

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WESLEY WON, DENNIS SPEERLY,
JOSEPH SIERCHIO, DARRIN DEGRAND,
DANIEL DRAIN, WAVERS SMITH,
RICHARD FREEMAN, CHRISTOPHER GILES,
LOUIS RAY, RICHARD SULLIVAN,
DANIEL BAPTIST, DENNIS SPEERLY,
JOHN IASIELLO, BENJY TOMPKINS,
JAMES NORVELL, MICHAEL BANKS,
GUY CLARK, MARIA BARALLARDOS,
CARY SHERROW, JASON KEVIN SINCLAIR,
KIMBERLY COULSON, TROY COULSON,
ANDRE MCQUADE, DONALD DYKSHORN,
TAIT THOMAS, JAMES PAUL BROWNE,
WILLIAM FREDO, DONALD SICURA,
JON ELLARD, RHIANNA MEYERS,
RANDALL JACOBS, MICHAEL PONDER,
PHILIP WEEKS, KARINA FREDO,
JIMMY FLOWERS, STEVEN BRACK,
KEVIN WESLEY, BRIAN LLOYD,
GREGORY BUTSCHA, JERRY CARROLL,
KIMBERLY CARROLL, DOMINIC EATHERTON,
THOMAS EDMONDSON, RICHARD FILIAGGI,
ROBERT HIGGINS, and DAVID THOMPSON,

Case Number 19-11044
Honorable David M. Lawson
Magistrate Judge David R. Grand

Plaintiffs,

v.

GENERAL MOTORS, LLC,

Defendant.

**OPINION AND ORDER DENYING MOTIONS TO SEAL
AND UNSEALING DOCUMENTS**

In the first of two motions to seal certain filings in the court record (ECF No. 171), defendant General Motors seeks to file on the docket redacted versions of certain exhibits to several of its motions challenging the admissibility of expert witness testimony and reports and

the plaintiffs' responses to them. GM wants to obscure portions of information that it deems confidential and proprietary, and to file under seal unredacted versions of the exhibits.

GM listed portions of the exhibits to the expert motions that it wants to have filed under seal in a series of charts presented with its motion. Those portions are:

- Expert Report of Alice Wachs, ¶¶ 26-27, 72, ECF No. 182-1, PageID.8779-8780, 8796. The redacted information consists of numerical figures and tables of figures and terms denoting the defendant's establishment of criteria for tolerable "defect rates" for class vehicles expressed in terms of "Incidents Per Thousand Vehicles" or "IPTV."
- Deposition of Alice Wachs, ECF No. 182-2, PageID.8863. The redacted information consists of a brief portion of deposition testimony by Ms. Wachs that includes certain numerical figures for defendant's defect rate criteria.
- Plaintiffs' Exhibit PX 578, ECF No. 182-3, PageID.8895-97. The exhibit consists of three slides of a PowerPoint presentation, which defendant says "concern[s] root cause analysis and actions taken by GM regarding vehicle design changes and warranty analysis." The information comes from reports of investigations of complaints of "shudder" and "hard shift" problems with specific class vehicles, including conclusions that the "root cause" of the problems was traced to problematic qualities of the automatic transmission fluid (ATF), degradation of clutch friction materials, and insufficient purging of air or overfilling of fluid in clutch assemblies attributed to problems with valve features or software calibration. The same exhibit also is included with the defendant's motion to exclude testimony by plaintiffs' expert Mark McVea. *See* ECF No. 180-2. However, the McVea report incorporated a more expansive excerpt of the presentation that includes numerous and somewhat inscrutable charts apparently showing telemetry from vehicles and delineating the component functions and resulting physical effects of different sorts of problematic shifting behaviors. PageID.8426-8438. The presentation also includes several tables describing GM's scheme for classifying "unintended deceleration" events, including criteria denoting their severity based on how often the events may occur and how likely it would be that a driver could maintain control of the vehicle or that an accident would occur. PageID.8439-8446. Similarly extensive excerpts from the same document again were included as an exhibit in support of the plaintiffs' motion to exclude expert testimony by Robert Lange. *See* ECF No. 177-5.
- Expert Report of William McVea, ¶¶ 32-33, PageID.8314-15. The redacted information consists of the same types of IPTV figures discussed above and portions of the same "root cause analysis" slide presentation (PX 578) that was included in the Wachs report.
- McVea Report ¶¶ 59-60, PageID.8327. The redacted portions include excerpts from GM documents stating that GM had determined that the "root cause" of the transmission problems was an incompatible combination of ATF and clutch friction materials, and

discussion about the prospects for seeking or obtaining contribution from suppliers to address the warranty expense.

