

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

No. 3:17-md-02777-EMC

**AMENDED PRETRIAL ORDER NO. 12:  
STIPULATED DISCOVERY  
SCHEDULE (modified-p. 4, paragraph 3)**

The Honorable Edward M. Chen

**THIS MATTER** having come before the Court on Plaintiffs’ application, and in accordance with the Court’s direction during Case Management Conferences that the parties should work cooperatively to advance and efficiently manage this multidistrict litigation (“MDL”), the Department of Justice, on behalf of the United States Environmental Protection Agency (“United States”), the Plaintiffs’ Steering Committee, on behalf of the consumer and reseller dealer class plaintiffs (“Class Plaintiffs”) (together with the United States, “Plaintiffs”), and counsel for Defendants FCA US LLC, Fiat Chrysler Automobiles N.V., V.M. Motori S.p.A., V.M. North America, Inc., and Robert Bosch LLC (collectively, “Defendants”) (jointly, “the Parties”), have met and conferred on how best to achieve that goal. As ordered in Pretrial Order No. 9, it is hereby further ORDERED as follows:

Date	Event
September 22, 2017	The Plaintiffs' Steering Committee shall notify Defendants of the states in which additional planned class representatives purchased or leased their vehicles.
September 29, 2017	The Plaintiffs' Steering Committee will produce Rule 26 initial disclosures consisting of a completed Plaintiff Fact Sheet for each Class Plaintiff named in the MCC along with a single supplemental global disclosure. Taken together, the Plaintiff Fact Sheets and the supplemental global disclosure shall include all of the information required by Federal Rule of Civil Procedure 26(a)(1).
September 29, 2017	Defendants and the United States will provide Rule 26 initial disclosures.
September 29, 2017	Date by which the Parties shall meet and confer about proposed pre-trial order(s) regarding expert and deposition discovery.
October 6, 2017	Defendants shall answer, move to dismiss, or otherwise respond to the MCC and the United States' complaint.
October 27, 2017	The parties will submit a joint proposed pre-trial order(s) regarding expert and deposition discovery.
October 31, 2017	Plaintiffs may amend the complaints, add parties, and/or add claims.
<b>November 6, 2017</b>	Plaintiffs will file any response in opposition to any motion to dismiss made by Defendants.
<b>November 28, 2017</b>	Defendants will file any reply(ies) in support of their motions to dismiss.
<b>December 19 2017(11am)</b>	<b>Hearing on motions to dismiss</b>
January 31, 2018	The Class Plaintiffs and Defendants shall substantially complete their productions of non-privileged, responsive documents related to class certification.
March 1, 2018	Class Plaintiffs shall disclose experts on which they shall rely for their class certification motion.
March 15, 2018	Class Plaintiffs shall file their motion for class certification.
April 6, 2018	The Parties shall endeavor to substantially complete their productions of non-privileged, responsive documents related to the United States' claims, the Class Plaintiffs' claims, and Defendants' defenses.
April 12, 2018	Defendants shall disclose experts on which they shall rely for their opposition to the class certification motion.
April 26, 2018	Defendants shall file their brief(s) in opposition to the Class Plaintiffs' motion for class certification.
May 24, 2018	Class Plaintiffs shall file a reply brief in support of its motion for class certification.
June 14, 2018	Class certification hearing

1  
2           **1.       Cooperation**

3           i.       The Parties agree to work together to coordinate discovery to the  
4 maximum extent feasible to promote the efficient and speedy resolution of this MDL. Pursuant  
5 to Pretrial Order No. 9, discovery relating to the merits of the complaints and class certification  
6 shall proceed simultaneously.

7           ii.       Phasing of *U.S. v. FCA US LLC et al.*

8           The United States' case against the FCA Defendants should proceed through a multi-  
9 phased approach. Phase One will focus on the resolution of issues relating to the alleged  
10 liability of the Defendants, as well as any damages to Class Plaintiffs. Accordingly, this Order  
11 shall only apply to fact and expert discovery on all matters necessary to determine the liability  
12 of the Defendants, including fact and expert discovery relating to the Defendants' defenses, as  
13 well as fact and expert discovery on all matters necessary to determine damages to Class  
14 Plaintiffs.

