IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY, Plaintiff, v. U.S. DEPARTMENT OF THE TREASURY, Defendant, and GENERAL MOTORS LLC, Intervenor-Defendant.	Civ. No. 11-1048 (BAH)

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Respectfully Submitted,

_____/s/_____

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Introduction

Plaintiff Center for Auto Safety ("the Center" or "CFAS") submits this reply in support of its motion for summary judgment in this case under the Freedom of Information Act ("FOIA") involving electronic mail exchanges between members of the Department of Treasury's Auto Task Force and the auto companies, General Motors and Chrysler Corporation, regarding "the biggest industrial bailout in American history" – i.e., the U.S. government's six-year old decision to provide more than $80 billion dollars in "rescue" money to those companies under the Troubled Asset Relief Program ("TARP") so that they could avoid going bankrupt. *See* Steven Rattner, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* 42 (2010) (hereinafter "*Overhaul*"), CFAS Exhibit ("Ex.") A. As demonstrated in Plaintiff's opening brief, ECF No. 40, and further detailed below, because the Treasury Department has failed to meet its burden of proof that all of the information withheld from the Center is exempt from disclosure under Exemption 4 of FOIA, Plaintiff's motion for summary judgment must be granted. 5 U.S.C. § 552(a)(4)(B); *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 755 (1989).[1]

A. The Agency Failed To Independently Determine That The Information At Issue Is Exempt From Disclosure.

As the Center explained in its opening brief, as an initial matter the government failed to meet its burden of proof here because it abdicated its independent obligation to determine whether the information at issue is exempt from disclosure and instead allowed attorneys for General Motors ("GM") and Chrysler to decide whether disclosure of the contested information

[1] Despite Treasury's protestations, Defendants' Summary Judgment Opposition, ECF No. 48 ("Def. Opp.") at 9, 11, there is nothing "improper" about the Center recounting the circumstances that led to the taxpayer funded bailout. This background is crucial to advise the Court of important information that not only highlights the public interest in disclosure here but also undermines the government's and GM's

is likely to cause "substantial competitive injury" to the "new" GM and "new" Chrysler. *See* Plaintiff's Summary Judgment Memorandum ("Pl. SJ Mem.") at 22 - 24. The agency *admits* that "[l]awyers for the 'new' Chrysler and the 'new' GM created the *Vaughn* Indices upon which the government relies in this case to carry its burden of proof." *See* Plaintiff's Statement of Material Facts As To Which There Is No Genuine Issue ("Pl. SMF") ¶14; Defendant and Intervenor-Defendant's Response ("Def. SMF Resp.") ¶14. The government further admits that rather than Treasury actually determining whether the release of each document or portion withheld under Exemption 4 is likely to cause "substantial competitive injury" to GM and Chrysler, it deferred to the companies' protestations, and that Treasury's only role was to decide whether the companies "credibly asserted" that this standard had been met. *See* Def. Opp. at 35.

However, relying on the very companies that do not want information publicly disclosed to call the shots on whether the legal standard has been met simply does not satisfy the government's burden here, no matter how "efficient" this approach may be for Treasury. *See* Def. Opp. at 35 (claiming that this was the "most efficient" way for the agency to meet its burden). Thus, while the government asserts that Plaintiff "cites no authority" for the proposition that the withholding agency – versus the submitter of the information – must determine and demonstrate to the Court that the withheld information is actually exempt from disclosure, *see* Def. Opp. at 35, Plaintiffs rely on the plain language of FOIA which states that "the burden is on *the agency* to sustain its action," 5 U.S.C. § 552(a)(4)(B) (emphasis added), as well as decades of case law that similarly explains that the government itself bears this burden. *See* Pl. SJ Mem. at 20-21. Indeed, a recent report by the National Highway Traffic Safety

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self-serving arguments that all of the withheld information is exempt from disclosure.

Administration ("NHTSA") recently explained that one of the reasons that agency failed to adequately address the deadly Delphi ignition switch for so many years was that GM "withheld critical information" from NHTSA. *See* Ashley Halsey III, *GM Defect 'Changed' Agency*, Wash. Post, June 6, 2015, at A3.

The lone case cited by the government, *Public Citizen v. United States Dep't of Health and Human Services*, No. 11-1681-BAH, __F. Supp.3d __, 2014 WL 4388062 (D.D.C. Sept. 5, 2014), Def. Opp. at 33, does not support Defendants' argument. Indeed, in both that case and its predecessor decision, *Public Citizen v. U.S. Health and Human Services*, 975 F. Supp.2d 81 (D.D.C. 2013), the court explained that the *agency* bears the burden of proof in a FOIA case. Thus, in the first round of that litigation, the court explained that "the agency 'bears the burden of establishing the applicability of the claimed exemption," and that:

> In order to carry this burden, *an agency must submit sufficiently detailed affidavits or declarations*, a *Vaughn* index or the withheld documents, or both, *to demonstrate that the government has analyzed carefully any material withheld*, to enable a court to fulfill its duty of ruling on the applicability of the exemption, and to enable the adversary system to operate by giving the requester as much information as possible, on the basis of which he can present his case to the trial court.

975 F. Supp.2d at 94 (emphasis added) (citations omitted). In round two of the litigation, upon which the government relies, the same court again explained that

> *[i]f an agency's affidavit describes the justifications for withholding the information with specific detail, demonstrates that the information withheld logically falls within the claimed exemption, and is not contradicted by contrary evidence in the record or by evidence of the agency's bad faith*, then summary judgment is warranted on the basis of the affidavit alone.

2014 WL 4388062, at *5 (emphasis added).[2]

[2] The fragmented quotes upon which Defendants rely, Def. Opp. at 33 n.15, do not support the

Here, we do not have the agency meeting any such burden. On the contrary, Treasury believes that it has met its burden of proof simply by deciding that the companies that do not want the information disclosed to the Center have "credibly asserted" the basis for their concerns. Def. SJ Mem. at 35. However, because that determination falls far short of what is required under FOIA, Defendants' argument must fail.

B. The Agency Has Not Met Its Burden To Demonstrate That All Of The Information At Issue Was "Obtained From A Person."

Treasury has also failed to demonstrate that *all* of the information at issue was "obtained from a person" as required to claim the protection of Exemption 4. *See* Pl. SJ Mem. at 26-28. As the Center explained, *id.*, because the Center's FOIA request concerns email exchanges *between* government officials and representatives of GM and Chrysler, it necessarily includes at least *some* information that was authored or created by government officials, which is not deemed information was "obtained from a person" within the meaning of the Exemption.

