1. GENASCI v. MACRAE SC-20180229

Judgment Debtor Examination.

TENTATIVE RULING # 1: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED AT 8:30 A.M., FRIDAY, OCTOBER 22, 2021 IN DEPARTMENT NINE, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE DEBTOR WAS EFFECTED NO LATER THAN TEN DAYS PRIOR TO THE HEARING DATE (CCP, § 708.110(d)). IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.

2. MATTER OF SILVER PC-20210285

OSC Re: Name Change.

TENTATIVE RUING # 2: THE PETITION IS GRANTED.

3. MATTER OF ZACHARY NORRIS PC-20210318

OSC Re: Name Change.

TENTATIVE RUING # 3: THE PETITION IS GRANTED.

4. MATTER OF MCCORMACK PC-20210362

OSC Re: Name Change.

TENTATIVE RUING # 4: THE PETITION IS GRANTED.

5. MATTER OF NOAH S. PC-20210436

OSC Re: Name Change.

TENTATIVE RUING # 5: THE PETITION IS GRANTED.

6. MATTER OF ANGELICA NORRIS PC-20210456

OSC Re: Name Change.

The mandated CLETS report is not in the court's file. (See Code of Civil Procedure, § 1279.5(f).)

TENTATIVE RUING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, OCTOBER 22, 2021 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

7. MATTER OF LUGO PC-20210467

OSC Re: Name Change.

TENTATIVE RUING # 7: THE PETITION IS GRANTED.

8. MATTER OF MYLA C. PC-20210470

OSC Re: Name Change.

The petition seeks to change the name of a minor; the minor's father has not joined in the petition; there is no proof of personal service of notice of the hearing or the order to show cause on the minor's father in the court's file; and although the verified petition states that the father is located in the vicinity of a certain city in California, there is no explanation provided in the verified petition to establish that notice of the hearing cannot reasonably be accomplished pursuant to Code of Civil Procedure, §§ 415.10 or 415.40. (Code of Civil Procedure, § 1277(a).)

TENTATIVE RUING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, OCTOBER 22, 2021 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

9. BOCKMAN v. COUNTY OF EL DORADO PC-20200611

Defendant El Dorado County's Motion to Compel Further Discovery and Document Production.

TENTATIVE RULING # 9: UPON REQUEST OF THE MOVING PARTY, THIS MATTER IS DROPPED FROM THE CALENDAR.

10. YOUNG v. GENERAL MOTORS, LLC PC-20210047

(1) Plaintiff's Motion to Compel Further Verified Response to Form Interrogatory Number 12.1.

(2) Plaintiff's Motion to Compel Further Responses to Special Interrogatories, Numbers 5, 14, 23, 40, and 42.

(3) Plaintiff's Motion to Compel Further Responses to Requests for Production Numbers 1, 9, 17, 19, 31, 37, 39, 40, 42, 52, and 53.

Plaintiff's Motion to Compel Further Verified Response to Form Interrogatory Number 12.1

Plaintiff's complaint seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions.

Plaintiff moves to compel a further verified response to Form Interrogatory Number 12.1 within 30 days. Plaintiff does not seek imposition of any discovery sanctions.

The proof of service declares that notice of the hearing and a copy of the moving papers were served by electronic service to defense counsel on September 10, 2021.

At the time this ruling was prepared, there was no opposition to the motion in the court's file.

If the propounding party deems that the response to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents is unwarranted or the specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general, that party may move for an order compelling a further response. (Code of Civil Procedure, § 2030.300(a)(1).)

"(a) The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following: ¶ (1) An answer containing the information sought to be discovered. ¶ (2) An exercise of the party's option to produce writings. ¶ (3) An objection to the particular interrogatory. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party. ¶ (c) Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding interrogatory, but the text of that interrogatory need not be repeated." (Code of Civil Procedure, § 2030.210.)

"(a) Each answer in response shall be as complete and straightforward as the information reasonably available to the responding party permits. ¶ (b) If the interrogatory can not be answered completely, it shall be answered to the extent possible. ¶ (c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code of Civil Procedure, § 2030.220.)

With the above-cited legal principles in mind, the court will rule on plaintiff's motion to compel a further response to form interrogatory number 12.1.

Form Interrogatory Number 12.1 requests defendant to state the name, address, and phone number of each individual who witnessed the incident or events occurring immediately before or after the incident; who made any statement at the scene of the incident; who heard any statements made about the incident by any individual at the scene; and who you or anyone acting on your behalf claim has knowledge of the incident, except for expert witnesses.

Defendant initially objected that the term "Incident" is vague and ambiguous as the action involves breach of warranty claims over a period of time, the information is protected by the attorney-client privilege and work product doctrine, and the information is equally available to plaintiff.

