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13 America, Inc.

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 KIA Motors America, Inc.

17 *Plaintiff,*

18 v.

19 BNSF Railway Company, CSX
20 Transportation, Inc., Norfolk Southern
21 Railway Company, and Union Pacific
22 Railroad Company,

23 *Defendants.*

Case No. 8:19-cv-01881-JLS-KES

[Discovery Document: Referred to
Magistrate Judge Karen E. Scott]

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

District Judge; Hon. Josephine L. Staton
Magistrate Judge: Hon. Karen E. Scott

24 **1. A. PURPOSES AND LIMITATIONS**

25 Pursuant to Fed. R. Civ. P. 26(c), Plaintiff KIA Motors America, Inc.
26 (“Plaintiff”) and Defendants BNSF Railway Company, CSX Transportation, Inc.,
27 Norfolk Southern Railway Company, and Union Pacific Railroad Company
28 (“Defendants,” and with Plaintiff, the “Parties”) hereby stipulate to this Protective
Order.

The purpose of the Protective Order is to govern the pretrial disclosure and
use by the parties of all documents, electronically stored information, testimony, and
other information exchanged by the Parties. The Parties have agreed to the
Protective Order. The substance of this Protective Order is identical in all material

1 respects to the Protective Order recently entered in Multidistrict Litigation No.
2 1869, to which this action has been noticed as a potential tag-along action.

3 The Parties further acknowledge, as set forth in Paragraph 11 below, that this
4 stipulated Protective Order does not entitle them to file confidential information
5 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
6 and the standards that will be applied when a party seeks permission from the court
7 to file material under seal.

8 **B. GOOD CAUSE STATEMENT**

9 The Parties believe that there is good cause for the designations Protective
10 Order. The “Confidential” designation is necessary to protect from public
11 disclosure information that is a trade secret, or other confidential research,
12 development, or financial information that is commercially sensitive, and personal
13 information that is protected from disclosure by statute, regulation, or otherwise is
14 entitled to protection from public disclosure. Further, the “Highly Confidential –
15 Attorneys’ Eyes Only” designation is reserved for materials containing rate or cost
16 data or other competitively sensitive information, the disclosure of which to another
17 Party or non-party would create a substantial risk of causing the Producing Party to
18 suffer a significant competitive or commercial disadvantage.

19 **PROTECTIVE ORDER**

20 Pursuant to Fed. R. Civ. P. 26(c), the following provisions shall govern the
21 pretrial disclosure and use by-the parties of all documents, electronically stored
22 information (“ESI”), testimony, and other information given during the course of
23 discovery.

24 **1. DEFINITIONS**

25 1.1 Party: any named party to this action (the “Action”), including
26 all of each named party’s officers, directors, employees, consultants, retained
27 experts, and outside counsel (and their support staff).
28

1 1.2 Disclosure or Discovery Material: all documents, items, or other
2 information, regardless of the medium or manner generated, stored, or maintained
3 (including, among other things, testimony, transcripts, or tangible things) that are
4 produced or generated in disclosures or responses to discovery in this matter.

5 1.3 “Confidential” Information or Items: information (regardless of
6 how generated, stored or maintained), testimony or tangible things obtained during
7 discovery in the Action that reveal a trade secret, or other confidential research,
8 development, or financial information that is commercially sensitive, or that
9 otherwise is entitled to protective treatment under Fed. R. Civ. P. 26(c), and
10 personal information that is protected from disclosure by statute, regulation, or
11 otherwise is entitled to protection from public disclosure.

12 1.4 “Highly Confidential – Attorneys’ Eyes Only” Information Or
13 Items: “Confidential” Information or Items, such as materials containing rate or
14 cost data or other competitively sensitive information, the disclosure of which to
15 another Party or non-party would create a substantial risk of causing the Producing
16 Party to suffer a significant competitive or commercial disadvantage.

17 1.5 Producing Party: a Party or non-party that produces Disclosure
18 or Discovery Material in the Action.

19 1.6 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party in the Action.

21 1.7 Designating Party: a Party or non-party that designates
22 Disclosure or Discovery Material as “Confidential” or “Highly Confidential —
23 Attorneys’ Eyes Only.”

24 1.8 Protected Material: any Disclosure or Discovery Material that is
25 designated as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

26 1.9 Outside Counsel: attorneys, paralegals and other support
27 personnel who are not employees of a Party, but who are retained to represent or
28 advise a Party in the Action.