- McVea Report ¶ 69, PageID.8331. The redacted portion consists of a chart of potential “8SPD RWD Gen2 Improvements,” which lists various combinations of hardware and software components that GM developed for potential deployment in Model Year 2023 and following vehicles, with “thumbs up” symbols denoting which alternatives had been found to alleviate different shifting problems.
- McVea Report ¶ 71, PageID.8332. The redacted data are portions of a GM document reporting the projected expense of various strategies to address transmission problems along with estimated costs and timelines for implementation.
- McVea Report ¶ 96-97, PageID.8350. The redacted data are portions of a GM “safety assessment” report relating to shift problems, with discussion indicating that a preliminary version of the report suggested that an unexpected downshift could be perceived by some drivers as a “surge” with a “startling effect,” but those terms were dropped from a final version of the report. The report also indicates GM concluded that all but 1% of drivers would be able to maintain control of their vehicles during such an incident. The discussion also noted that the investigation was “closed with no further action” despite the identification of 34 accidents associated with the effect.
- McVea Report ¶ 102. The redacted information is part of one sentence identifying components that had been developed for use in the “Gen2” transmission design for Model Year 2023 and later vehicles.
- Footnote 11 to defendant’s motion to exclude testimony by Richard Eichmann, ECF No. 179, PageID.136. The footnote includes a statement that “dealer invoice data” indicates “significant variation” in the prices paid for class vehicles during the relevant time period, including specific high and low price figures.
- Richard Eichmann Expert Report, ¶ 39, n. 115, ECF No. 179-2, PageID.8191. The redacted information consists of a discussion about the numbers of class vehicles sold in various categories and revenue figures resulting from the sales.
- Eichmann Report n. 127, PageID.8195. The redacted lines are excerpts of deposition testimony in which the witness discusses that, after considering various market data such as “Manufacturer Suggested Retail Price” (MSRP) price points set by its competitors, GM sets an “invoice price” that is paid by dealers to obtain cars for sale, which it does by determining a percentage of the MSRP that allows for an adequate “dealer margin” or profit leeway between the invoice price and published MSRP figure.
- Eichmann Report n. 139, PageID.8197. The redacted information discusses a “conjoint analysis” performed by GM that found that price changes in a particular class model were associated with discrete changes in market share versus competitive vehicles at different price points, including numerical figures for the correlated price and share variance.

- Lorin Hitt Expert Report, Tables 1, 2, Figure 3, ECF No. 179-3, PageID.8215-16, 8218. The redacted figures consist of tables and charts with figures illustrating defendant's expert Lorin Hitt's estimates of implied "marginal cost" and "gross profit" derived by GM from selling various class models, based on Hitt's reanalysis of data and calculations disclosed in Eichmann's expert report.
- Hitt Report nn. 110, 115, 117, PageID.8217-19. The redacted information includes numerical figures for GM's "marginal cost" of producing example class vehicles and figures for the company's "firm-wide gross margin" and "demand elasticity" for class models as determined through internal market studies.
- Hitt Report ¶ 154, Figure 6, PageID.8221. The redacted information includes numerical figures for the "invoice price" of certain class models within the relevant time period, and a chart illustrating the range of "invoice prices" for one class model in certain years.
- Plaintiffs' Motion to Exclude Expert Testimony by Robert Lange, ECF No. 177, PageID.7056-7058. The redacted portions of the text include numerical figures for the same "IPTV" criteria discussed above, excerpts of the same exhibit referred to above as PX 578, and images of other GM documents relating to "root cause investigation" of the transmission problems, along with discussion of the significance of the numbers involved and conclusions reached by GM's investigation.
- Plaintiffs' Exhibit PX 121, ECF No. 177-3, PageID.7167-7223. The exhibit comprises 56 pages of excerpts from GM documents summarizing the results of GM's "root cause analysis" and warranty service data review concerning transmission problems in certain class vehicles, estimated costs of various proposed fixes for the problems, a cutaway view of a transmission denoting certain components, and various charts apparently showing telemetry of vehicles before and after implementation of fixes such as changing to a different ATF formula, along with analyses and figures illustrating that the problematic fluid failed to maintain a "positive friction curve" over time (i.e., that the ability of the fluid to maintain friction properties degraded in use). The documents also include extensive charts and discussion illustrating the frequency of warranty claims for various models and in different regions, a timeline of past service bulletins issued to address the problems, and timelines and costs for implementing additional proposed solutions.
- Plaintiffs' Exhibit PX 153, ECF No. 177-6, PageID.7295-7331. The exhibit consists of 36 pages of GM documents. It is substantially similar in content to PX 578, discussed above. GM characterizes it as a root cause analysis and warranty analysis report concerning a different selection of class vehicles than those covered by PX 578. It includes analysis of warranty service data for various transmission problems, excerpts of reports of problems with specific customer vehicles with shift issues, telemetry charts, "root cause analysis" discussions and conclusions, and several cross-sectional illustrations indicating problematic components in the transmission.
- Plaintiffs' Exhibit 223, ECF No. 177-7, PageID.7338-7347. The exhibit consists of nine spreadsheet pages apparently depicting a "dashboard" summary for plans to address