In response, the government argues that the "obtained from a person" requirement nevertheless applies if the government-generated information at issue incorporates data or other information obtained from *outside* the government. *See* Def. SJ Opp. at 14, 16. The Center does not disagree. However, the government also has a responsibility to segregate and disclose all information generated by government personnel that does *not* fall into that category – an obligation that simply has not been fulfilled here. Thus, in its opening brief, Plaintiff identified many *examples* of emails that, according to the companies' *Vaughn* Indices, involved back and

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government's argument. The first quote refers to the court's determination that the *agency's* affidavit regarding the *adequacy of the search* for responsive records was adequate; the remaining quotes simply reference evidence in the record demonstrating that the records at issue were both "commercial" and "confidential" in nature. However, none of those quotations stands for the proposition that the agency may abdicate its responsibility to make an independent determination that the withheld records are in fact exempt from disclosure, nor does it appear that this issue was even raised in that litigation.

forth discussions between Task Force members and representatives of Chrysler and GM. *See* Pl. SJ Mem. at 26-27. Although the government broadly asserts that these emails contain "responses from Treasury that would otherwise reveal the content of the GM or Chrysler communications," Def. Opp. at 15, it provides no declaration or other citation for this self-serving contention, and it vehemently opposes the Court conducting an *in camera* inspection to ascertain the validity of any such assertion. *See* Def. Opp. at 39-40. Moreover, in keeping with its position that Chrysler and GM are the decision-makers here, Treasury is also apparently relying on representations by GM that the *government's* segregability requirement has been met here. *See* Def. Opp. at 15, n.10 (stating that "[i]n addition to assessing the redacted documents specifically identified by Plaintiff, *GM also re-examined the content of all other redacted documents* and confirms that all GM redactions were made to GM-generated documents.") (emphasis added). However, as the Court of Appeals long ago observed, "*[n]either this court nor the district court will ordinarily take cognizance of 'facts' supplied by way of such [unsupported] assertions*." *Carson v. U.S. Dep't of Justice*, 631 F.2d 1008, 1015, n.30 (D.C. Cir. 1980) (emphasis added); *see also Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d 141, 150 (D.C. Cir. 2006) (declining to accept "counsel's post hoc explanations" as to why certain information is exempt from disclosure).

The Court need look no further than one document the Center actually has in its possession that nevertheless continues to be listed on Chrysler's *Vaughn* Index *as exempt in its entirety under Exemption 4*, to demonstrate the validity of Plaintiff's argument. That document, "Obama Administration New Path to Viability for GM and Chrysler," which is listed on Chrysler's *Vaughn* Index as HHR-DOT-2-00004091, and was submitted to the Court with

Plaintiff's opening brief as Plaintiff's Exhibit X, was withheld from the Center in its entirety for *almost four years* under Exemption 4. *See* Center FOIA request, Pl. Ex. R (June 8, 2009); *see also* Def. Opp. at 17 (stating that the document was provided to the Center in January 2013). However, the entire document – which Plaintiff urges the Court to read – was *authored by the government* and hence was not "obtained by a person" within the meaning of Exemption 4.

Nor, for that matter, is there *any* information in that document that would fall into the category of confidential information generated by the auto companies. Indeed, the only specific information that could arguably have come from the companies themselves is mention of the fact that Chrysler was considering entering into a partnership with Fiat, Pl. Ex. X at 1 – information that was publicly known as early as January 20, 2009. *See* http://www.forbes.com/2009/01/20/chrsyler-fiat-merger-biz-manufacturing-cz_jf_0121flint.html . Therefore, there simply was no justification for Treasury continuing to withhold this document from the Center for four more years, nor is there any justification for Chrysler's present inclusion of this document on its *Vaughn* Index as information that must be withheld in full from the Center on the grounds that the entire document is protected from disclosure under Exemption 4.[3]

While the government conveniently asserts that Chrysler's inclusion of this non-exempt document on its *Vaughn* Index was "inadvertent," Def. Opp. at 17, this simply reinforces

[3] *See* Chrysler *Vaughn* Index, ECF No. 36-3, at 71 (asserting that this entire document "contains confidential commercial information of Chrysler that *would cause substantial competitive harm to Chrysler if disclosed publicly*. Specifically, Document HHR-DOT2-0004091 contains detailed discussion of Chrysler's financial condition at the time when it was negotiating its partnership with Fiat and its lending agreement with the U.S. Treasury Department. Revealing this type of non-public information would cause Chrysler substantial competitive harm by providing Chrysler's competitors with non-public financial information as well as information regarding the business operations of Chrysler and its employees, placing Chrysler at a competitive disadvantage in competing and negotiating with other industry participants.") (emphasis added).

Plaintiff's position that the government must conduct an *independent* review of those *Vaughn* Indices and the documents listed therein in order to meets its burden of proof here. Indeed, regardless of whether inclusion of the document on Chrysler's *Vaughn* Index was "inadvertent," Chrysler purports to have reviewed that document to determine whether it falls within the protection of Exemption 4, and in its Index provides the Court with a lengthy explanation as to why the entire document falls within the Exemption, *see* Chrysler *Vaughn* Index at 71; n. 3 *supra* – none of which turns out to be correct. At the very least, this example is sufficient to warrant an *in camera* inspection of all other documents that, as described on the companies' *Vaughn* Indices, suggest that they contain information generated *by government officials*, including not only the examples provided by Plaintiff, SJ Mem. at 26-27, but all other similarly described documents.[4]

Indeed, although Treasury also insists that the *Vaughn* Indices are not deficient where they fail to identify the authors or identities of individuals who sent the emails in question, *see* Def. Opp. at 36, as demonstrated in the Center's opening brief, and further detailed above, if the email in question was authored by a government official it may not be information that was "obtained from a person" within the meaning of the plain language of Exemption 4. Hence,

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[4] Treasury's reliance on *COMPTEL v. FCC,* 945 F. Supp. 2d 48, 57 (D.D.C. 2013), Def. Opp. at 17, for the proposition that Chrysler's erroneous inclusion of this document on its *Vaughn* Index provides no basis for the Court to scrutinize *other* similarly listed documents, makes no sense. Indeed, in that case the court found that "[w]hile it is possible that the government relied on information from [an outside entity] to draft parts of the original version*, it seems unlikely, and the FCC has not met is burden to show, that this is true for the entire document*," *id.* (emphasis added), – precisely what has occurred here. Moreover, in that case, the court ultimately upheld the agency's decision to withhold all of the other documents at issue in the case only because the plaintiff failed to object to the withholding of those documents, *id.* at 60, – the opposite of what has occurred here. *See also* Pl. SJ Mem. at 25, n.32 (making absolutely clear that "[t]hese and other examples provided herein are merely *representative* of the various deficiencies discussed that appear throughout the *Vaughn* Indices").

having such information may be crucial to the Center's ability to demonstrate that such information cannot be withheld from the Center, at least in its entirety – and is certainly relevant to the Court's ability to conduct the requisite *de novo* review.