1 1.10 In House Counsel: attorneys, paralegals and other legal
2 department personnel who are employees of a Party, to whom disclosure of
3 Disclosure or Discovery Material is reasonably necessary for the Action.

4 1.11 Counsel (without qualifier): Outside Counsel and In House
5 Counsel (as well as their support staffs).

6 1.12 Principal: an owner, officer, or executive of any plaintiff named
7 in the lawsuits consolidated in the Action whose identity as an owner, officer, or
8 executive of that plaintiff has been disclosed to the Parties.

9 1.13 Expert: a person, who is not an owner, director, officer or
10 employee of a Party, who has specialized knowledge or experience in a matter
11 pertinent to the Action, including his or her employees and support personnel, who
12 has been retained by a Party or its Counsel to serve as an expert witness or as a
13 consultant in the Action. This definition includes without limitation professional
14 jury or trial consultants retained in connection with the Action.

15 1.14 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
17 demonstrations; organizing, storing, retrieving data in any form or medium) and
18 their employees and subcontractors.

19 2. USE OF DISCLOSURE OR DISCOVERY MATERIAL. Subject to
20 provisions of Paragraphs 13 and 15, no Disclosure or Discovery Material may be
21 used by the Receiving Party for any reason other than the prosecution or defense of
22 claims in, or the settlement of, the Action—and subject to any other applicable
23 limits on discovery imposed by court rules, the Federal Rules of Civil Procedure, or
24 otherwise.

25 3. DESIGNATING MATERIAL. The Producing Party may designate
26 documents, ESI or other materials “Confidential” or “Highly Confidential –
27 Attorneys’ Eyes Only,” as specified below. The Producing Party shall apply a
28 confidentiality designation only when that party has a reasonable, good faith belief

1 that the information so designated constitutes “Confidential” or “Highly
2 Confidential — Attorneys’ Eyes Only” material. The protections conferred by this
3 Order cover not only the protected information itself, but also any information
4 copied or extracted therefrom, as well as copies, excerpts, summaries, or
5 compilations thereof, plus testimony, conversations, or presentations by Parties or
6 Counsel to or in court or in other settings that might disclose Protected Material to
7 persons not authorized to receive such material.

8 3.1 Manner and Timing of Designations. Except as otherwise
9 provided in this Order, or as otherwise stipulated or ordered, Disclosure or
10 Discovery Material must be designated for protection under this Order by clearly
11 designating the material before it is disclosed or produced.

12 3.2 The designation of materials as “Confidential” or “Highly
13 Confidential – Attorneys’ Eyes Only” shall be made as follows:

14 (a) for produced documents, by imprinting the word(s)
15 “Confidential” or “Highly Confidential — Attorneys’ Eyes Only” on the face of
16 each page of a document so designated or in a similarly conspicuous location for
17 non-document materials. Use of the legend “Highly Confidential” shall be
18 construed as and shall have the same meaning and effect of use as the legend
19 “Highly Confidential – Attorneys’ Eyes Only”;

20 (b) for written discovery responses, by imprinting the word(s)
21 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” next to or above
22 any response to a discovery request or on each page of a response;

23 (c) for depositions, by indicating on the record at the
24 deposition which portions of the transcript and/or responses should be treated as
25 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.” Alternatively,
26 within thirty (30) days of receipt of a transcript or recording of a deposition or other
27 pretrial or trial proceeding, the offering or sponsoring Party or non-party may
28 designate such transcript or recording or any portion thereof as “Confidential” or

1 “Highly Confidential – Attorneys’ Eyes Only” by notifying all Parties, in writing, of
2 the specific pages and lines of the transcript or recording that should be treated as
3 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.” All transcripts or
4 recordings of depositions shall be treated as “Highly Confidential – Attorneys’ Eyes
5 Only” for thirty (30) days after receipt of the transcript or recording, or until written
6 notice of a designation is received, whichever occurs first. Transcript pages
7 containing Protected Material must be separately bound by the court reporter, who
8 must affix to the top of each such page the legend “Confidential” or “Highly
9 Confidential – Attorneys’ Eyes Only,” as instructed by the Party or non-party
10 offering or sponsoring the witness or presenting the testimony;

11 (d) for ESI, either by imprinting the word “Confidential” or
12 “Highly Confidential — Attorneys’ Eyes Only” on any disk or storage medium, or
13 on the face of each page of a document so designated, or by designating the
14 production as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in
15 the transmittal cover letter.