transmission issues in class model years from 2015 through 2019, including indications whether various divisions of the company were on track to deliver on goals required for completion of the plans. In particular, the tables identified the Product Engineering and Quality divisions as being “Not Confident” of meeting goals for addressing “TCC Shudder,” “Harsh Shift,” and “Warranty Reduction” issues, which the legend of the chart identified as a situation where “Targets [are] not met” or “Risks [are] not mitigated.” *E.g.*, PageID.7339. Portions of the exhibit also include numerical figures for the number of vehicles sold in particular model years. *Ibid.* The exhibit also discloses information about non-class vehicle models, indicating that various component changes, including a “Gen2” design for the transmission, would be implemented for model years 2020 through 2023. *E.g.*, PageID.7345.

- Deposition of Robert Lange, ECF No. 177-4, PageID.7248, 7250, 7256, 7259. The redacted portions of the testimony consist of responses that cite numerical figures or quote portions of information from PX 223, discussed above, including such things as whether criteria for “IPTV” metrics were on track to be met for certain model years, including numerical figures for observed and target defect rates.

In its second motion (ECF No. 198), GM seeks to have sealed extensive portions of the record offered in support of the parties’ oppositions to the various expert motions, along with selected portions of the motion briefing. The topics covered by the various exhibits and testimony are substantially the same as those discussed above and fall into several categories: (1) figures indicating prices and sales volume for class vehicles and analyses and discussion of the same, (2) figures indicating warranty claim rates for class vehicles, and analysis or discussion of the same, (3) GM documents and expert reports containing statistical compilations and analyses of warranty claim rates, including discussion of specific target defect rates established by GM for class models, (4) GM documents and expert reports containing extensive details about engineering investigations of the transmission problems, along with “root cause” analyses and proposed solutions for the shudder and hard shift behaviors, and (5) identification of components of hardware and software solutions proposed by GM to address the transmission problems, and associated timelines and cost projections for implementing the same. The defendant submitted in support of this motion a package of “sealed exhibits” spanning more than 560 pages, with partial or wholesale redactions from the record annotated across hundreds of pages of the record.

II.

Because of the “‘strong presumption in favor of openness’ as to court records,” *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 305 (6th Cir. 2016) (quoting *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1180 (6th Cir. 1983)), a party seeking to seal a court filing faces a formidable task, *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983). The *Shane Group* case has set the bar high, imposing on the party asking to seal documents the “burden of overcoming that presumption” of openness by “demonstrat[ing] — on a document-by-document, line-by-line basis — that specific information in the court record meets the demanding requirements for a seal.” *Shane Group*, 825 F.3d at 305, 308.

Conclusory allegations and references to protective orders will not do. “Unlike information merely exchanged between the parties, ‘[t]he public has a strong interest in obtaining the information contained in the court record.’” *Id.* at 305. “[T]he public is entitled to assess for itself the merits of judicial decisions,” and, thus, “[t]he public has an interest in ascertaining what evidence and records the District Court [has] relied upon in reaching [its] decisions.” *Ibid.* (quoting *Brown*, 710 F.2d at 1181). That is why “[o]nly the most compelling reasons can justify non-disclosure of judicial records.” *Ibid.* (quoting *Knoxville News*, 723 F.2d at 476).

