

1 Eric H. Gibbs (SBN 178658)
ehg@girardgibbs.com
2 David Stein (SBN 257465)
3 ds@girardgibbs.com
4 Rachel A. Naor (SBN 284966)
ran@girardgibbs.com

5 **GIRARD GIBBS LLP**
6 601 California Street, 14th Floor
7 San Francisco, California 94108
8 Telephone: (415) 981-4800
Facsimile: (415) 981-4846

9 Todd M. Schneider (SBN 158253)
10 tschneider@schneiderwallace.com
11 Joshua G. Konecky (SBN 1822897)
12 jkonecky@schneiderwallace.com

13 **SCHNEIDER WALLACE**
COTTRELL KONECKY LLP
14 180 Montgomery Street, Suite 2000
15 San Francisco, California 94104
16 Telephone: (415) 421-7100
Facsimile: (415) 421-7105

17 *Attorneys for Plaintiffs*

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20
21 PETER VELASCO, *et al.*,

22 Plaintiffs,

23 v.

24 CHRYSLER GROUP LLC,

25 Defendant.

Case No. 2:13-cv-08080-DDP (VBKx)

FILED UNDER SEAL

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Date: October 20, 2014

Time: 10:00 a.m.

Judge: Honorable Dean D. Pregerson

Courtroom: 3

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION
CASE NO. 2:13-cv-08080-DDP (VBKx)**

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1 **I. INTRODUCTION**

2 When Plaintiffs filed this lawsuit, alleging that widespread failures of Chrysler’s
3 Totally Integrated Power Modules (TIPMs) were indicative of a systemic defect,
4 Chrysler called the allegations “long on rhetoric and short on facts.” (Doc. 27 at 1.) It
5 claimed that nothing was wrong with the TIPM and twice moved to dismiss the case on
6 legal grounds. Now that the Court has allowed the case to proceed, however, Chrysler
7 has begun producing its internal records, and [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED] Yet Chrysler has never
17 notified its dealers or customers of any TIPM issue, and has confirmed in discovery that
18 it has no plans to do so. Meanwhile, hundreds of Chrysler’s customers have lodged
19 complaints with NHTSA, the Center for Auto Safety, and websites like
20 CarComplaints.com. Plaintiffs have submitted 11 declarations from drivers whose
21 vehicles have suddenly lost power and stalled while they were driving as a result of
22 TIPM failures, and these are only a small sample of the problems to come.

23 Through this motion, Plaintiffs seek a preliminary injunction requiring Chrysler to
24 do what it should have done long ago—notify its customers that [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]. The parties’ dispute over Chrysler’s legal responsibility for past and
28 future repair costs can wait for the litigation to run its course. But informing consumers

1 of a potentially dangerous condition in their vehicles—a condition that Chrysler had
2 denied but [REDACTED]
3 [REDACTED]—cannot wait. The risk of serious injury from widespread TIPM failures and
4 stalling is too high to justify keeping Chrysler’s customers in the dark any longer. There
5 is little harm in providing Chrysler’s customers with information so they can take
6 precautionary measures during the litigation, but the consequences of not acting could be
7 severe.

8 **II. SUMMARY OF FACTS**

9 **A. Chrysler’s Defective TIPM**

10 The defective part at issue in this case is the TIPM—a part unique to Chrysler that
11 essentially controls all of the vehicle’s electrical functions. The TIPM resides in the
12 engine compartment and is directly connected to the battery. (*See* Naor Decl., Ex. A at
13 5; [REDACTED].) Power generated by the battery enters the TIPM, which then
14 distributes that power to the rest of the vehicle—as needed—through a series of relays.
15 (*See* Naor Decl., Ex. A at 5; [REDACTED].) [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Because the TIPM is defective, it fails to reliably distribute power throughout the
20 vehicle, resulting in erratic and often unsafe behavior from the vehicle’s electrical
21 system. Large numbers of Chrysler owners have reported needing TIPM repairs after
22 they couldn’t start their vehicle, stalled while driving, suffered other electrical
23 malfunctions while driving (*e.g.*, lights turning off, horn blaring), or suffered a dead
24 battery because their vehicle’s fuel pump would not turn off. (*See, e.g.*, Naor Decl., Ex.
25 B at 15-17.) So many TIPMs had to be replaced that the part went on national
26 backorder. (Naor Decl., Ex. G, ¶ 4; Ex. K, ¶ 4; [REDACTED].) Chrysler
27 dealerships have told drivers that the demand for replacement TIPMs is so high that it
28