16 3.3 Upward Designation of Information or Items Produced by Other
17 Parties or Non-Parties. Subject to the standards of paragraph 3, a Party may upward
18 designate (i.e., change any Disclosure or Discovery Material produced without a
19 designation to a designation of “Confidential” or “Highly Confidential – Attorneys’
20 Eyes Only” or designate any Disclosure or Discovery Material produced as
21 “Confidential” to a designation of “Highly Confidential –Attorneys’ Eyes Only”)
22 any Disclosure or Discovery Material produced by any other Party or non-party,
23 provided that said Disclosure or Discovery Material contains the upward designating
24 Party’s own trade secrets or other confidential research, development, financial,
25 personal, or commercially sensitive information, or otherwise is entitled to
26 protective treatment under Fed. R. Civ. P. 26(c).

27 Upward designation shall be accomplished by providing written notice to all
28 Parties identifying (by Bates number or other individually identifiable information)

1 the Disclosure or Discovery Material to be re-designated within thirty (30) days of
2 production by the Producing Party. Failure to upward designate within thirty (30)
3 days of production, alone, will not prevent a Party from obtaining the agreement of
4 all Parties to upward designate certain Disclosure or Discovery Material or from
5 moving the Court for such relief. Any Party may object to the upward designation
6 of Disclosure or Discovery Material pursuant to the procedures set forth in
7 paragraph 6 regarding challenging designations.

8 4. ACCESS TO AND USE OF PROTECTED MATERIAL

9 4.1 Disclosure of Confidential information. Unless otherwise
10 ordered by the Court or permitted in writing by the Designating Party, a Receiving
11 Party may disclose any information or item designated as “Confidential” only:

12 (a) to the Receiving Party’s Outside Counsel to whom it is
13 reasonably necessary to disclose the information for the Action;

14 (b) to the Receiving Party’s In House Counsel to whom it is
15 reasonably necessary to disclose the information for the Action;

16 (c) to no more than two Principals of the Receiving Party to
17 whom it is reasonably necessary, to disclose the information for the Action and who
18 have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); except
19 that, upon identification of that Principal, any Designating Party shall have five (5)
20 days to petition the Court to challenge the Principal’s status as a Principal to whom
21 Confidential information may be disclosed.. Pending a decision whether
22 Confidential Information may be disclosed to such a Principal, no Confidential
23 Information shall be disclosed to that Principal without the consent of the
24 Designating Party.

25 (d) to any Expert to whom disclosure is reasonably necessary
26 for the Action who has signed the “Agreement to Be Bound by Protective Order”
27 (Exhibit A);
28

1 (e) to the Court and its personnel in the Action, including any
2 relevant appellate court, in the event that any portion of the Action is appealed;

3 (f) to court reporters, their staffs, and professional vendors to
4 whom disclosure is reasonably necessary for the Action;

5 (g) to any person who Counsel have a good faith basis to
6 believe authored or previously received the material;

7 (h) to any person who is an employee of the Designating
8 Party, or a former employee of the Designating Party (if they were employed by the
9 Designating Party when the Confidential Information was created); and

10 (i) during the conduct of their depositions, to witnesses in the
11 Action for whom Counsel has a good-faith basis to believe disclosure is reasonably
12 necessary and who have signed the “Agreement to Be Bound by Protective Order”
13 (Exhibit A). If in the future any Party deems in good faith that this subsection is
14 unworkable, that Party can initiate its unilateral right to demand renegotiation of this
15 subsection and submit an amendment to the Court for approval. The portions of the
16 deposition transcript pertaining to such Confidential information shall automatically
17 be deemed designated as “Confidential” (and any such Confidential information
18 marked as an exhibit during a deposition shall continue to be designated as
19 “Confidential”).