Relevant to the calculus is the status of the information sought to be shielded from public view as a trade secret. But trade secret status is neither a necessary nor a sufficient condition for sealing. *Kondash v. Kia Motors Am., Inc.*, 767 F. App’x 635, 638 (6th Cir. 2019) (“While the existence of a trade secret will generally satisfy a party’s burden of showing a compelling reason for sealing documents, even if a trade secret does not exist, a court may still find a compelling reason exists; further, even if a district court finds that a trade secret exists, it must still determine whether public interest outweighs the moving party’s interests in protecting their trade secret.”).

Even “[w]here a party can show a compelling reason for sealing, the party must [still] show why those reasons outweigh the public interest in access to those records and that the seal is narrowly tailored to serve that reason.” *Id.* at 637. Moreover, “[t]he presumption in favor of public access is strong when public safety is implicated”; and accordingly, while it is “well-established that confidentiality provisions, protective orders, and the sealing of cases are appropriate litigation tools in some circumstances[,] the interests of public health and safety will often outweigh any confidentiality interests that might be implicated.” *Id.* at 637 (quotations omitted). “This is particularly true in class actions, where, because of the interest of a broader public outside of the named parties, the standards for overcoming the presumption of openness ‘should be applied . . . with particular strictness.’” *Ibid.* (quoting *Shane Group*, 825 F.3d at 305).

“‘In civil litigation, only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence (such as the name of a minor victim of a sexual assault),’ is typically enough to overcome the presumption of access.” *Shane Group*, 825 F.3d at 308 (quoting *Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 546 (7th Cir. 2002)); *Brown*, 710 F.2d at 1180 (“In such cases, a court should not seal records unless public access would reveal legitimate trade secrets, a recognized exception to the right of public access to judicial records”). To qualify for protection as a trade secret, “information must (1) derive economic value from the fact that it is not known to others who could make use of it, and (2) be the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” *Mike’s Train House, Inc. v. Lionel, LLC*, 472 F.3d 398, 410 (6th Cir. 2006), *abrogated on other grounds by A. K. ex rel. Kocher v. Durham Sch. Servs., LP*, 969 F.3d 625, 630 (6th Cir. 2020). The party seeking trade secret protection “must identify its trade secrets with a reasonable degree of precision and specificity that is particular enough as to separate the trade

secret from matters of general knowledge in the trade or of special knowledge of persons skilled in the trade.” *Dow Chem. Canada, Inc. v. HRD Corp.*, 909 F.Supp.2d 340, 346 (D. Del. 2012); *see also Big Vision Private Ltd. v. E.I. DuPont De Nemours & Co.*, 1 F.Supp.3d 224, 258-59 (S.D.N.Y 2014) (collecting cases).

GM’s arguments are largely conclusory. For instance, it contends in sweeping fashion that “[t]he materials [enumerated] in Exhibits A through E [to the first sealing motion] are used in GM’s business of designing, manufacturing of, developing of, testing of, and/or analyzing the root causes of potential issues in GM’s products, including the vehicles identified in Plaintiffs Amended Consolidated Class Action Complaint.” The argument in the second motion is substantially verbatim and equally shallow. But GM does not cite or discuss any particular portion of any of the exhibits, which cumulatively span hundreds of pages of the record. It has not identified or discussed with any specificity any discrete portion of the voluminous segments of the record that it seeks to have withheld from public view. That alone is reason enough to deny its demand for the wholesale redactions that it seeks, since it falls far short of the rigorous document-by-document analysis that the circuit demands. *Shane Group*, 825 F.3d at 308.

GM also has not proposed a “narrowly tailored” closure of records, but instead seeks to withhold wholesale hundreds of pages of relevant documents from the public view. Even “[w]here a party can show a compelling reason for sealing, the party must [still] show why those reasons outweigh the public interest in access to those records and that the seal is narrowly tailored to serve that reason.” *Kondash*, 767 F. App’x at 637. “To do so, the party must ‘analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.’” *Ibid.* (quoting *Shane Group*, 825 F.3d at 305-06). GM has made no attempt to explain in any particularized fashion how its interest in sealing any specific item of information from the voluminous redactions

outweighs the public interest in full disclosure of the factual basis for the Court's rulings in these proceedings. Instead, as the court of appeals observed in *Shane Group*, its "asserted bases for sealing off all [the] information [are] brief, perfunctory, and patently inadequate." 825 F.3d at 306. The Sixth Circuit sternly has warned the district courts of this circuit, in *Shane Group* and in other cases, that summarily granting motions to seal without articulating specific reasons rooted in the facts and circumstances of the case to show why sealing is necessary is not a procedure that comports with the presumption of full disclosure in the judicial process. *United States v. DeJournett*, 817 F.3d 479, 485 (6th Cir. 2016) ("The interest [justifying nondisclosure] is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.") (quoting *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984)). The Court is unable to construct a ruling to satisfy that demanding standard based on the defendant's sketchy presentation here.