Moreover, as Mr. Rattner – head of Treasury's Auto Task Force – explained in his 2009 book about the bailout, although the government *publicly* represented that the auto companies were devising the strategies necessary to avoid bankruptcy, in reality the Task Force itself took over the restructuring of both the "new" GM and Chrysler. *See Overhaul*, Pl. Ex. A, at 210 (explaining that Larry Summers, co-chairman of the Task Force, "had pushed us from the start *to play down Team Auto's role and keep the emphasis on GM and Chrysler managing their own affairs*. . . . As we drafted press statements and fact sheets, *I would constantly force myself to write that 'GM' had done such and such. Just once I would have liked to write 'we' instead*.") (emphasis added). Thus, the record in this case casts serious doubt on the government's assertion that *none* of the withheld information was authored by the government, versus the "new" GM and Chrysler, and hence was all "obtained from a person" as required to claim the protection of Exemption 4.[5]

[5] *See also, e.g., Overhaul* at 59-60 (explaining that it was Mr. Rattner's idea to pursue the Section 363 Asset sales for both companies to avoid bankruptcy); *id.* at 92 (explaining that the Task Force was "stepping in to run GM"); *id.* at 132 (detailing the President's instructions to the Task Force members that "[w]e took to mean that we should insist that all of our conditions be met in a way that was prudent from the taxpayer's standpoint"); *id.* at 172 (explaining that the Task Force "ordered Chrysler to fund its day-to-day operating deficit, as much as possible, using its cash on hand rather than TARP money"); *id.* at 181 (explaining that because Chrysler needed the bailout funds from Treasury to avoid bankruptcy, "[*h]e who has the gold makes the rules*") (emphasis added).

C. Treasury Cannot Demonstrate That Disclosure Of Withheld Information Is Likely To Impair Its Ability To Obtain Similar Information In The Future.

Nor has Treasury met its burden to demonstrate that *all* of the withheld information is exempt under Exemption 4 because it is "confidential" in that disclosure is likely to "impair the [g]overnment's ability to obtain necessary information in the future." *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). As the Center amply demonstrated in its opening brief, all of the information at issue here was *required* to be submitted to the government in exchange for the billions of taxpayer dollars that the companies both needed to avoid bankruptcy, *see* Pl. SJ Mem. at 30-32 – a fact that is undisputed by Defendants, *see* Pl. SMF ¶ 16; Def. SMF Resp. ¶ 16. Thus, there simply is no credible basis for the assertion that those companies – or any other companies seeking billions of dollars in federal bailout funds – would hesitate for a moment to supply the federal government with whatever information it needed to provide those funds.

As Joan Claybrook, former head of NHTSA, explained in her uncontested Rule 56(e) declaration:[6]

> The agency's argument that if the Treasury Department were to disclose the information at issue "companies operating in competitive environments would be reluctant to share such information with Treasury in the future," and that "Treasury's ability to act as a lender would be hampered," [] "is *simply not supported by what occurred here and what would likely occur in the future if a company were to request TARP or*

[6] Although the Center submitted Ms. Claybrook's expert declaration with respect to her expertise as *both* a former head of a government agency with jurisdiction over the auto industry *and* as to the operations and competitive landscape of that industry, Defendants chose not to challenge either Ms. Claybrook's expertise, or for that matter, to respond to any of the extremely relevant factual points made in her Declaration. *See* Def. Opp. at 28 (incorrectly stating that Ms. Claybrook's Declaration is "conclusory" and "merely repeat[s] the legal arguments presented in Plaintiff's brief"). Accordingly, the Court should deem all of Ms. Claybrook's expertise and expert opinion conceded here. *See*, *e.g.*, *Arias v. DynCorp*, 752 F.3d 1011, 1016 (D.C. Cir. 2014) (granting summary judgment for the defendant who presented "*unrebutted expert testimony*" on the issues before the court) (emphasis added).

> *other federal funding*. This is not a matter of requesting a company to "share" information with the government. On the contrary, the information provided to the Treasury Department was a *mandatory requirement* of receiving any such funding, as the record clearly shows.

Claybrook Declaration ("Dec."), ECF No. 40-3, ¶ 13 (first emphasis added; second in original).[7]

In response, the government asserts that it can nevertheless meet its burden simply because its declarant, an "attorney advisor" for Treasury, provides the conclusory statement that disclosure "would 'compromise the effectiveness of government programs that may be dependent on sensitive information from such companies.'" Def. Opp. at 29-31, (relying on *Public Citizen Health Research Group v. Nat'l Institutes of Health*, 209 F. Supp. 2d 37, 52 (D.D.C. 2002)). However, given that the old GM and Chrysler were *required* to submit reliable information to the government in exchange for obtaining billions of dollars in bailout funds that they needed to avoid bankruptcy, the government has simply failed to demonstrate *how* disclosure would in any way impair the government's ability to provide billions of relief funds to *other* companies similarly situated in the future. Thus, there simply is *no* basis for this Court to conclude that disclosure of *any* of the withheld information would "'hinder the agency in fulfilling its statutory mandate,'" as asserted by Treasury. Def. Opp. at 31 (quoting *Public*

[7] *See also id.* ¶ 14 ("In fact, these companies simply would not have been provided with the TARP funds they needed to maintain their financial viability if they had *not* provided Treasury with *all* of the information that was requested") (emphasis in original); *id.* ¶ 15 ("Based on my experience, *any company or individual in the future who requests similar funding or assistance from the federal government to avoid bankruptcy will provide the government with whatever the government requests to make a decision about whether to provide such funding or assistance*. This certainly was my experience when the government provided Chrysler with loan assistance in 1980 when it was on the verge of bankruptcy") (emphasis added); *id.* ¶ 17 ("This point is especially true with respect to the billions of dollars in TARP funding that was provided to Chrysler and GM in 2009, because *those companies had no other means of avoiding bankruptcy*. *Therefore, they either provided Treasury with all requested information or risked going bankrupt. Any company or individual seeking TARP or similar federal funding or loan guarantees in the future would necessarily be in a similar situation – it would be seeking such federal assistance as a last resort to maintain its financial viability*.") (emphasis added).