20 4.2 Disclosure of “Highly Confidential – Attorneys’ Eves Only”
21 Information. Unless otherwise ordered by the Court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or items
23 designated “Highly Confidential — Attorneys’ Eyes Only” only:

24 (a) to the Receiving Party’s Outside Counsel to whom it is
25 reasonably necessary to disclose the information for the Action;

26 (b) to no more than one In House Counsel for a Receiving
27 Party, but only to the extent that the information or item designated “Highly
28 Confidential — Attorneys’ Eyes Only” was produced by a Party in the Action and:

1 (i) was sent or received by a current or former
2 employee of the Receiving Party; or
3 (ii) is transaction data for transactions of the Party that
4 In House Counsel represents, including summaries thereof.
5 (c) to any Expert to whom disclosure is reasonably necessary
6 for the Action who has signed the “Agreement to Be Bound by Protective Order”
7 (Exhibit A);
8 (d) to the Court and its personnel in the Action, including any
9 relevant appellate court, in the event that any portion of the Action is appealed;
10 (e) to court reporters, their staffs, and professional vendors to
11 whom disclosure is reasonably necessary for the Action;
12 (f) to any person who Counsel have a good faith basis to
13 believe authored or previously received the material;
14 (g) to any person who is an employee of the Designating
15 Party, or a former employee of the Designating Party (if they were employed by the
16 Designating Party when the “Highly Confidential – Attorneys’ Eyes Only”
17 Information was created); and
18 (h) during the conduct of their depositions, to witnesses in the
19 Action for whom Counsel has a good-faith basis to believe disclosure is reasonably
20 necessary and who have signed the “Agreement to Be Bound by Protective Order”
21 (Exhibit A). Any Receiving Party intending to use “Highly Confidential –
22 Attorneys’ Eyes Only” Information at the deposition of an individual who is not
23 otherwise listed in subsections 4.2(a)-(g) of this paragraph shall provide written
24 notice to the Designating Party identifying (by Bates number or other individually
25 identifiable information) the “Highly Confidential – Attorneys’ Eyes Only”
26 Information no later than two (2) business day before the intended disclosure. After
27 receiving the notice, the Designating Party shall not disclose the notice or the
28 information proposed to be disclosed to any other Party or non-party (including the

1 witness to whom the disclosure is proposed). Should the parties, after meeting and
2 conferring, disagree that the proposed disclosure is reasonably necessary, the
3 “Highly Confidential – Attorneys’ Eyes Only” Information shall not be disclosed to
4 the witness unless and until the Court orders such disclosure. If in the future any
5 Party deems in good faith that this subsection is unworkable, that Party can initiate
6 its unilateral right to demand renegotiation of this subsection and submit an
7 amendment to the Court for approval. The portions of the deposition transcript
8 pertaining to such “Highly Confidential – Attorneys’ Eyes Only” information shall
9 automatically be deemed designated as “Highly Confidential – Attorneys’ Eyes
10 Only” (and any such “Highly Confidential – Attorneys’ Eyes Only” information
11 marked as an exhibit during a deposition shall continue to be designated as “Highly
12 Confidential – Attorneys’ Eyes Only”).

13 4.3 Depositions

14 (a) A Receiving Party’s In House Counsel will be permitted to
15 attend any deposition of a former or current employee of the Receiving Party
16 represented by that In House Counsel but will be required to leave the deposition
17 room if any “Highly Confidential – Attorneys’ Eyes Only” documents or
18 information is to be discussed, other than such “Highly Confidential – Attorneys’
19 Eyes Only” documents or information the Receiving Party’s In House Counsel
20 otherwise is permitted to receive pursuant to Paragraphs 4.1(b) and 4.2(b).

21 (b) A Receiving Party’s In House Counsel shall not be
22 provided access to portions of any deposition transcript discussing information or
23 items designated Highly Confidential – Attorneys’ Eyes Only, other than such
24 “Highly Confidential – Attorneys’ Eyes Only” documents or information the
25 Receiving Party’s In House Counsel otherwise is permitted to receive pursuant to
26 Paragraphs 4.1(b) and 4.2(b).

27 5. RESPONSIBILITY FOR COMPLIANCE. The Party’s Counsel who
28 discloses “Confidential” or “Highly Confidential- Attorneys’ Eyes Only”

1 information shall be responsible for assuring compliance with the terms of this
2 Order with respect to persons to whom such “Confidential” or “Highly Confidential-
3 Attorneys’ Eyes Only” information is disclosed, and shall obtain and retain the
4 original Acknowledgements executed by qualified recipients of “Confidential” or
5 “Highly Confidential – Attorneys’ Eyes Only” information (if such execution was
6 required by the terms of this Order). If it comes to a Party’s or non-party’s attention
7 that any materials that it designated for protection do not qualify for protection at
8 all, or do not qualify for the level of protection initially asserted, that Party or non-
9 party must promptly notify all other Parties that it is withdrawing the mistaken
10 designation.