15           If liability is established in Phase One, a schedule will be established for fact and expert  
16 discovery relating to issues to be determined in a subsequent trial phase in *U.S. v. FCA US LLC*  
17 *et al.*, including any assessment of civil penalties under the Clean Air Act and any appropriate  
18 injunctive relief. The United States and Defendants anticipate additional fact and expert  
19 discovery during this subsequent phase. However, while this Order establishes deadlines for  
20 completion of Phase One issues, it does not prohibit discovery into Phase Two issues where  
21 witnesses or documents have substantial overlap, and the parties shall undertake reasonable  
22 efforts to avoid the need to depose the same witness during Phase One and then again in Phase  
23 Two.

24           The discovery schedule set out above is posited on the assumption that the Parties will be  
25 ready to go trial on Phase One in early 2019.

26           **2.       Jurisdiction**

27           i.       Defendants do not waive and specifically preserve all jurisdictional  
28 challenges with respect to any particular action consolidated or coordinated within this MDL

1 and may either include such jurisdictional challenges in any motions to dismiss described in  
2 Paragraph 3 below or defer any such challenges until after any such action has been remanded  
3 to its respective transferor court following the conclusion of consolidated or coordinated pretrial  
4 proceedings in this MDL.

5  
6 **3. Responses to Complaints**

7 Subject to the provisions of Paragraph 2 of this order, Defendants shall answer, move to  
8 dismiss or otherwise respond to the MCC and the United States' complaint on or before  
9 **October 6, 2017**. See PTO 9, Docket No. 202, ¶ 2. Absent an Order of the Court, Plaintiffs  
10 shall file their responses in opposition to any such motions by **November 6, 2017**, and  
11 Defendants shall file their replies by **November 28, 2017**.

12 **4. Discovery**

13 A. *Service*. All discovery requests and written responses and objections may be  
14 served by email; for purposes of calculating the deadline to respond, email service will be  
15 treated the same as hand-delivery. Any discovery request, response to discovery, pleading or  
16 other document that is not required to be electronically filed with the Court shall be served on  
17 another party by email. Notwithstanding the foregoing, to the extent service by email is  
18 impractical, the Parties agree to serve the discovery request, response to discovery, pleading or  
19 other document by file-transfer-protocol (FTP) or overnight delivery. Defendants shall serve  
20 discovery requests and written responses and objections on Class Plaintiffs' Lead Counsel  
21 (including David Stelling of Lieff Cabraser, Heimann and Bernstein, LLP) and Government  
22 Coordinating Counsel, as identified in Pre-Trial Order No. 3. See Docket. No. 173 at § I, ¶ A.1.,  
23 and § II, ¶ 1. Plaintiffs shall serve discovery requests, plaintiff fact sheets, and other written  
24 discovery responses and objections on Robert J. Giuffra, Jr., William B. Monahan, and Darrell  
25 S. Cafasso of Sullivan & Cromwell LLP, and Matthew D. Slater and Carmine D. Boccuzzi, Jr.  
26 of Cleary Gottlieb Steen & Hamilton LLP (together, "Defense Counsel"). Each party shall  
27 provide copies of all discovery requests, responses, and objections to every other party.

28 B. *Rule 26 Initial Disclosures*. Defendants and the United States shall exchange

1 and produce Rule 26 initial disclosures to the other Parties on or before **September 29, 2017**.  
2 The Plaintiffs' Steering Committee will produce a completed Plaintiff Fact Sheet for each Class  
3 Plaintiff named in the MCC along with a single supplemental global disclosure by **September**  
4 **29, 2017**. Taken together, the Plaintiff Fact Sheets and the supplemental global disclosure shall  
5 include at least all of the information required by Rule 26(a)(1).

6 C. *Document Productions.* Following entry of this Order, a Protective Order  
7 concerning the treatment of confidential discovery information, and a protocol or protocols  
8 regarding the production of electronically stored information ("ESI") and hard-copy documents,  
9 the Parties shall produce documents on a rolling basis as they are located, copied, reviewed and  
10 numbered for production.

11 i. *Substantial Completion of Document Production related to Class*  
12 *Certification.* The Class Plaintiffs and Defendants shall endeavor to  
13 substantially complete their productions of non-privileged, responsive  
14 documents related to class certification by **January 31, 2018**. The Parties  
15 may apply (jointly or separately) for an extension of this deadline for good  
16 cause shown.

17 ii. *Substantial Completion of Document Production related to the United States'*  
18 *Claims, the Class Plaintiffs' Claims, and Defendants' Defenses.* The Parties  
19 shall endeavor to substantially complete their productions of non-privileged,  
20 responsive documents related to the United States' claims, the Class  
21 Plaintiffs' claims and the Defendants' defenses by **April 6, 2018**. The Parties  
22 may apply (jointly or separately) for an extension of this deadline for good  
23 cause shown.