1 may be months before their vehicle can be repaired. (Naor Decl., Ex. G, ¶ 4; Ex. K, ¶ 4;
2 Ex. B.)

3 Chrysler has publicly denied that anything is wrong with the TIPM, [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 A [REDACTED] failure rate largely speaks for itself, but it is particularly noteworthy for a
17 part, like the TIPM, that is integral to vehicle operation and is expected to last the life of
18 the vehicle. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 and indicative of a very serious TIPM defect that Chrysler owners need to be made
26 aware of.

1 **B. Chrysler’s Decision Not To Notify Its Customers and Attempts to**
2 **Quietly Fix the “No Start” Issue.**

3 [REDACTED]
4 [REDACTED], yet it has
5 decided not to inform them. (Naor Decl., Ex. C, Req. No. 2.) Plaintiffs specifically
6 asked in discovery (as well as informally) whether Chrysler planned to notify its
7 customers of any issue relating to the TIPM in their vehicles. Chrysler answered
8 unambiguously that it has never notified customers or even its dealers, and does not
9 intend to issue a notice of any kind. (*Id.*, Req. Nos. 2, 3, 9.)

10 Chrysler’s position is not surprising given how long it has known of the TIPM
11 problems and remained silent. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
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[REDACTED]

[REDACTED] Chrysler did not advise its customers that their TIPMs *needed* to be fixed. It kept the TIPM problems a secret and expressed more concern for the company's reputation with customers than for the customers itself. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] But Chrysler still refuses to publicly acknowledge any TIPM defect, much

1 less inform its customers that [REDACTED] so that they can take steps to protect
2 themselves.

3 [REDACTED]
4 By failing to inform its customers or even its dealerships of the TIPM defect,
5 Chrysler has left drivers to discover it the hard way. Plaintiffs' counsel has heard from
6 over 500 consumers who have suffered TIPM-related problems, including difficulty
7 starting the vehicle, stalling, or stuck-on fuel pumps. (Naor Decl., ¶ 7.) NHTSA's
8 online record of complaints reveals over 300 similar complaints. (*Id.*, ¶ 4.) The Center
9 for auto Safety has received at least 70 complaints related to the TIPM.
10 See [http://www.autosafety.org/sites/default/files/imce_staff_uploads/TIPM%20Complai](http://www.autosafety.org/sites/default/files/imce_staff_uploads/TIPM%20Complaint%20without%20email.pdf)
11 [nt%20without%20email.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/TIPM%20Complaint%20without%20email.pdf). And TIPM-related problems are currently the #1 and #2
12 complaints on www.CarComplaints.com.

13 It is bad enough when drivers are left stranded because of an inability to start their
14 vehicles, but the real danger occurs when the TIPM fails on the road—which, as first-
15 hand accounts show, can be a harrowing experience:

16 I was on the way to work one morning with my stepson in the car when the
17 car's engine suddenly lost power while we were traveling at around 55
18 miles per hour on a main street. Fortunately, I was able to coast to the side
19 of the road and put on my hazard lights. When the car stalled, my heart was
20 racing and I kept thinking "Oh my God, the car just shut off." My stepson
could tell I was very frightened, and tried to calm me down.

21 (*Id.*, Ex. E, ¶ 3.)