11 6. CHALLENGES TO DESIGNATION. Entry of this Order shall be
12 without prejudice to any party’s motion for relief from or modification of the
13 provisions hereof or to any other motion relating to the production, exchange, or use
14 of any document or ESI, or other information in the course of the Actions. If a party
15 disagrees with a Producing Party’s designation of information as “Confidential” or
16 “Highly Confidential – Attorneys’ Eyes Only,” or disputes the limitations on access
17 to be accorded such information under this Order, the party contesting the
18 designation or restriction on access shall provide to the Producing Party written
19 notice of its disagreement and specifically identify the information or restriction on
20 access in dispute, in compliance with Local Rule 37-1. If, despite good faith effort,
21 the dispute cannot be resolved informally by the parties within ten (10) days of the
22 Producing Party’s receipt of the written notice, the party contesting the designation
23 or restriction on access may seek a determination from the Court with respect to the
24 propriety of the designation. The Producing Party shall then have five (5) days from
25 the filing of a motion contesting the designation or restriction on access to file an
26 opposition to such motion, following which the contesting party shall be afforded
27 three (3) days to file a reply memorandum. The “Confidential” or “Highly
28 Confidential- Attorneys’ Eyes Only” status of the challenged material shall be

1 maintained until the Court shall rule on the motion. While the challenging party
2 must initiate the motion before the Court, it is the burden of the party seeking
3 protection under this Order to demonstrate that the “Confidential” or “Highly
4 Confidential – Attorneys’ Eyes Only” designation is appropriate. A challenge under
5 this paragraph shall not affect a party’s right of access to “Confidential” or “Highly
6 Confidential – Attorneys’ Eyes Only” material or to disclose information as
7 provided for in this Order. A party does not waive its right to challenge a
8 confidentiality designation by not electing to mount a challenge promptly after the
9 original designation is made.

10 7. INADVERTENT FAILURE TO IDENTIFY MATERIALS AS
11 “CONFIDENTIAL” OR “HIGHLY-CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY”. Any party who inadvertently fails to identify materials as “Confidential”
13 or “Highly Confidential – Attorneys’ Eyes Only” shall have ten (10) days from the
14 discovery of its oversight to correct its failure. Such failure shall be corrected by
15 providing to the Receiving Party written notice of the error and substituted copies of
16 the inadvertently produced Disclosure or Discovery Material. Any party receiving
17 such inadvertently unmarked Disclosure or Discovery Material shall make
18 reasonable efforts to retrieve the Disclosure or Discovery Material distributed to
19 persons not entitled to receive Disclosure or Discovery Material with the corrected
20 designation. The right to designate as “Confidential” or “Highly Confidential –
21 Attorneys’ Eyes Only” documents that were inadvertently not identified as such
22 when produced shall be waived six months after production of the materials,
23 provided however that there shall be no waiver where there is good cause shown for
24 the failure to identify the mistaken designation.

25 8. DISCLOSURE OF DISCLOSURE OR DISCOVERY MATERIAL
26 PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR WORK
27 PRODUCT DOCTRINE. Consistent with Federal Rule of Evidence 502, if a Party
28 or non-party notifies my other Party that it disclosed Disclosure or Discovery

1 Material that is protected from disclosure under the attorney-client privilege, work
2 product doctrine, and/or any other applicable privilege or immunity, or the
3 Receiving Party discovers such disclosure, the disclosure shall not be deemed a
4 waiver in whole or in part of the applicable privilege or protection, either as to the
5 specific material or information disclosed or as to any other material or information
6 relating thereto or on the same or related subject matter. If a Party or nonparty
7 requests the return of such Disclosure or Discovery Material pursuant to this
8 paragraph or if the Receiving Party recognizes that it has received Disclosure or
9 Discovery Material that, based upon a reasonable interpretation, is subject to any of
10 the privileges discussed in this paragraph, the Receiving Party shall destroy or return
11 all copies of such Disclosure or Discovery Material to the Producing Party within
12 five (5) business days of receipt of such notice or discovery, shall provide a
13 certification of Counsel that all such disclosed Disclosure or Discovery Material has
14 been returned or destroyed, and shall not use such items for any purpose unless and
15 until further order of the Court. Any party providing notice to another that it has
16 disclosed Disclosure or Discovery Material that is protected from disclosure under
17 any of the privileges discussed in this paragraph must include, to the extent not
18 already provided, within or simultaneously with such notice sufficient information
19 for the Receiving Party to evaluate the privilege claim(s) asserted, per Rule 26(b)(5)
20 of the Federal Rules of Civil Procedure. The Receiving Party may move the Court
21 for an order allowing use of the Disclosure or Discovery Material in the Action, but
22 further provided that the Receiving Party may not argue that the disclosure to the
23 Receiving Party waived the privilege or immunity.