24 iii. *Privilege Issues.* Within fourteen (14) days of the entry of this Order, Class  
25 Plaintiffs' Lead Counsel, Government Coordinating Counsel, and Defense  
26 Counsel shall meet and confer to discuss a protocol for asserting any  
27 privilege or right to confidentiality as a protection from the disclosure of  
28 otherwise discoverable information, including a plan for preservation or non-

1 waiver of any applicable privileges or rights to confidentiality, and a plan for  
2 the production of privilege logs. The Parties shall submit a joint proposed  
3 protocol on privilege issues within thirty days of the entry of this Order. If  
4 the Parties are unable to agree on the contents of such a protocol, then each  
5 side shall submit its own proposed order with a memorandum (not to exceed  
6 ten (10) pages) explaining why the Court should adopt that party's particular  
7 proposal. Although productions may occur before the entry of the order on  
8 privilege issues, they will be deemed to have been made under the terms of  
9 the later-entered privilege order.

10 D. *Written Discovery Requests.* Unless otherwise specified herein, written  
11 discovery requests, and responses and objections thereto, shall be made in accordance with the  
12 Federal Rules of Civil Procedure and the Local Rules of the U.S. District Court for the Northern  
13 District of California. Defendants may serve discovery requests on one another.

14 i. *Written Discovery Responses and Objections.* Except as otherwise set forth  
15 herein, written responses and objections to requests for the production of  
16 documents shall be due 45 days after service of the request, written responses  
17 and objections to interrogatories and requests for admission shall be due 60  
18 days after service of the request, and verifications of interrogatories shall be  
19 provided within 14 days after service of written responses and objections to  
20 those interrogatories.

21 ii. *Discovery of Defendants Interrogatories.* Unless otherwise agreed by the  
22 Parties, Class Plaintiffs' Lead Counsel may serve no more than fifty-five (55)  
23 interrogatories, including discrete subparts, on each Defendant. Unless  
24 otherwise agreed by the Parties, Government Coordinating Counsel may  
25 serve no more than twenty-five (25) interrogatories, including discrete  
26 subparts, on each Defendant named in the United States' complaint. Leave  
27 to serve additional interrogatories may be granted to the extent consistent  
28 with Rule 26(b)(1) and (2).

1           iii.    *Discovery of Plaintiffs:*

2                   1.    *Class Plaintiff Fact Sheets.* The Plaintiffs' Steering Committee will  
3                   produce Rule 26 initial disclosures consisting of a completed Plaintiff  
4                   Fact Sheet ("PFS") for each Class Plaintiff named in the MCC along  
5                   with a single supplemental global disclosure on or before **September**  
6                   **29, 2017**. Taken together, the Plaintiff Fact Sheets and the  
7                   supplemental global disclosure shall include at least all of the  
8                   information required by Rule 26(a)(1). All objections to the  
9                   admissibility of information contained in or provided with the PFS  
10                  are reserved and, therefore, no objections need be lodged in the  
11                  responses to the questions and requests contained in the PFS. The  
12                  PFS process is designed to streamline the production of relevant  
13                  information and documents, but that process in no way limits any  
14                  party from seeking additional information and documents from any  
15                  plaintiff that completes a PFS through other discovery requests under  
16                  the Federal Rules of Civil Procedure. The timing of requests and  
17                  responses to such requests shall mirror that in Paragraph 4.D(i) of this  
18                  Order and any limitations of such requests and responses shall be  
19                  governed by the Federal Rules of Civil Procedure.

20                  2.    *Interrogatories on Class Plaintiffs.* Unless otherwise agreed by the  
21                  Parties, Defendants may serve no more than ten (10) additional  
22                  interrogatories on each of the Class Plaintiffs named in the MCC.

23                  3.    *Interrogatories on the United States.* Unless otherwise agreed by the  
24                  Parties, Counsel for the FCA Defendants may serve no more than  
25                  twenty-five (25) interrogatories, including discrete subparts, on the  
26                  United States. Leave to serve additional interrogatories may be  
27                  granted to the extent consistent with Rule 26(b)(1) and (2).

28           E.    *Additional Discovery Requests.* Subject to the foregoing limitations set forth in

1 this Order (which may not be exceeded without leave of Court), the Parties are free to serve  
 2 additional fact discovery requests without leave of Court. Additional requests will be governed  
 3 by the Federal Rules of Civil Procedure and the Local Rules of the U.S. District Court for the  
 4 Northern District of California.