22 During the first week of September, the car's engine went dead while I was
23 driving out of the parking lot of my son's school after dropping my son off.
24 There was no warning that the car was about to stall, and I was very
25 shocked when the car suddenly lost power. At the time the car stalled, I
26 was making a left turn and another car was coming toward me. My car died
27 while I was in front of the oncoming car, which was very frightening. I
28 tried to turn the car back on, but the car cranked and would not start, so I
turned on my hazard lights and hoped that the oncoming car would not hit
me. Fortunately, the oncoming car had enough time to come to a full stop

1 and avoid a collision. I eventually got the car to turn on, and I pulled over
2 to the side of the road.

3 (*Id.*; Ex. F, ¶ 4.)

4 We also experienced a fearful and life-threatening event in the form of a
5 complete loss of power in our vehicle. My husband was driving in town and
6 merged into the middle lane in order to make a left-hand turn out of traffic.
7 Suddenly, the vehicle completely shut off. My family was left shaken that
8 this happened with our Dodge.

8 (*Id.* Ex. G, ¶ 3.)

9 Plaintiffs have submitted 11 declarations from Chrysler customers whose vehicles
10 stalled while they were driving, and have heard from several others who had similar
11 experiences. (Naor Decl., ¶ 7; Ex. E-O.) Of the complaints submitted to NHTSA, at
12 least 70 report stalling. (*Id.*, ¶ 4.) There are undoubtedly many more incidents that have
13 not been reported, [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 **III. LEGAL ANALYSIS**

17 The Court may issue a preliminary injunction to protect consumers from harm
18 pending the outcome of this litigation if the record establishes: (i) a likelihood of
19 success on the merits; (ii) irreparable harm is likely to result in the absence of
20 preliminary relief; (iii) the balance of hardships and equities favors consumers; (iv) an
21 injunction is in the public interest. *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d
22 1036, 1044 (9th Cir. 2012) (affirming preliminary injunction in putative class action).
23 These elements are typically evaluated on a sliding scale, “so that a stronger showing of
24 one may offset a weaker showing of another.” *Towery v. Brewer*, 672 F.3d 650, 657
25 (9th Cir. 2012). For example, if the balance of hardships tips sharply toward consumers,
26 the Court may issue a preliminary injunction even if Plaintiffs have only raised “serious
27 questions” going to the merits.” *Id.*

1 An analysis of each element shows that a preliminary injunction is warranted,
2 particularly in light of the safety risks and irreparable damage consumers will suffer if
3 they continue to drive a class vehicle unaware that it may stall at any time.

4 **A. Plaintiffs Are Likely to Prevail on the Merits.**

5 This lawsuit alleges that Chrysler has unlawfully withheld material information
6 from its customers—namely, that the TIPM in their vehicles is defective and poses a
7 safety hazard. (2nd Am. Compl. [Doc. 39], ¶¶ 108, 116, 124, 129, 136, 146.) Chrysler
8 has already sought dismissal of Plaintiffs’ claims on legal grounds—arguing that, even if
9 Plaintiffs’ allegations of dangerous TIPM defect were true—it would not be obliged to
10 tell its customers. (See Mot. to Dismiss 2nd Am. Compl. [Doc. 42].) The Court
11 disagreed and ruled that—assuming the facts stated in the complaint turned out to be
12 true—Chrysler would have a legal duty to disclose the TIPM defect under state
13 consumer protection laws. (See 8/22/14 Order [Doc. 46] at 11-12 (“Courts have
14 routinely found that an auto manufacturer’s alleged failure to disclose a material defect
15 can be the basis for a claim under each statute.”).)