24 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED
25 PRODUCED IN OTHER LITIGATION. If a Receiving Party is served with a
26 subpoena or an order issued in separate litigation that would compel disclosure of
27 any information or items designated in the Action as “Confidential” or “Highly
28 Confidential – Attorneys’ Eyes Only,” the Receiving Party must so notify the

1 Designating Party, in writing (by email or fax, if possible) immediately and in no
2 event more than five (5) court days after receiving the subpoena or order. Such
3 notification must include a copy of the subpoena or court order.

4 9.1 The Receiving Party also must immediately inform in writing the party
5 who caused the subpoena or order to issue in the other litigation that some or all the
6 material covered by the subpoena or order is the subject of this Order. In addition
7 the Receiving Party must deliver a copy of this Order promptly to the party in the
8 other action that caused the subpoena or order to issue.

9 9.2 The purpose of imposing these duties is to alert the interested parties to
10 the existence of this Order and to afford the Designating Party in this case an
11 opportunity to protect its confidentiality interest in the court from which the
12 subpoena or order is issued. The Designating Party shall bear the burden and the
13 expense of seeking protection in that court of its Protected Material, and nothing in
14 these provisions should be construed as authorizing or encouraging a Receiving
15 Party in the Action to disobey a lawful directive from another court.

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If
17 a Receiving Party learns that, by inadvertence, it has disclosed Protected Material to
18 any person or in any circumstance not authorized under this Order, the Receiving
19 Party must immediately (a) notify in writing the Designating Party of the
20 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
21 Protected Material, (c) inform the person or persons to whom unauthorized
22 disclosures were made of all the terms of this Order, and (d) request such person or
23 persons to execute the Agreement to Be Bound by Protective Order, that is attached
24 hereto as Exhibit A.

25 11. FILING CONFIDENTIAL MATERIAL WITH THE COURT. If a
26 Party files a document containing “Confidential” or “Highly Confidential –
27 Attorneys’ Eyes Only” information with the Court, it shall do so in accordance with
28 Civil Local Rule 79-5.

1 12. INTRODUCING CONFIDENTIAL INFORMATION IN COURT
2 PROCEEDINGS. A Party who seeks to introduce “Confidential” or “Highly
3 Confidential – Attorneys’ Eyes Only” information at a hearing, pretrial or other
4 proceeding shall advise the Court at the time of introduction that the information
5 sought to be introduced is protected. If the party who designated the information as
6 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” requests the
7 protection be continued, the Court will review the information to determine if the
8 information is entitled to continued protection. Prior to disclosure of “Confidential”
9 or “Highly Confidential – Attorneys’ Eyes Only” information at a hearing, the
10 Producing Party may seek further protections against public disclosure from the
11 Court.

12 13. USE AND DISCLOSURE OF INDEPENDENTLY OBTAINED
13 INFORMATION. Nothing herein shall impose any restriction on the use or
14 disclosure by a Party or its agent of its own information, or of publicly available
15 information, or of information lawfully available to that Party, or of information that
16 lawfully came into the possession of the Party independent of any disclosure of
17 Disclosure or Discovery Material in the Action.

18 14. ADVICE TO CLIENT. Nothing in this Order will bar or otherwise
19 restrict Counsel from rendering advice to his or her client with respect to this matter
20 or from generally referring to or relying upon “Confidential” or “Highly
21 Confidential – Attorneys’ Eyes Only” material in rendering such advice.

22 15. PRE-TRIAL APPLICATION ONLY. This Order shall apply to pre-
23 trial proceedings in the Action and shall have no application at trial. The Parties
24 agree to confer in good faith on a protective order to govern during trial in the
25 Action. This Order, however, shall remain in effect until such time as an order to
26 govern trial proceedings is entered. Should the Producing Party believe any
27 document warrants protection beyond that described above, the parties shall confer
28 with respect to the treatment of that specific document.