Citizen Health Research Group v. NIH, 209 F. Supp. 2d at 54); *see also Critical Mass Energy Project v. NRC*, 830 F.2d 278, 283 (D.C. Cir. 1987), *vacated on other grounds* 975 F.2d 871 (D.C. Cir. 1992) (an impairment argument must be supported by a "detailed justification").

Moreover, tellingly, in sharp contrast to *Public Citizen Health Research Group v. NIH*, *supra*, upon which the government relies, here neither of the company declarants made *any* assertion that the companies would *not* have submitted the information at issue here if they had known that it might be disclosed under the FOIA. *Compare* 209 F. Supp. 2d at 53 (relying on detailed "[a]ffidavits submitted by industry representatives" that "[p]ublic disclosure . . . would have a chilling effect on [the company's] future decisions to enter into agreement with the NIH") *with* Declaration of Laura Fitzpatrick (GM's attorney), ECF No. 36-2, *and* Declaration of Louann Van Der Wiele, ECF No. 36-3 (Chrysler's representative) (no such similar statements).[8]

Further, as the Center also explained, "Treasury has broad subpoena powers and hence could always compel companies wishing to take advantage of federal funding programs comparable to TARP to provide whatever information is needed to make such decisions in the future." Pl. SJ Mem. at 30 n.39. Although Treasury tries to blunt this extremely relevant fact by asserting that here "the Government did not obtain the Disputed Information through its subpoena power," Def. Opp. at 29 n.14, this fact is completely beside the point – if the

[8] Treasury's attempt to distinguish cases relied on by the Center on the grounds that such cases were "reverse-FOIA" cases where the government had decided to *release* material and the submitter had sued to prevent the release, *see* Def. Opp. at 30, is to no avail. This is a distinction without any relevance – it simply means that in a reverse FOIA case, it is particularly difficult for a submitter of information to demonstrate that disclosure is likely to "impair" the government's ability to function in the future, because the government has already reached a contrary conclusion. However, this certainly does *not* mean that where the government summarily asserts that disclosure of *all* withheld information would impair its ability to dole out taxpayer funding in the future, the Court must automatically defer to that position, especially when it is not accompanied by any detailed or even logical explanation, or with any similar statements from the companies themselves.

government *needed or wanted* such information in order to decide whether to provide companies with taxpayer bailout funds, it certainly *could* subpoena such information, or, of course, simply *refuse to provide the companies with the requested financial relief.* Either way, the government's ability to obtain the information it needed would not be "impaired." *See also* Claybrook Dec. ¶ 18 ("[A]s the head of a federal agency, I knew that the government could always obtain relevant information it needed from the auto companies simply by indicating that we would invoke the agency's subpoena power.").[9]

D. Treasury Also Failed To Meet Its Burden That Disclosure Of Any And All Of The Information Is Likely To Cause The "New" GM And Chrysler "Substantial Competitive Injury."

As the Center has demonstrated, Pl. SJ Mem. at 32-44, the government has also failed to meet its burden of proof that all of the information withheld from the Center is "confidential" because its disclosure is likely to cause "substantial competitive injury" to either the "new" GM or the "new" Chrysler. None of Treasury's responsive arguments has any merit.[10]

1. Only *Competitive* Injury Is Cognizable Under This Prong Of Exemption 4.

First, although both the "new" GM and Chrysler asserted in their declarations that the information must be withheld to insure that entities such as "customers," "potential customers,"

[9] While Defendants complain that Plaintiff failed to "point to any support" for the proposition that the government would be able to subpoena records from a company applying for billions of dollars in bailout relief, Def. Opp. at 29 n.14, not only is this statement incorrect, *see* Pl. SJ Mem. at 30 n.39 (citing Declaration of Joan Claybrook ¶ 18 and 18 U.S.C. § 3486), but, conspicuously, Treasury certainly did not deny that it *would* have such authority. *See also*, *e.g.*, *Resolution Trust Corp. v. Thornton*, 41 F.3d 1539, 1544 (D.C. Cir. 1994) ("Administrative agencies wield broad power to gather information through the issuance of subpoenas.").

[10] Thus, Defendants' statement that "Plaintiff does not contest that competitors' use of the Disputed Information could cause GM or Chrysler substantial competitive injury," Def. Opp. at 20, is peculiar in the extreme – much of Plaintiff's opening brief, as well as the expert declaration of Ms. Claybrook, demonstrates that this assertion is baseless.

and "unions" could not obtain and use such information to the companies' disadvantage, *see* Fitzpatrick Dec. ¶ 13; Van Der Wiele Dec. ¶ 8, now that the Center has shown that such concerns do not qualify under the "substantial *competitive* injury" test, which requires a showing that the information can be used by *competitors* of the auto makers to gain a substantial competitive advantage, *see* Pl. SJ Mem. at 33-34, Treasury disavows that any such claims were asserted. Rather, despite what the companies' declarants actually said, Treasury and GM's attorneys insist in their latest brief that "no information was withheld *solely out of concern for one of the identified groups*," and that, instead "[i]t is all part of the same competitive mix." Def. Opp. at 21. However, because the companies' declarants did in fact assert that release of at least *some* of the information would cause them harm because it could be used to their disadvantage by "customers," "potential customers," and "unions," and those concerns are not cognizable under Exemption 4, this alone – rather than the unsworn self-serving factual assertions of counsel – is grounds for finding that the agency has failed to meet its burden.[11]

Similarly, although Defendants contend that they did *not* assert a substantial competitive injury argument on behalf of third party Delphi Corporation – a former supplier of GM's that is now itself bankrupt – *see* Def. Opp. at 26, in fact Defendants stated that release of the some of the information at issue would cause substantial competitive injury because:

Old GM and GM also both pursued a number of separate initiatives

[11] Defendants' reliance on *Nat'l Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673 (D.C. Cir. 1976), Def. Opp. at 21, is unfounded. Not only did that case certainly *not* hold that information that hurts companies vis-à-vis *consumers* qualifies for protection under Exemption 4, but the Court of Appeals emphasized throughout that opinion that conclusory generalized statements of substantial competitive harm do not suffice to satisfy an agency's burden to demonstrate that release of the information at issue is likely to result in "substantial competitive harm." *See, e.g.*, 547 F.2d at 680. Indeed, in that case, because of the conclusory nature of the agency's affidavits, the district court held a *trial* before determining that the agency had met its burden with respect to *some* of the information, but failed to sustain its burden with regard to other information at issue.