16 The issue now is not whether Plaintiffs’ claims are legally viable, but whether
17 they are likely to succeed in proving the facts upon which their claims are premised—or
18 at least raise factual questions “serious enough to require litigation.” *Pimentel v.*
19 *Dreyfus*, 670 F.3d 1096, 1106 (9th Cir. 2012). [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] Chrysler has previously
8 admitted that vehicle stalls can be unsafe, but denied that “the TIPM assembled into the
9 Class Vehicles caused stalling while the vehicles were driven on the roadway.” (Naor
10 Decl., Ex. C, Req. No. 4.) [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 The evidence against Chrysler will only improve as it is forced to disclose more of
14 its internal records. To date, it has yet to electronically search its email or other
15 databases and has only turned over documents manually collected by select individual
16 employees. Yet the evidence now before the Court at this early stage is already rather
17 strong and indicates that Plaintiffs are likely to prevail on the merits of their claims.

18 **B. Chrysler’s Customers Stand To Suffer Irreparable Harm If A**
19 **Preliminary Injunction Is Not Issued.**

20 The risk of irreparable harm to consumers if Chrysler continues to conceal stalling
21 dangers posed by its TIPMs is quite severe. Driving a vehicle that could lose power at
22 any time is obviously rather dangerous, as Chrysler has acknowledged and as several
23 courts have held. *See, e.g., Howard v. Ford Motor Company*, No. 763785-2, CCH
24 Consumer Prod. Safety Guide ¶ 75,652, 2009 WL 3620336 (Cal. Super. Ct., Alameda
25 Cty., Oct. 11, 2000) (“stalling, under almost any circumstances, presents an
26 unreasonable risk to automobile safety and to the safety of the occupants of any such
27 automobile”) (collecting cases).

1 What makes Chrysler’s silence particularly dangerous is that— [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 In other words, the frightening stalling incidents reflected in the accompanying
10 declarations and in driver reports to NHTSA are [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 About 2.5 million Chrysler vehicles that rely on the defective TIPM 7 are currently on
16 the road. (Naor Decl., ¶ 9, Ex. P.) The sheer number of these vehicles, [REDACTED]
17 [REDACTED], means that if nothing is done, thousands upon
18 thousands of these vehicles will likely stall in traffic or at high speeds over the next few
19 years, and some of these stalls will lead to injury. *See Inst. of Cetacean Research v. Sea*
20 *Shepherd Conservation Soc.*, 725 F.3d 940, 946 (9th Cir. 2013) (“A dangerous act, if
21 committed often enough, will inevitably lead to harm, which could easily be
22 irreparable.”).

23 The purpose of this motion is to minimize the number of dangerous stalls that
24 occur, and to ensure that the inherently slow process of litigation does not needlessly
25 endanger Chrysler’s customers or contribute to avoidable injuries and auto accidents.
26 *See Garcia v. Google, Inc.*, No. 12-57302, --- F.3d ----, 2014 WL 3377343, at *7 (9th
27 Cir. July 11, 2014) (“Death is an ‘irremediable and unfathomable’ harm, and bodily
28

1 injury is not far behind. To the extent the irreparable harm inquiry is at all a close
2 question, we think it best to err on the side of life.” (citation omitted).

3 **C. The Balance of Hardships and the Equities Tip Sharply in Favor of**
4 **Chrysler’s Customers.**

5 The Ninth Circuit has made clear that when “faced with a conflict between
6 financial concerns and preventable human suffering, we have little difficulty concluding
7 that the balance of hardships tips decidedly in plaintiffs’ favor.” *Rodde v. Bonta*, 357
8 F.3d 988, 999 (9th Cir. 2004). Such is the case here. If the injunction is granted and
9 Chrysler ultimately prevails on the merits, the hardship it will have suffered would be
10 purely financial: the administrative cost of communicating with its customers. If, on the
11 other hand, an injunction is not granted, those customers will be unnecessarily placed in
12 harm’s way and thousands will suffer avoidable, potentially catastrophic, vehicle stalls
13 while driving.

