INFORMATION REDACTED
PURSUANT TO THE FREEDOM OF
INFORMATION ACT (FOIA), 5 U.S.C.
552(B)(6)

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Via FTP Secure Link

John Donaldson
Acting Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
West Building W41-227
Washington, D.C. 20590

RE: Request for Confidential Treatment
Peer Information Request Related to PE22-014

Dear Mr. Donaldson:

This letter is submitted on behalf of Motional AD Inc. (hereinafter "Motional") and requests confidential treatment under 5 U.S.C. § 552(b)(4) and 49 C.F.R. Part 512 for the information submitted in response to the Peer Information Request ("Peer IR") related to NHTSA's Preliminary Evaluation in PE22-014, issued on January 24, 2023. With this request, Motional provides supporting information required by 49 C.F.R. § 512.8(a)–(f).

This request for confidential treatment pertains to Motional's response to Request Nos. 2-6 for the Peer IR letter related to vehicle immobilization and Request Nos. 2 – 5 for the Peer IR letter related to inappropriately hard braking. Motional is seeking confidential treatment of all identified information contained in its submissions that are responsive to these requests.

The focus of the Chief Counsel's confidentiality determination is to protect the interests of both the government and submitters of confidential business information. ***See*** 49 C.F.R. § 512.1 ("Purpose and scope"). The very existence of NHTSA's confidential treatment under Part 512 encourages submitters to "voluntarily submit[]" useful "commercial or financial information" to the government and it correspondingly provides the government with an assurance that such information will be reliable. 49 C.F.R. § 512.8(c)(4); 5 U.S.C. § 552(b)(4).

Exemption 4 of the Freedom of Information Act ("FOIA") affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from such disclosure. ***See*** Attorney General FOIA Memorandum (Oct. 12, 2001), https://www.justice.gov/archive/oip/foiapost/2001foiapost19.htm (recognizing key value of "protecting sensitive business information").

Namely, Exemption 4 was enacted prevent disclosures of the type of competitive harm outlined in 49 C.F.R. Part 512 that would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter's] product." ***Pub. Citizen Health Rsch. Grp. v. FDA***, 185 F.3d 898, 905 (D.C. Cir. 1999). "Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA." ***Worthington Compressors, Inc. v. Costle***, 662 F.2d 45, 51 (D.C. Cir. 1981). "If these competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government." ***Id.***

The standard announced in ***Food Marketing Institute v. Argus Leader Media*** provides the current legal standard related to the protection of confidential information. Under ***Food Marketing Institute, c***onfidential protection under Exemption 4 requires proof of two conditions: (1) that the information is kept private or closely held by the person providing it; and (2) that the person receiving it provides some assurance that the information will be kept secret. 204 L. Ed. 2d 742, 139 S. Ct. 2356, 2358 (2019). Those conditions align with the consideration in 49 C.F.R. 512.15(d), that "[t]he information was provided to NHTSA voluntarily and was not customarily released to the public by the person from whom it was obtained." Motional seeks confidential treatment of its sensitive and competitive business information as it meets the legal standard set forth above.

The public disclosure of the information contained in Motional's response materials is kept private by the company and disclosure would cause substantial harm to Motional's competitive position. Identification of the states and jurisdictions in which Motional operates or has operated the subject vehicles and vehicle identifying information coupled with the disclosure of the date of initial operation on public roadways, the number of miles traveled and number of subject incidents (as defined in each Peer IR letter) is sensitive, confidential business information. The autonomous vehicle (AV) industry is a highly competitive space with a limited number of participants and the release of this information would have immediate adverse effects as it would reveal the scope and level of Motional's current operations. Further, release of Motional's description of its Operational Design Domain ("ODD") and ADS and vehicle system design would reveal proprietary information on Motional's ADS perception, detection and motion planning. This information is highly

competitive and would reveal data related to Motional's operational readiness and performance. The information would be highly valuable to competitors. Finally, release of Motional's responses related to its assessments of the subject incidents, if any, cited in its responses could give its competitors insight into the status of Motional's technical capabilities and limitations. The disclosure of any and all of this information would be harmful and substantial as it would be highly valuable to competitors and could reveal Motional's future deployment plans.

None of the above information has been publicly disclosed. The information is customarily and actually treated as private and Motional does not release or otherwise provide this information or information like it to the public. The information may have been disclosed, only as necessary, for the purposes of obtaining advice and assistance from counsel and other confidential advisers. But such disclosures do not compromise the confidential nature of the information. NHTSA has previously treated information that would reveal an entity's forward looking business plans as confidential and consistent with the agency's practice of maintaining confidential treatment of this type of information, this constitutes assurance that NHTSA will continue to treat this information as confidential.

Motional is requesting that the information included in the attached materials, including appendices, be granted confidential treatment and that confidentiality be granted for an indefinite period of time. A confidentiality certificate signed in support of this request and a confidential and public facing version of the responses are provided.

Sincerely,

[redacted]

Christie L. Iannetta

CLI:
Enclosures