> relating to the restructuring of Delphi Corporation, at that time GM's largest supplier; which itself had been operating under bankruptcy protection since 2005. These included *the potential sale of individual Delphi facilities and/or lines of business to third parties* with GM support, the *potential sale of the preponderance of Delphi's assets to a third party pursuant to a bankruptcy reorganization plan*, and the simultaneous purchase by GM or a number of Delphi plants. The confidential documents related to these transactions include . . . *critical financial data* that has never been disclosed to any third party.

Def. SJ Mem. at 16 (emphasis added). This statement certainly appears to assert that release of at least some of the information at issue would harm *Delphi* rather than the new GM. Indeed, the "critical financial data" to which GM refers should be data concerning *Delphi*. At the very least, this particular explanation for withholding Delphi materials also cries out for *in camera* review of the records at issue to ensure that the government has met its duty to segregate and release all non-exempt information.[12]

2. The Companies' Requests For Confidentiality Are Irrelevant To Whether Treasury Has Met Its Burden.

Second, in its opening brief Treasury relied heavily on "confidentiality clauses" contained in the TARP loan agreements to support its contention that the withheld information is exempt from disclosure, s*ee* Def. SJ Mem. at 4-5, as did the companies' declarants, *see* Fitzpatrick Dec. ¶ 15; Van Der Wiele Dec. ¶ 6. However, now that the Center has demonstrated that such agreements are also completely irrelevant to the Court's determination of whether release of any of the information is likely to cause either company "substantial competitive injury," *see* Pl. SJ Mem. at 34, Treasury insists that it did *not* rely on those clauses as a basis for

[12] In addition, although Treasury's counsel summarily asserts that "neither the [Delphi] ignition switches nor any issues associated with the ignition switches are relevant to these proceedings," Def. Opp. at 11, there is no citation for this assertion, and, as explained, *supra*, the Court should not accept such unsupported statements of fact by counsel. *See also* GM *Vaughn* Index, Doc. Nos. 2-1-391 (documents concerning Delphi).

arguing that any of the information at issue is exempt, *see* Def. Opp. at 23. Therefore, this also is not a basis for allowing the government to withhold any of this information from the Center.

3. **Information About The "Old" Companies May Not Be Withheld.**

Third, in response to Plaintiff's argument that much of the information at issue necessarily concerns the "old" GM and "old" Chrysler – both of which are now bankrupt – and hence cannot possibly cause the "new" companies any "substantial competitive injury" if released, Treasury asserts that Plaintiff "ignores the fact" that the "new" companies acquired "substantially all of the assets" of the "old" companies. Def. Opp. at 23. However relevant this statement may be, Treasury conveniently ignores that "*substantially* all" necessarily means that the "new" companies did not acquire *all* of the assets of the "old" companies – and hence, Treasury has failed to explain how disclosure of six-year old information about assets that were jettisoned by the "new" companies can nevertheless cause them "substantial competitive injury" in 2015.

Even more telling, the Center relied heavily on the fact that certain major *liabilities* were left behind with the now bankrupt "old" companies, and hence that disclosure of information about *those* matters cannot possibly cause "substantial competitive injury" to the "new" companies. *See* Pl. SJ Mem. at 39; *see also* Claybrook Dec. ¶ 21 ("Certainly, with respect to information about the liabilities that were left behind with the 'old' companies, disclosure of such information would not cause the 'new' companies *substantial* competitive injury.") (emphasis added). Therefore, because Defendants have completely ignored this particular argument altogether, summary judgment should be entered for the Center with respect to any

document that concerns *liabilities* left with the "old" GM and Chrysler.[13]

4. The Information At Issue Is Too Outdated To Be Of "Substantial" Competitive Use To A Competitor Of The New GM And Chrysler.

Fourth, Defendants have still failed to explain how this six-year-old information concerning how the U.S. government helped these two auto companies avert bankruptcy would be of *any* competitive value to a competitor in 2015 and beyond. Thus, while Plaintiff agrees that perhaps in *some* circumstances the age of the information at issue alone is not dispositive of whether an agency can meet its burden of proof, *see* Def. Opp. at 23-24, Treasury has yet to show how the six-year old information at issue in *this* case, under all of the attendant circumstances that compelled the U.S. government to step in and not only provide the companies billions of dollars in taxpayer relief, but also actually *restructure* these companies so that they could avoid bankruptcy, would be of any value to a competitor, let alone cause the "new" companies "substantial" competitive injury.

The cases relied on by Defendants do not help them. For example, *Braintree Elec. Light Dept' v. Dep't of Energy*, 494 F. Supp. 287 (D.D.C. 1980), upon which Defendants rely, Def. Opp. at 24, involved a *trial* at which an industry expert testified "that although the oil market had changed in the last several years*, the 1980 market was similar to that of 1973 and 1974, the years in which the requested information was prepared*." *See* 494 F. Supp. at 291 (emphasis

[13] *See*, *e.g.*, *FDIC v. Bender*, 127 F.3d 58, 67-68 (D.C. Cir. 1997) (upholding court's dismissal of arguments to which the opposition failed to respond); *Hopkins v. Women's Div., Gen. Bd. of Global Ministries*, 238 F. Supp. 2d 174, 178 (D.D.C. 2002) ("It is well understood in this Circuit that when a plaintiff files an opposition to a motion to dismiss addressing only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded."); *Burke v. Inter-Con Sec. Sys., Inc.*, 926 F.Supp.2d 352, 356 (D.D.C. 2013) (party conceded arguments raised in opponent's motion for summary judgment by failing to oppose those arguments in its opposition); *Rosenblatt v. Fenty*, 734 F. Supp. 2d 21, 22 (D.D.C. 2010) ("*an argument in a dispositive motion that the opponent fails to address in an opposition may be deemed conceded*") (emphasis added).

added). We have no similar testimony here. On the contrary, Plaintiff's expert, Joan Claybrook – the former head of NHTSA and an undisputed expert on the auto industry, *see supra* n.6 – explained in her Rule 56(e) declaration that:

> Much of the information at issue necessarily relates to the 'old' failing companies that are now bankrupt. Therefore, such information would be of little *competitive* use to any auto companies currently competing with the new GM or new Chrylser, and its release certainly would not cause GM or Chrysler "substantial" competitive injury.