- Vague and Ambiguous Objection

Plaintiff argues that the term "Incident" is not vague or ambiguous as it clearly refers to the very limited scope of time and narrow dealings with defendant and defendant's authorized repair facilities, such as presentation of the vehicle for repairs on three occasions; and in or about October 2020 when plaintiff contacted defendant's customer assistance center and expressly advised defendant that the subject vehicle exhibited numerous non-conformities and plaintiff sought a repurchase of the vehicle or replacement of the vehicle, which was denied.

The term "INCIDENT" is defined in the form interrogatories served on defendant as "the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to the action or proceeding." (Plaintiff's Exhibit 1 – Form Interrogatories, Set One, Section 4.(a)(1).)

Plaintiff's complaint seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions; and despite a reasonable number of attempts to repair these defects and malfunctions and after representations by defendants that all defects, malfunctions, maladjustments, and non-conformities had been repaired, the vehicle had not been repaired as the vehicle still had the defects, malfunctions, maladjustments, and non-conformities.

The term "incident" used in form interrogatory number 12.1 is not vague and ambiguous as defined in the form interrogatories and with respect to the issues raised in the complaint. The objection is overruled.

- Equally Available Objection

It does not appear that plaintiff has equal access to information concerning the identity, address and phone number of each individual who witnessed the defects, malfunctions, maladjustments, non-conformities, and failed repairs or events occurring immediately before or after the failed repairs that is relevant to the claim of breach of the warranties; who made any statement at the scene of the repairs; who heard any statements made about the defects, malfunctions, maladjustments, non-conformities and failed repairs by any individual at the scene; and who defendant or anyone acting on defendant's behalf claim has knowledge of the defects, malfunctions, maladjustments, and non-conformities and failed repairs. The objection is overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not

extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

The identity, address, and phone number of witnesses to the dealings with defendant and defendant's authorized repair facilities arising from presentation of the subject vehicle for repairs three times and underlying claims in the complaint is not protected by the attorney-client privilege or work product doctrine. The objection is overruled.

- Sufficiency of Response After Objections

At the conclusion of the objections asserted in response to form interrogatory 12.1, defendant stated that subject to and without waived the objections, defendant is not aware of any individuals who may have responsive information other than plaintiff, unnamed employees of the dealership(s) where plaintiff's vehicle was serviced, and unnamed GM call center advisors with whom plaintiff may have communicated regarding the subject vehicle.

Defendant further cited Code of Civil Procedure, § 2030.230 and referred plaintiff to the documents defendant was producing in response to plaintiff's request for production in which plaintiff may identify the individuals with the information sought, such as incidentally obtained repair orders regarding the subject vehicle, service request activity reports, and global warranty history report.

The response is insufficient. Defendant did not state the name, address, and phone number of each individual employee of the dealership(s) where plaintiff's vehicle was serviced, and GM call center advisors.

- Response Referring Plaintiff to Records to be Produced by Defendant in Response to Requests for Production

"If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them." (Emphasis added.) (Code of Civil Procedure, § 2030.230.)

"This exception applies only if the summary is not available and the party *specifies* the records from which the information can be ascertained. [FN 11.] A broad statement that the information is available from a mass of documents is insufficient. (See California Civil Discovery Practice, Section 3.49 (C.E.B.1975); *Daiflon v. Allied Chemical Corporation*, supra, 534 F.2d 221, 226; *Flour Mills of America v. Pace*, 75 F.R.D. 676, 681-682 (E.D.Okl.1977); *Harlem River Consumers Co-op v. Associated Growers of Harlem*, supra, 64 F.R.D. 459, 463; *Budget Rent-A-Car of Missouri, Inc. v. Hertz Corp.*, 55 F.R.D. 354, 356-357 (W.D.Mo.1972).) Further, the other party must be given a reasonable opportunity to examine *all* pertinent

records. (*Fuss v. Superior Court*, 273 Cal.App.2d 807, 815, 78 Cal.Rptr. 583 (1969).)" ¶ FN11. Under the comparable federal rule, it has been held that if the answer is available in a more convenient form, the proponent should not be required to search through records in order to obtain the proper data. (*Daiflon v. Allied Chemical Corp.*, 534 F.2d 221, 226 (10th Cir. 1976).)" (Emphasis added.) (Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 784-785.)

Defendant adequately specified the documents that will be produced that plaintiff could find the information as incidentally obtained repair orders regarding the subject vehicle, service request activity reports, and global warranty history report.