GM, suggesting a trade secret analogy, asserts that the materials it wants to have sealed all "derive economic value from their confidential status," but it does not identify with any specificity any serious competitive injury that it would suffer from the disclosure of any particular information within the broadly cited materials. It also asserts that it "takes great care to protect from disclosure the materials described above," but its presentation includes no citation or discussion of any information evidencing such care. It has not identified any "trade secret" embodied by any of the information in the various exhibits.

To qualify for protection as a trade secret, "information must (1) derive economic value from the fact that it is not known to others who could make use of it, and (2) be the subject of efforts that are reasonable under the circumstances to maintain its secrecy." *Mike's Train House*, 472 F.3d at 410. GM's sparse presentation does not measure up to that standard. No citation of

any particular portion of the record can be found in its entire argument; it merely references *in toto* a laundry list of exhibits that it wants to keep private, asserting without elaboration that all of the information therein is “confidential” and “proprietary,” and could cause it competitive harm if disclosed. That is hard to accept. To the extent that any “methods” of the defendant’s “root cause analysis” and “warranty data analysis” procedures are disclosed by the documents, the defendant has not established, or even attempted to establish, that any such “methods” comprise “trade secrets” as distinguished from matters of general knowledge in the industry of automotive manufacture. *See Kondash v. Kia Motors Am., Inc.*, No. 15-506, 2018 WL 770418, at *4 (S.D. Ohio Feb. 7, 2018), *aff’d*, 767 F. App’x 635 (6th Cir. 2019) (Kia has not demonstrated that the reports and investigation materials are trade secrets. . . . [T]he Court fails to see how these documents constitute a ‘procedure’ or ‘process’ that derives independent economic value from not being known and is the subject of efforts to maintain its secrecy. . . . Under the logic presented by Kia, virtually all internal documents would fall under the category of a ‘trade secret.’ Furthermore, the documents’ contents are of great public interest, particularly to drivers concerned about their safety and class members interested in their legal claims in this case.”). The party seeking trade secret protection “must identify its trade secrets with a reasonable degree of precision and specificity that is particular enough as to separate the trade secret from matters of general knowledge in the trade or of special knowledge of persons skilled in the trade.” *Dow Chem.*, 909 F. Supp. 2d at 346; *see also Big Vision Private Ltd.*, 1 F. Supp. 3d at 258-59 (collecting cases). In this case, GM has made no discernible effort to do so. Moreover, GM has not explained what “efforts [it made] that are reasonable under the circumstances to maintain [the] secrecy” of any of the information at issue in the motions to seal, as it must to garner trade secret protection. *Mike’s*

Train House, 472 F.3d at 410. There is no articulable basis in the record for any finding by the Court that any of the cited materials qualify for protection as “trade secrets.”

Similarly, GM has not made an adequate showing that it has a compelling interest in the secrecy of any pricing, sales, or defect rate data included in the redacted exhibits, which all relate to the class vehicles from model years 2015 through 2019. The exhibits contain numerous instances of figures that denote the defendant’s goals for “defect rates” of class vehicles, expressed in terms of “Incidents Per Thousand Vehicles” or “IPTV.” It has made no effort to explain how the disclosure of its practices in establishing such target rates, or the historical circumstances that its quality or safety targets were not met by its production of certain class vehicles, would cause it a serious injury in the marketplace. There certainly is nothing novel or exotic in the notion that a manufacturer may establish metrics and undertake efforts to ensure that no more than a certain portion of its products fail to perform as intended. Nor has GM made a credible case that any specific and serious competitive harm would be inflicted by the disclosure of its unremarkable practice of establishing an “invoice price” for sale of its cars that allows dealers an adequate profit margin between that price and the published retail price. GM’s “vaguely phrased fears of revealing financial information about [its] economic position and operations” through the disclosure of specific figures for such things as its “marginal cost” and “gross margin” also are inadequate to justify sealing because “proponents of closure bear the burden of showing that disclosure will work a clearly defined and serious injury.” *CFE Racing Prod., Inc. v. BMF Wheels, Inc.*, No. 11-13744, 2016 WL 8231672, at *2 (E.D. Mich. June 8, 2016) (quoting *Shane Group*, 825 F.3d at 307) (internal quotations omitted).