Claybrook Dec. ¶19 (emphasis in original). Moreover, as Ms. Claybrook also explained, "[m]any of the reasons the old companies were having financial difficulties relate to *their own mismanagement and failure to response to consumer needs and preferences*. Therefore, information concerning the operation of the 'old' mismanaged companies *would be of little competitive value to any current competitor of GM and Chrysler*." *Id.* (emphasis added).

Ms. Claybrook further explained that:

> Even with respect to information that may pertain to the "new" companies, the information is *now so old that it would be of little competitive value to any of the other auto companies*. Much has changed since that information was generated, and, in my experience, *the auto companies rarely plan for more than five years in the future because of the many market, manufacturing, and regulatory variables that inevitably affect such plans*.

Claybrook Dec. ¶22 (emphasis added).

Thus, it is not simply the *age* of the information at issue here that makes it stale and hence of little, if any, competitive value to GM and Chrysler's competitors – let alone "substantial" competitive value – but the totality of circumstances that pertain to the generation of the information at issue. Hence, none of the other cases relied on by Defendants, Def. Opp.

at 24-25, has any applicability here.[14]

Indeed, in light of all the circumstances at issue here, Defendants are relegated to arguing that release of the information is likely to cause the "new" companies "substantial competitive injury" because it "could" reveal the companies' "negotiating positions, timing, approaches, and strategies." *See* Def. Opp. at 24-25. But, such sweeping generalized claims of "substantial competitive harm" would mean that virtually *all* information generated by a company at any time in its history would qualify for protection under Exemption 4 – i.e., any such information could potentially reveal a "negotiating position" "approach," or "strategy" that was considered in the past. However, such conclusory generic claims simply fail to satisfy the government's burden to demonstrate, with specificity, how release of the actual information at issue in this case is likely to cause either of the "new" companies "substantial competitive harm." *See, e.g., Nat'l Parks and Conservation Ass'n v. Kleppe*, 547 F.2d at 680 ("Conclusory and generalized allegations are indeed unacceptable as a means of sustaining the burden of nondisclosure under the FOIA, since such allegations *necessarily elude the beneficial scrutiny of adversary proceedings, prevent adequate appellate review and generally frustrate the fair assertion of*

[14] Thus, in sharp contrast to what the Center has shown here, in *People for the Ethical Treatment of Animals v. United States Dep't of Agric.*, 2005 WL 1241141 (D.D.C. May 24, 2005), the court specifically found that the plaintiff "ha[d] not established a significant change in the competitive industry from 2001 through the present," *id.* at *7. Similarly, in *Timken Co. v. United States Customs Serv*., 1983 WL 486422 (D.D.C. June 24, 1983), the court found that the record established that "the contested information would give plaintiff a complete picture of the operations of its competitors in the [relevant] market from 1973 until 1978," *id.* at *4 – whereas here, the information at issue concerns either the "old" companies that are now bankrupt, or information relevant to extremely unique circumstances that existed in 2009 when the "new" companies were trying to become financially viable with billions of dollars of taxpayer relief, which also is of little relevance to a competitor in the *current* market. *See* Claybrook Dec.¶ 22. Likewise, in *Center for Auto Safety v. Nat'l Highway Traffic Admin.*, 93 F. Supp. 2d 1 (D.D.C. 2000), the court found that the information at issue was not "stale" because it "represents years of research and development and enormous financial investment that went into developing the air bag systems *used in today's cars*,"*id.* at 16 (emphasis added). No such showing has been made here.

rights under the Act.") (emphasis added).[15]

Further, as the Center has already demonstrated, most, if not *all*, of the approaches and strategies devised to save GM and Chrysler from bankruptcy originated with Treasury's Auto Task Force, *not* the nascent companies themselves. *See supra* at 8-9; see *also Overhaul*, Exhibit A (the head of the Auto Task Force provides his "insider" account of how the federal government took over GM and Chrysler and made them financially viable). And, as also demonstrated, many of those "negotiations," "approaches," and "strategies" are revealed in great detail in Mr. Rattner's 2009 book. Indeed, remarkably, Treasury *admits* that in continuing to assert that *all* of the information at issue in this case can continue to be withheld from the Center, it has "*never ascertained which of the information that has been withheld from the Center is included in Mr. Rattner's book*." *See* Pl. SMF ¶ 43 (emphasis added); Def. SMF Resp. ¶ 43. But, clearly, if the head of the Task Force with first-hand knowledge of all the "negotiations," "strategies," and "approaches" that were used to prevent the bankruptcies of GM and Chrysler *published a book about these matters six years ago*, disclosure of *additional* information about the same matters in will hardly result in "substantial" competitive injury to either company in

[15] The Center does not disagree that in appropriate cases the agency may treat "common documents commonly," as explained by the Court of Appeals in *Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d at 147, relied on by Defendants, Def. Opp. at 21. However, here, in sharp contrast to that case, not only did the agency itself not explain in a declaration why such information is exempt from disclosure, but the explanations provided by the *companies* as to why these categories of information fall within the coverage of the Exemption are sorely lacking. *See, e.g.*, 449 F.3d at 147 (noting that the *agency's* declarant "linked the substance of each exemption to the documents' common elements"); *see also id.* at 148-49 (finding certain documents exempt where the agency has documented that the particular information is contained in submissions requesting approval of new drugs that "other companies 'could make use of . . . to eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the product for which' the submitting company filed the [submission].") (citations omitted); *but see id.* at 149 (finding that the agency failed to meet its burden of proof for other exempted information where "[i]n no way do these subject headings," or any other "document descriptions themselves shed . . . light" on why the documents are exempt from disclosure).

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5. That So Much Similar Information Has Already Been Made Public Vastly Undermines Treasury's Ability To Meet Its Burden Of Proof.

