbroad subpoena will be quashed. *United Techs. Corp. v. Mazer*, 2007 WL 788877, *3 (S.D. Fla. Mar. 14, 2007) (request for "all documents relating to meetings of the Board of Directors" over six-year period was "so amorphous as to have no limiting principle").

IV. No. 19 seeks competitors' sensitive commercial information that also is irrelevant.

No. 19 seeks all documents concerning "existing profit margins on new car business." But courts will quash a subpoena for confidential material from a nonparty competitor. *DISH Network, L.L.C. v. WNET*, 2014 WL 1628132, *9 (D. Colo. Apr. 24, 2014), *citing United States v. Serta Assoc., Inc.*, 29 F.R.D. 136, 138 (N.D. Ill. 1961) and *Mycogen Plant Sci., Inc. v. Monsanto Co.*, 164 F.R.D. 623, 628 (E.D. Pa. 1996). The very point of Tesla's lawsuit is to allow it to sell cars in Michigan; it is improper for it to subpoena would-be competitors' most sensitive financial data.

No. 19 also imposes an undue burden by seeking clearly irrelevant information. *Fuhlendorf.*[5]

[5] At the parties' most recent phone conference to discuss the subpoena, Tesla was unable to articulate a theory of relevance for No. 19, and thus the Dealers are amending their March 8 Objections to add clear lack of relevancy.

CONCLUSION/RELIEF REQUESTED

For the above reasons, the Dealers ask this Court to quash Tesla's subpoenas as to Requests Nos. 1-3, 6-9, 10, and 19, and enter an appropriate protective order.

Respectfully submitted,

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Date: March 31, 2017

ADDENDUM A

AREAS OF DEALER TESTIMONY IDENTIFIED ON DEFENDANTS' RULE 26 DISCLOSURES

1) independent car dealers and the role they play in the relevant market and their local business community [and] longstanding customer relationships;

2) dealer contracts with manufacturers;

3) automobile manufacturers that have gone bankrupt or otherwise ceased operating [and] the continuance of support and service for customers' cars given the dealer's training, access to parts, and presence in the communities to be able to do so, including electric vehicles manufactured by a company that has ceased operations;

4) manufacturers that have tried and failed to operate dealerships;

5) titling issues for new and used vehicles;

6) financing and credit needs of various consumers, including consumers with bad credit or low incomes who need creative and flexible help with both financing and trade-in value, and the ability of independent dealers to provide less fortunate consumers with an array of options that manufacturer-owned dealers do not;

7) independent dealer and service and repair facilities' advocacy for their customers to foster long-term relationships, including interceding with manufacturers to cover out-of-warranty service and/or recalls, splitting the cost of such service with the manufacturer, or absorbing the entire cost itself;

8) existing profit margins on new-car business;

9) the ability of manufacturers to allocate and control product, factory parts, warranty repair work, reimbursement rates, etc. and the need for dealers to have access to inventory, parts, sufficient reimbursement rates, etc, and the ways that manufacturers could manipulate the availability of such product, parts, warrant reimbursement rates, etc. to the detriment of the viability of independent dealers and the maintenance of continued competition in the market place. [Defendants' Rule 26 Disclosures, pp. 2-3].

ADDENDUM B – SUBPOENA REQUEST NOS. IN DISPUTE

1. All documents concerning Tesla.

2. All documents concerning the above-captioned litigation, including but not limited to documents provided to You by or on behalf of the defendants or their attorneys, documents You provided to the defendants or their attorneys, and documents concerning the substance of any testimony you may provide in connection with this action.

3. All documents concerning House Bill 5606 (Substitute S-1 as reported by the Committee of the Whole), introduced on or around October 1, 2014.

* * *

6. All documents concerning efforts to change any laws concerning the sale in Michigan of new or used motor vehicles by a motor-vehicle manufacturer.

7. All documents sent to or received from [MADA], any state or national dealers association, or any of their members concerning any of the following topics: Tesla; the prohibition in Michigan (or any other state) against vehicle sales and/or service by a motor vehicle manufacturer; Michigan House Bill 5606 (Substitute S-1 as reported by the Committee of the Whole) that was introduced on or around October 1, 2014; or the actual or potential operation of a motor vehicle dealership by a motor vehicle manufacturer.

8. All documents concerning efforts to change any laws concerning the service in Michigan of motor vehicles by a motor-vehicle manufacturer.

9. Documents sufficient to show all financial contributions made by You to any Michigan legislator or other Michigan elected official, including but not limited to Senator Joe Hune and Governor Rick Snyder.

10. All documents concerning "the role [independent car dealers] play in the relevant market and their local business community."

* * *

19. All documents concerning "existing profit margins on new car business."

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

/s Michelle Musial
Michelle Musial

Dated: March 31, 2017