The defendant’s requested redactions further are unjustified because much of the pricing and sales data that it seeks to obscure concern the sale of class models between three and seven

years ago, and such obsolete information cannot be deemed any longer to have sufficient economic value to establish a compelling interest in sealing. *Fox Sports Net North, LLC v. Minnesota Twins Partnership*, 319 F.3d 329, 336 (8th Cir. 2003) (“As the district court observed, obsolete information cannot form the basis for a trade secret claim because the information has no economic value.”); *MicroStrategy, Inc. v. Bus. Objects, S.A.*, 661 F. Supp. 2d 548, 554 (E.D. Va. 2009) (“As noted above, the Competitive Recipe is approximately nine years old, and outlines a competitive strategy to deal with Business Objects’ products that have not been on the market for at least seven years. The court had noted in both the August 6, 2004 order and the May 10, 2005 order that while the Competitive Recipe was a trade secret when acquired, the document would likely lose its trade secret status over time.”).

Finally, GM insists that the public interest in disclosure of the information is minimal because the technical materials in question would not be “accessible” to members of the general public unschooled in principles of automotive engineering needed to comprehend their meaning. Even if GM had made the required showing to demonstrate a compelling interest in favor of sealing the information in question, that argument does not measure up against the weighty interest of the public in full disclosure of the record in this class proceeding, which involves allegations of a safety-related automobile defect affecting hundreds of thousands of vehicles sold over a span of four model years.

The record in this case suggests that GM’s requests for the closure of substantial portions of the record is motivated by little more than its desire to conceal information tending to compromise its litigating position, since the information tends to show that the class vehicles had a well-documented history of transmission malfunctions, that the defendant identified potential fixes for those problems, and that it decided not to deploy those fixes because it adjudged the cost

of the remedies to be economically undesirable to bear. GM has taken the position that there is no defect in its transmission design, or that if there are issues with design, then they are multifarious in nature and causation. Its own extensive engineering analyses, which identified component causes and proposed widely deployable potential fixes, tend to contradict that position.

GM also has argued that the defect, if any, is “uncommon” in nature and cannot be remedied by any readily available common treatment or modification. Its program documents showing that it identified discrete hardware and software fixes that could be deployed in “service packs” calls that position into question. Moreover, the fact that GM computed deployment expenses for several such service packs on a gross basis, sufficient to address the issue in all or most of the vehicles sold, belies its position that any transmission issues experienced are infrequent and unlikely to affect most class vehicles.

GM also has argued that the rates of warranty complaints on its cars are highly variable and not sufficiently extreme to put it on notice that any defect existed at any point during the relevant time period. Its extensive internal studies of the transmission problems, backed up by the defendant’s own compilations of warranty claim data, tend to rebut that position. The defendant also insists that damages may not be estimated on a class-wide basis due to excessive variability in prices paid by dealers and consumers for the class vehicles. Pricing and sales data revealing the precise extent of any such variability will be essential to the Court’s assessment of the defendant’s position.

All of those factual circumstances will be central to the Court’s rulings on the parties’ pending motions and will bear heavily on the Court’s deliberations both in assessing the propriety of the expert testimony that has been offered, and in conducting the searching analysis that is required to certify a class action under Rule 23. “The presumption in favor of public access is

strong when public safety is implicated”; and accordingly, while it is “well-established that confidentiality provisions, protective orders, and the sealing of cases are appropriate litigation tools in some circumstances[,] the interests of public health and safety will often outweigh any confidentiality interests that might be implicated.” *Kondash*, 767 F. App’x at 637. “This is particularly true in class actions, where, because of the interest of a broader public outside of the named parties, the standards for overcoming the presumption of openness ‘should be applied . . . with particular strictness.’” *Ibid.* (quoting *Shane Group*, 825 F.3d at 305). Those weighty public interests in full disclosure of the evidence overwhelm the weakly articulated concerns for confidentiality that have been advanced here.