14 The communication that Chrysler provides to its customers need not be
15 inflammatory or make the company look bad. Chrysler could frame the notice as it sees
16 fit, subject to Plaintiffs’ review and the Court’s approval. The notice need not even
17 mention a “defect” if Chrysler still maintains that the TIPM failures do not rise to the
18 level of a defect. At this point in the proceedings, Plaintiffs ask only that, at a minimum,
19 Chrysler share with its customers and dealerships some key information that it has
20 already acknowledged internally:

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 This information should be non-controversial in light of Chrysler’s own records,
2 and would avoid pre-judging the merits of the parties’ dispute. The issue of who is at
3 fault and who should pay for TIPM replacements can await a full trial on the merits. But
4 Chrysler’s customers should be given enough information now so that they know vehicle
5 stalling is a possibility and take steps to avoid it. As several of the declarations and
6 customer accounts provided to NHTSA illustrate, when vehicles have stalled in traffic,
7 the stalls were often preceded by other symptoms of a failing TIPM—most often,
8 difficulty starting the engine. (Naor Decl., Ex. B; E-G.) Many times, customers even
9 took their vehicles in for service after experiencing the “no start” issue, but the
10 dealership was initially unable to replicate or correctly diagnose the problem because
11 Chrysler had not told them about the widespread TIPM problems either. (*Id.*, Ex. B, O.)
12 If customers and dealerships are told what symptoms to be on the look-out for, the risk
13 of vehicle stalls could be sharply curtailed. In addition, by providing this information,
14 customers and dealerships could ensure that their TIPMs are inspected or replaced
15 regularly to further reduce their risk—something that no customer or dealership would
16 otherwise think of doing.

17 **D. TIPM Problems Are A Matter of Public Interest.**

18 The danger posed by TIPMs is not limited to harming only Chrysler customers.
19 Anyone on the road when a TIPM fails is at risk, making TIPM problems a matter of
20 public interest, and awareness of those problems a matter of public safety. Granting the
21 proposed injunction would therefore benefit drivers, passengers, and pedestrians across
22 the country. By looking out for TIPM-related symptoms and replacing their TIPMs
23 before the defective part triggers a stall in traffic, Chrysler customers will be looking out
24 for the public’s safety as well as their own.

25 **E. Provisional Class Certification Is Optional.**

26 The Court is not required to certify the putative classes before issuing the
27 proposed preliminary injunction. *See Lavan v. City of Los Angeles*, 797 F. Supp. 2d
28 1005, 1019 (C.D. Cal. 2011), *aff’d*, 693 F.3d 1022 (9th Cir. 2012) (“the equivalent of

1 class-wide relief may still be appropriate despite the fact that a class has not yet been
2 certified”); Conte & Newberg, *Newberg on Class Actions* § 24:83 (4th ed. 2002) (“The
3 absence of formal certification is no barrier to classwide preliminary injunctive relief.”).

4 Some courts have, however, provisionally certified a class, solely for the purposes
5 of issuing a preliminary injunction. *Meyer*, 707 F.3d at 1040. If the Court chose to do
6 so here, it would be well justified, as each of Plaintiffs’ proposed state-wide classes meet
7 requirements of Rule 23(a) and 23(b)(2). (*See* 2nd Am. Compl., ¶ 97 (proposing
8 California, Florida, Maryland, Massachusetts, and Missouri classes).)

9 Rule 23(a)(1): The members of each proposed class number in the thousands, far
10 too many to individually join in a single action. ([REDACTED])

11 Rule 23(a)(2): Consumer claims for failing to disclose an automotive defect
12 involve on a number of common questions. In particular, whether the TIPM is a
13 defective part and whether that fact would be considered material by a reasonable
14 consumer are central issues that can be decided for all class members in a single
15 proceeding. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th
16 Cir. 2010) (finding commonality satisfied in auto defect action asserting consumer
17 protection violations).

18 Rule 23(a)(3): Each state-wide class would be represented by a named plaintiff
19 with substantially same state law claims against Chrysler for failing to disclose the
20 TIPM defect and its safety implications. *Id.* at 1175.