1 16. DURATION OF ORDER/RETURN OF CONFIDENTIAL
2 INFORMATION. All provisions of this Order restricting the use of “Confidential”
3 or “Highly Confidential – Attorneys’ Eyes Only” information shall continue to be
4 binding after the conclusion of the Action, unless otherwise agreed or ordered by the
5 Court. Within sixty (60) days of the conclusion of the Action (whether by entry of a
6 final order of dismissal, judgment, settlement, or disposition on appeal, or
7 otherwise), a Producing Party may request that a person in the possession of the
8 Producing Party’s “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”
9 information return or destroy that information (other than Outside Counsel’s copies
10 of documents filed with the Court or Outside Counsel’s file copies of documents
11 attached to or information incorporated in attorney work product prepared in
12 connection with the Action). If the Receiving Party elects to destroy the
13 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information, it
14 shall certify within sixty (60) days that such information has been destroyed. To the
15 extent any person retains copies of the “Confidential” or “Highly Confidential –
16 Attorneys’ Eyes Only” information pursuant to the terms of this paragraph, such
17 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information shall
18 continue to be subject to the protections provided by this Order.

19 17. RESERVATION OF RIGHTS. Nothing contained in this Order or any
20 designation of confidentiality hereunder, or any failure to make such designation,
21 shall be used or characterized by any party as an admission by a Party or a Party
22 opponent. Nothing in this Order shall be deemed an admission that any particular
23 information designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes
24 Only” is entitled to protection under the Order, Fed. R. Civ. P. 26(c), or any other
25 law. Nothing in this Order shall be construed as granting any person or entity a
26 right to receive, specific “Confidential” or “Highly Confidential – Attorneys’ Eyes
27 Only” information where a court has entered an order precluding that person or
28 entity from obtaining access to that information. The Parties specifically reserve the

1 right to challenge the designation of any particular information as “Confidential” or
2 “Highly Confidential – Attorneys’ Eyes Only,” and agree that by stipulating to entry
3 of this Order, no Party waives any right it otherwise would have to object to
4 disclosing or producing any information or item on any ground not addressed in this
5 Order. Similarly, no Party waives any right to object on any ground to introduction
6 or use as evidence of any of the Disclosure or Discovery Material covered by this
7 Order. The Parties reserve the right to request modifications of this protective order
8 as reasonably necessary.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

10
11 Dated: December 12, 2019

QUINN EMANUEL URQUHART &
SULLIVAN LLP

12 By: /s/ Viola Trebicka

13 Duane Lyons

14 Viola Trebicka

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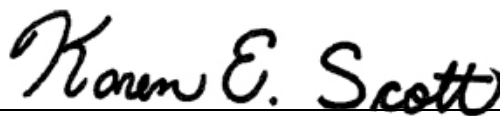
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[PROPOSED] ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: December 16, 2019



Hon. Karen E. Scott
United States Magistrate Judge

1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

3 I, _____, of

4 _____, declare under penalty of perjury that I
5 have read in its entirety and understand the Protective Order entered by the United
6 States District Court for the Central District of California in the case captioned *KIA*
7 *Motors America, Inc. v. BNSF Railway Company, CSX Transportation, Inc., Norfolk*
8 *Southern Railway Company, and Union Pacific Railroad Company*, Civil Action
9 No. 8:19-cv-01881-JLS-KES (C.D. Cal. Sept. 30, 2019) (the “Action”).

10 I agree to comply with and to be bound by all the terms of this Protective
11 Order, and I understand and acknowledge that failure to comply could expose me to
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will
13 not disclose in any manner any information or item that is subject to this Protective
14 Order to any person or entity except in strict compliance with the provisions of this
15 Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing the terms of this
18 Protective Order, even if such enforcement proceedings occur after termination of
19 the Action.

20 Date: _____

21 City and State: _____

22 Printed Name: _____

23 Signature: _____

1 **E-SIGNATURE AFFIRMATION**

2 Pursuant to the United States District Court, Central District of California Local
3 Rule 5-4.3.4, I attest that all other signatories listed, and on whose behalf the filing
4 is submitted, concur in the filing's content and have authorized the filing.

5 Dated: December 12, 2019

QUINN EMANUEL URQUHART &
SULLIVAN LLP

6 By: /s/ Viola Trebicka

7 Duane Lyons

8 Viola Trebicka

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retrieval.

Viola Trebicka