Finally, the Center has also shown that there simply is no way that disclosure of *all* of the information at issue here is likely to result in "substantial competitive injury" to either the "new" GM or the "new" Chrysler when so much financial and commercial information about these companies – including much more *recent* financial data – is *already* in the public domain. *See* Pl. SMJ at 41-44.[16] Remarkably, Defendants *admit* that this is true, at least with respect to some of the information cited by Plaintiff. *See, e.g.*, Def. SMF Resp. ¶¶ 35, 39-41. However, Defendants argue that this salient fact is legally irrelevant because the Center has not met the requirements for demonstrating that there has been a "waiver" of Treasury's claim of Exemption. *See* Def. Opp. at 26-28.

But the Center has *not* asserted that the government *waived* any argument with respect to its "substantial competitive injury" claim, and hence *none* of the case law upon which Defendants rely is relevant to the Court's *de novo* review in *this* case. Rather, the Center relies on the voluminous publicly available information about GM and Chrysler's monthly sales figures, financial performance, audited financial statements, historical and projected financial operating information budgets, costs projections and forecasts, plans and strategies for the future, tax and liability matters, product strategy, manufacturing costs and relationships with suppliers,

[16] *See also* Claybrook Dec. ¶ 23 ("*The kinds of information that the government appears to be withholding here are also publicly disclosed in whole or part in other public forums*. Cost projections and other financial information was included in the February 2009 Viability Plans submitted to Treasury by both Chrysler and GM, and those Plans – rejected by Treasury – have been publicly available for years. In addition, *the kind of information being withheld has also been required to be submitted by the companies in SEC filings*. . . . Further, if either GM or Chrysler has filed for patent protection since 2009, detailed financial information would also be on file with the Patent Office. GM's and Chrysler's monthly sales figures are also published on the internet.") (emphasis added) (citations omitted).

dealer reductions, future objectives, union negotiations, and restructuring plans, as well as specific details of the negotiations and strategies that led to the Section 363 sales and restructuring of the two companies detailed in Mr. Rattner's book, simply to further demonstrate the unlikelihood that release of *additional* information about such matters – generated in 2009 when the companies were on the verge of bankruptcy – would likely result in causing either GM or Chrysler "substantial" competitive injury. *See* Pl. SMF ¶¶ 35-42 (and Exhibits cited therein); Claybrook Dec. ¶¶ 23-24. Indeed, all of this information has been disclosed by the companies themselves, Treasury, the White House, Congress, or Mr. Rattner – the *head* of the Auto Task Force that orchestrated the bailout.[17]

Therefore, surely the demonstrated widespread disclosure of *similar* information by the companies and the U.S. government – including much more *recent* data that have been provided by both GM and Chrysler in various SEC filings, *see* Pl. SMF ¶¶ 36-38 – is *relevant* to the Court's determination of whether disclosure of the 2009 emails at issue here is likely to cause either GM or Chrysler "*substantial* competitive harm." Indeed, Treasury makes the odd

[17] Defendants *admit* that much of this information has been publicly disclosed. *See* Def. SMF Resp. ¶ 35 (admitting that the "new" GM and Chrysler monthly sales figures, by model, are published on the internet); *id.* ¶ 39 (admitting that "[f]inancial information about the old Chrysler and GM has been publicly disclosed in various governmental and legislative reports"); *id.* ¶ 40 (admitting that the "terms of the loan agreement between the old Chrysler and Treasury have been publicly disclosed);" *id.* ¶ 41 (admitting that the "[t]erms and provisions of the § 363 Sales that were approved by the Bankruptcy Courts have been publicly disclosed"). As to other information that Plaintiff demonstrated can be found in publicly available documents, Defendants' denial of these well supported facts was unaccompanied by any citation to the record. S*ee* Pl. SMF ¶¶ 36, 37, 38, 42;Def. SMF Resp. to same. Accordingly, those factual assertions must also be deemed admitted. *See* Fed. R. Civ. P. 56(c) (party asserting that a fact is genuinely disputed "must support the assertion by . . . citing to particular parts of materials in the record"); Local Rule 56.1 (an opposition to a motion for summary judgment "shall be accompanied by a separate concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, which *shall include references to the parts of the record relied on to support the statement*") (emphasis added); *id.* ("In determining a motion for summary judgment, the court may assume that facts identified by the moving party in its statement of material facts are admitted, *unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion*.") (emphasis added).

statement that "Plaintiff points to no document containing Disputed Information that is as specific as any publicly available information." Def. Opp. at 27 (emphasis in original). Of course, because the Center does not have *access* to the documents that Treasury *continues* to withhold, it is a bit disingenuous for the agency to fault the Center for not producing copies of such documents to demonstrate that the information contained therein is no longer confidential. However, the Center *has* been able to demonstrate that at least one document still listed on Chrysler's *Vaughn* Index as exempt in full because disclosure would cause the "new" company "substantial competitive injury" is not exempt at all, *see supra* at 5-6, and the Center can demonstrate that other documents withheld in full on the same grounds until release in July 2014 were also never exempt from disclosure, *see infra* at 24-25.

In any event, the fact that there is publicly available information that is *more* "*specific*" than what the withheld documents would reveal, Def. Opp. at 17, would seem to *support*, rather than defeat, Plaintiff's argument here – if in fact there is a host of more "specific" information of the kind being withheld that is already *publicly* available, it defies logic that the government can nevertheless meet its burden to demonstrate that release of the less specific *general* information is nevertheless likely to result in "substantial" competitive injury to either the "new" GM or the "new" Chrylser. *See Elec. Privacy Info Ctr. v. U.S. Dep't of Homeland Security*, 892 F. Supp. 2d 28, 42 (D.D.C. 2012) (in upholding the agency's Exemption 4 claim the court relied heavily on the fact that "the public documents that [plaintiff] cites contain *generic performance information distinct from the specific data include in the document in dispute*") (emphasis added). Indeed, as the Court of Appeals long ago explained in *Niagara Mohawk Power Corp. v. U.S. Dep't of Energy*, 169 F.3d 16, 21 (D.C. Cir. 1999), upon which Defendants rely, Def. Opp.

at 27-28, where the information at issue "turn[s] out to add so little" to what is already publicly available, "its public disclosure will cause no *additional* competitive harm," (emphasis added), and hence Exemption 4 does not apply.[18]

E. Alternatively, The Court Should Conduct An *In Camera* Inspection Of Withheld Information.

Although the Center has amply demonstrated that Treasury has not met its burden of proof that all of the information that has been withheld is exempt from disclosure under Exemption 4, should the Court continue to have doubts about whether it can rule in the Center's favor at this juncture, it should conduct an *in camera* inspection of some of the documents. Contrary to Defendants' assertion, such inspections are by no means "exceptional" in FOIA cases or only conducted where the Plaintiff can demonstrate "bad faith" on the part of the agency. *See* Def. Opp. at 39-40. Indeed, FOIA itself expressly provides that in conducting its *de novo* review, the court "may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions." 5 U.S.C. § 552(a)(4)(B); *see also Spirko v. Postal Serv.*, 147 F.3d 992, 996 (D.C. Cir. 1998).