21 Rule 23(a)(4): The named plaintiffs would be adequate representatives of the
22 proposed classes, as their interests in pursuing state consumer protection claims are
23 aligned with those of the class, and they have retained counsel experienced in class-wide
24 auto defect litigation to represent the class.

25 Rule 23(b)(2): Chrysler has refused to act on grounds that apply generally to each
26 state-wide class of consumers, rendering class-wide injunctive relief appropriate.
27 Chrysler has acknowledged in discovery that it has never informed its customers or
28

1 dealerships of any TIPM problem or issue, and that it has no intent to do so. (Naor
2 Decl., Ex.C, Req. Nos. 2, 9.)

3 **F. The Court Also Possesses the Authority to Order Dissemination of**
4 **Information to the Putative Classes Under Rule 23.**

5 In addition to its equitable authority to issue a preliminary injunction, the Court
6 also possesses discretion under Rule 23(d) to protect class members by ordering that
7 they be notified of the existence of this lawsuit and dispute over the risks posed by their
8 vehicle’s TIPM. There is no requirement that a class be certified before the Court can
9 direct communications with class members. For example, Rule 23(d) has been used to
10 correct misinformation provided to proposed class members, as well as to communicate
11 with proposed class members after certification has been denied. *O’Connor v. Uber*
12 *Techs. Inc.*, No. C-13-3826 EMC, 2014 WL 1760314, at *4 (N.D. Cal. May 2, 2014) (“a
13 court’s authority over communications under Rule 23(d) extends beyond ‘actual class
14 members’ to ‘potential class members’”); *Puffer v. Allstate Ins. Co.*, 614 F. Supp. 2d
15 905, 915 (N.D. Ill. 2009) (“it is appropriate to exercise our authority under Rule
16 23(d)(1)(B)(i) to direct that notice be given to putative class members”).

17 Usually, there is no harm in waiting to inform class members about pending
18 litigation and its allegations until class certification is decided. There is typically
19 nothing that an ordinary class member would do differently if they knew about a dispute,
20 and it is not until the opt-out phase that class members would stop to consider their
21 choices. Here, however, many class members would act differently if they were told
22 about the TIPM dispute. Unless their TIPM has already failed, most have never heard of
23 a TIPM, much less that it may be defective and lead to widespread stalling, inability to
24 start the engine, and other aberrant behavior in their vehicles’ electrical system.
25 Informing class members of Plaintiffs’ class-wide allegations now, rather than after
26 certification, will give drivers additional time to decide whether they want to act on
27 those allegations and take steps to ensure their safety—whether it be by inspecting their
28 TIPM regularly or replacing it at the first sign of electrical problems. It will also ensure

1 that class members preserve evidence, such as repair receipts, so that they can prove
2 their individual damages in the event Chrysler is found financially liable. Again, the
3 notice need not disparage Chrysler, but it should give class members an early
4 opportunity to benefit from the action brought in their name and mitigate the harm they
5 stand to suffer as a result of an allegedly defective TIPM.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Plaintiffs request that the Court issue a preliminary
8 injunction requiring Chrysler to share its knowledge of TIPM problems with its
9 customers so they can take precautions during the litigation. Plaintiffs have submitted a
10 proposed injunction with their motion.

11
12 DATED: September 18, 2014

Respectfully submitted,

13 **GIRARD GIBBS LLP**

14 By: /s/ David Stein

15
16 Eric H. Gibbs
17 Rachel A. Naor
18 601 California Street, 14th Floor
19 San Francisco, California 94108
20 Telephone: (415) 981-4800
21 Facsimile: (415) 981-4846

22 Todd M. Schneider
23 Joshua G. Konecky
24 **SCHNEIDER WALLACE**
25 **COTTRELL KONECKY LLP**
26 180 Montgomery Street, Suite 2000
27 San Francisco, California 94104
28 Telephone: (415) 421-7100
Facsimile: (415) 421-7105

Attorneys for Plaintiffs