GM cites several non-controlling decisions from district courts in other circuits for the generalized proposition that information about its “diagnostic procedures” and “warranty strategies” qualify as “confidential business information” that should be protected from public view because it could have value to its competitors. However, none of those decisions acknowledged the demanding standard for sealing court records that prevails in this circuit under *Shane Group* and the cases that follow it. Moreover, although the cited cases did grant some requests for sealing limited portions of the record, they also rejected as unduly overbroad other requests to exclude “any mention” of specific engineering or financial methods. *E.g.*, *Philips v. Ford Motor Co.*, No. 14-02989, 2016 WL 7374214, at *4 (N.D. Cal. Dec. 20, 2016) (“Ford seeks to redact all mention that Ford or its dealers have a ‘markup’ when selling replacement EPAS systems, as well as any suggestion by Ford employees that the price for replacement EPAS systems should be lower. Ford has identified no competitive harm that could result from generalized acknowledgement of a profit margin or vague statements that the margin should be lower, and therefore these statements do not meet the ‘compelling reason’ standard.”).

The decision in *Lohr v. Nissan N. Am., Inc.*, No. 16-1023, 2021 WL 1627090 (W.D. Wash. Apr. 27, 2021), is of little help since it contains no extended discussion about the content of any of the material that was filed under seal. Moreover, the case is distinguishable because the district court there noted that the materials submitted included discrete engineering details such as “product specifications,” “design features and specifications,” “graphic illustrations and drawings,” and “internal engineering analyses.” *Id.* at *2. The court found that some of the exhibits “contain proprietary information regarding product specifications, numbers indicative of sales and market trends for NNA vehicles, and warranty information,” and determined that the product design information could be copied by a competitor. *Ibid.* But in this case, although many of the redacted materials include “engineering analyses” and related data, conspicuously absent from all of the documents is any detailed discussion of precise dimensions, production techniques, methods of manufacture, or other discrete details about how the class transmissions were designed and constructed. Instead, all of the materials comprise post-hoc analyses to determine the root cause of problems exhibited by the designs in the field, rather than any particularized engineering techniques or methods that were employed when designing and building proprietary aspects of the transmissions or their components in the first instance. Even the limited cross-sectional views of the transmissions that were included in the exhibits do not apparently disclose anything that could not be learned merely by procuring and disassembling examples of the devices, which was done by plaintiffs’ expert, and his observations from that activity were discussed in portions of his expert report. Again, GM has not shown that any of the “methods” disclosed by its problem investigations are more than garden variety engineering rubrics for finding the cause of a problem.

Similarly, the discussion in *Williamson v. S.A. Gear Co., Inc.*, No. 15-365, 2017 WL 3971043 (S.D. Ill. Sept. 8, 2017), is unhelpful because it contains almost no details or developed

discussion about the content of the materials sealed. The reasoning in that case does not approach the level of rigor demanded by the Sixth Circuit for district court rulings permitting the closure of extensive portions of the record. *See id.* at *1 (“[T]he AutoZone Defendants have identified discrete documents that they assert include confidential, proprietary business information regarding AutoZone’s unique internal claims procedures, warranty processes, and sales information. Based on a review of the identified documents . . . the Court agrees. The particular documents identified by Defendants contain vendor agreements, internal sales tracking data and proprietary business information concerning processes and procedures for handling particular claims.”); *c.f.*, *Shane Group*, 825 F.3d at 307-08 (“That leaves the concern about ‘competitively-sensitive financial and negotiating information[.]’ But that concern is inadequate for any number of reasons. One is that the proponents of closure bear the burden of showing that ‘disclosure will work a clearly defined and serious injury[.]’ And ‘[i]n delineating the injury to be prevented, specificity is essential.’” (quoting *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001))).

III.

GM has not established that it has a compelling interest in maintaining the secrecy of information about its “root cause analysis” process and the causal elements and potential solutions for the alleged transmission problems that outweighs the public interest in full public disclosure of the information. Nor has it established that it has a compelling interest in maintaining the secrecy of financial details such as its historical sales figures, “gross margin,” “marginal cost,” or “invoice price” data relevant to the sale of class models between 2015 and 2019.

Accordingly, the defendant’s motions to seal certain items filed on the docket (ECF No. 171, 198) are **DENIED**.

It is further **ORDERED** that the items filed under seal (ECF No. 174, 177, 179, 180, 182, 199, 201, 204, 206, 210) shall be **UNSEALED** by the Clerk of Court.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: July 27, 2022