Here, such an inspection is particularly warranted because Treasury has withheld so many documents in their entirety despite the fact that (a) the documents were generated six years ago, (b) so much information about the government's bailout of GM and Chrysler, including Mr. Rattner's entire book about these events, is already in the public domain; (c) Treasury allowed

[18] *Elec. Privacy Info Ctr. v. U.S. Dep't of Homeland Security*, 892 F. Supp. 2d. 28, upon which Defendants rely, Def. Opp. at 32, does not help them for another reason. There, in determining there was no segregable non-exempt information that could be disclosed, the court relied on a sworn declaration from the submitter explaining that the withheld information was *different* than information already in the public domain, *see* 892 F. Supp.2d at 43-44 – a showing that has *not* been made here.

the submitters of the information to prepare the *Vaughn* Indices; and (d) those Indices contain inadequate and conclusory descriptions of documents. *See* Pl. SJ Mem. at 24-25; *see also Spirko*, 147 F.3d at 996 (recognizing that *in camera* review may be "particularly appropriate" when the agency's affidavits are "insufficiently detailed to permit meaningful review of exemption claims" or when the "dispute turns on the contents of the withheld documents.") (citation omitted).[19]

Indeed, the Center has already demonstrated that at least one document listed on Chrysler's *Vaughn* Index as exempt in its entirety is in fact *not* exempt. *See supra* at 5-6. There are other documents withheld from the Center on the grounds that disclosure of the entire document would result in "substantial competitive injury" to GM, which upon review simply do not meet that standard. For example, on July 2014, Treasury released documents to the Center that had previously been withheld for five years – and that were listed on the original 2013 *Vaughn* Index prepared by GM's attorneys as exempt in their entirety – that simply are not exempt from disclosure. One such document, Bates Label HHR-DOT2-00020640, is a draft press release for GM concerning the Bankruptcy Court's July 2009 decision to approve the Section 363 Asset Sale. *See* Pl. Ex. JJ. That there is nothing in that document that can even remotely be considered exempt from disclosure under Exemption 4 is demonstrated by the fact that the final version of the press release, Pl. Ex. KK, which was released to the public on *July 6, 2009*, is virtually identical in content. Yet, Treasury – and the "new" GM – continued to

[19] *See also*, *e.g.*, *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, 2005 WL 1241141, at *3 (D.D.C. May 24, 2005) (court conducted an *in camera* inspection to test the government's assertion that release of all of the withheld information would cause "substantial competitive injury" to the submitter); *Judicial Watch v. U.S. Dep't of Treasury*, 802 F. Supp.2d 185, 198 (D.D.C. 2011) (court conducted an *in camera* inspection of documents to ascertain if the agency had released all segregable non-exempt information).

withhold this entire document for five years, asserting that disclosure "would likely cause substantial competitive harm if released." *See* GM *Vaughn* Index, Pl. Ex. LL, at 14.[20]

These and the other examples the Center has identified provide ample evidence that an *in camera* inspection is warranted here – the record indisputably shows that Treasury has simply failed to meet its burden that all of the withheld information is exempt from disclosure.[21]

CONCLUSION

For all of the foregoing reasons, as well as those set forth in Plaintiff's Memorandum in Support of Its Motion for Summary Judgment, Treasury has failed to meet it burden of proof and the Center is entitled to summary judgment.

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[20] Similarly, Treasury and GM withheld until July 2014 a request for confidential treatment, HHR-DOT-2-00189321 and the transcript of a GM Press Conference, HHR-DOT2-00021600 on the grounds that disclosure of *any* such information would cause the "new" GM "substantial competitive injury," *see* GM Initial *Vaughn* Index, Pl. Ex. LL, at 1027, 16, (attached as Pl. Exhs. MM-NN), when there simply is *nothing* in those documents that meets this standard, particularly when all of the information was made *public* by GM in 2009. There are many other examples, too numerous to include here. For example until April 2013, Chrysler listed on its *Vaughn* Index redacted information that was subsequently released to the Center in July 2014 that could not legitimately have been withheld on the grounds that disclosure was likely to cause Chrysler "substantial competitive harm," including a paragraph in an email to Mr. Rattner explaining the well-known fact that auto companies use employee incentives as a "competitive tool," *compare* HHR-DOT-00001030, Pl. Ex. OO *with* Chrysler *Vaughn* Index (April 29, 2013), ECF No. 21-3, at 1, and the statement in another email that Ron Kolka "will stay for 30 days as an employee of old Chrysler until we sort out the budget stuff," HHR-DOT2-00183048, Pl. Ex. PP – a fact that was known to the public when Mr. Kolka left the company in 2009. *See, e.g.*, *Detroit News* (June 11, 2009), http://www.detroitnews.com/article/20090611/906110411; *see also* Chrysler *Vaughn* Index, ECF No. 21-3 at 34-35 (stating that this information was redacted because release "would place Chrysler at a disadvantage vis-à-vis other competitors").

[21] The Center has already identified several categories of documents for which an *in camera* inspection would be helpful to the Court's *de novo* review. *See supra* at 8-9, 9-10, 16-17. In addition, should the Court agree that such an approach is warranted here, the Center is willing to work with the government in an effort to propose a manageable way for the Court to conduct such a review – e.g., by choosing an additional representative sample of documents to review. *See, e.g.*, *Weisberg v. Dep't of Justice*, 745 F.2d 1476, 1490 (D.C. Cir. 1984) (noting that "[t]he sampling procedure is appropriately employed, whereas here the number of documents is excessive and it would not realistically be possible to review each and every one") (citations omitted).