5 F. *Depositions and Expert Discovery.*

- 6 i. On **April 6, 2018**, the Parties may begin taking depositions of fact witnesses,  
 7 provided that prior to this date the Parties may take depositions of non-  
 8 governmental witnesses: (1) that relate to class certification; (2) that are for  
 9 the purpose of exploring issues related to the preservation of evidence; or (3)  
 10 under Rule 30(b)(6) regarding issues related to (a) management and  
 11 maintenance of documents or (b) Defendants' corporate structures and  
 12 corporate relationships among the Defendants.
- 13 ii. On or before **October 27, 2017**, the Parties will submit a joint proposed pre-  
 14 trial order(s) for expert discovery and a protocol for conducting depositions  
 15 of experts and fact witnesses. If the Parties are unable to agree on the  
 16 contents of such order(s), then each shall submit its own proposal with a  
 17 memorandum (not to exceed five (5) pages) explaining why the Court should  
 18 adopt that party's proposal.
- 19 iii. No Party may notice a deposition prior to entry of a deposition protocol.

20 **5. Amendment of Complaint or Addition of Parties**

21 A. Plaintiffs may amend the complaint, add parties, and/or add claims up to and  
 22 through **October 31, 2017**, and, in the event of any amendment or addition, the Parties shall  
 23 thereafter meet and confer to discuss the scheduling of a response deadline and any related  
 24 matters. If facts emerge in discovery or otherwise after that date that support amendment and/or  
 25 adding parties, Plaintiffs may revise the complaint or add parties thereafter only with leave of  
 26 the Court and for good cause shown.

27 **6. Electronically Stored Information and Preservation of Documents and ESI**

28 A. Class Plaintiffs' Lead Counsel, Government Coordinating Counsel, and Defense

1 Counsel shall meet and confer to further discuss the ESI protocols that will be followed in this  
2 case. To aid in the discussions, the Parties may include individuals knowledgeable about ESI  
3 and relevant IT systems in the scheduled meet and confer. No later than thirty (30) days after  
4 the entry of this Order, the Parties shall submit a joint proposed ESI Protocol. If the Parties are  
5 unable to agree on the contents of such a protocol, then each side shall submit its own proposed  
6 order regarding production of ESI with a memorandum (not to exceed ten (10) pages)  
7 explaining why the Court should adopt that party's particular proposal.

8 **7. Discovery Dispute Resolution**

9 A. Discovery disputes shall be resolved consistent with the Civil Standing Order on  
10 Discovery, U.S. District Judge Edward M. Chen. All discovery disputes shall be raised within  
11 two weeks of the Parties having reached impasse following the required meet-and-confer  
12 discussions.

13  
14 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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

Dated: September 22, 2017

Respectfully submitted,  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Elizabeth J. Cabraser  
Elizabeth J. Cabraser

275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008  
ecabraser@lchb.com

*Plaintiffs' Lead Counsel and Chair of the Plaintiffs' Steering Committee*

Dated: September 22, 2017

SULLIVAN & CROMWELL LLP

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

Robert J. Giuffra, Jr.  
William B. Monahan  
Darrell S. Cafasso  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Telephone: (212) 558-4000  
Facsimile: (212) 558-3588  
giuffrar@sullcrom.com  
monahanw@sullcrom.com  
cafassod@sullcrom.com

*Counsel for Fiat Chrysler Automobiles N.V.,  
FCA US LLC, V.M. Motori S.p.A., and V.M.  
North America, Inc.*

Dated: September 22, 2017

CLEARY GOTTlieb STEEN & HAMILTON LLP

By: /s/ Matthew D. Slater  
Matthew D. Slater

Cleary Gottlieb Steen & Hamilton LLP  
2000 Pennsylvania Ave., N.W.  
Washington, DC 20006  
Telephone: (202) 974-1500  
Facsimile: (202) 974-1999  
mslater@cgsh.com

*Counsel for Robert Bosch LLC*

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

Dated: September 22, 2017

U.S. DEPARTMENT OF JUSTICE

By: /s/ Leigh P. Rendé  
Leigh P. Rendé

United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611  
Telephone: (202) 514-1461  
leigh.rende@usdoj.gov

*Government Coordinating Counsel*

**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: September 22, 2017

/s/ Elizabeth J. Cabraser  
Elizabeth J. Cabraser

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: October 2, 2017

  
\_\_\_\_\_  
THE HONORABLE 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 September 22, 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  
Elizabeth J. Cabraser