However, the response is ambiguous as to whether those documents have the information concerning all of the employees of the dealership(s) where plaintiff's vehicle was serviced and unnamed GM call center advisors that defendant states has the information sought. It does not readily appear that repair orders regarding the subject vehicle, service request activity reports, and global warranty history reports specify the identities, addresses, and phone numbers of each individual who witnessed the defects, malfunctions, maladjustments, non-conformities, and failed repairs or events occurring immediately before or after the failed repairs that is relevant to the claim of breach of the warranties; who made any statement at the scene of the repairs; who heard any statements made about the defects, malfunctions, maladjustments, non-conformities and failed repairs by any individual at the scene; and who defendant or anyone acting on defendant's behalf claim has knowledge of the defects, malfunctions**,** maladjustments, and non-conformities and failed repairs.

Therefore, it is appropriate to grant the motion to compel a further verified response to form interrogatory number 12.1 without objections.

Plaintiff's Motion to Compel Further Responses to Special Interrogatories, Numbers 5, 14, 23, 40, and 42

Plaintiff's complaint seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions.

Plaintiff moves to compel a further verified response to Special Interrogatory Numbers 5, 14, 23, 40, and 42 within 30 days. Plaintiff contends that the responses are incomplete, evasive, and non-responsive. Plaintiff does not seek imposition of any discovery sanctions.

The proof of service declares that notice of the hearing and a copy of the moving papers were served by electronic service to defense counsel on September 10, 2021.

At the time this ruling was prepared, there was no opposition to the motion in the court's file.

If the propounding party deems that the response to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents is unwarranted or the specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general, that party may move for an order compelling a further response. (Code of Civil Procedure, § 2030.300(a)(1).)

"(a) The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following: ¶ (1) An answer containing the information sought to be discovered. ¶ (2) An exercise of the party's option to produce writings. ¶ (3) An objection to the particular interrogatory. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party. ¶ (c) Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter and be in

the same sequence as the corresponding interrogatory, but the text of that interrogatory need not be repeated." (Code of Civil Procedure, § 2030.210.)

"(a) Each answer in response shall be as complete and straightforward as the information reasonably available to the responding party permits. ¶ (b) If the interrogatory can not be answered completely, it shall be answered to the extent possible. ¶ (c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code of Civil Procedure, § 2030.220.)

With the above-cited legal principles in mind, the court will rule on plaintiff's motion to compel further responses to Special Interrogatories, Numbers 5, 14, 23, 40, and 42.

Special Interrogatory Number 5

Special interrogatory number 5 states that in the event the response to special interrogatory number 2 is in the affirmative, defendant is to identity of all persons with knowledge of each communication.

Defendant responded: "GM refers Plaintiff to its response to Special Interrogatory No.2."

In response to special interrogatory number 2, which was incorporated by reference as defendant's response to special interrogatory number 5, defendant initially objected that the terms "Communication" and "service" are vague, ambiguous, and overbroad.

- Vague, Ambiguous, and Overbroad Objection

Special interrogatory number 2 asks if defendant or anyone acting on defendant's behalf received any communication from plaintiff regarding the service of the subject vehicle.

Special interrogatory number 2 expressly defines "communication" as meaning any and all transmittals of information, whether oral or in writing, whether handwritten, typewritten, tape-

recorded, or produced by electronic data processing, irrespective of how conveyed, including, but not limited to inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, phone conversations, letters, notes, telegrams, advertisements, or other forms of verbal intercourse, whether oral or written.

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was allegedly non-conforming as it had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "communications" and "service" stated in special interrogatory number 2 are not vague, ambiguous, and/or overbroad. The objection is overruled.

- Equally Available Objection

It does not appear form the circumstances that plaintiff has equal access to information concerning the identity of all persons who had knowledge of each communication from plaintiff regarding the service of the subject vehicle for the defects, malfunctions, maladjustments, non-conformities and failed repairs.

The objection is overruled.

- Response Referring Plaintiff to Records to be Produced by Defendant in Response to Requests for Production

At the conclusion of the objections asserted in response to special interrogatory number 2 that was incorporated by reference as defendant's response to special interrogatory number 5, defendant stated that subject to and without waiving the objections, the vehicle was serviced at

authorized GM repair centers, not GM, as reflected on the Global Warranty History Report produced by defendant in response to plaintiff's requests for production; GM did not service or repair the vehicle; and GM refers to the Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle, which have been produced and these documents identify the individuals, communications, transaction, dates and times of which GM is familiar regarding the subject vehicle.

Plaintiff argues that the response is evasive in that the defendant's exercise of the option to produce writings is insufficient, because the naming of the documents does not clearly and affirmatively identify all persons who have knowledge of the communications between defendant GM and defendant's authorized dealerships for repairs and service.

"If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them." (Emphasis added.) (Code of Civil Procedure, § 2030.230.)

"This exception applies only if the summary is not available and the party *specifies* the records from which the information can be ascertained. [FN 11.] A broad statement that the

information is available from a mass of documents is insufficient. (See California Civil Discovery Practice, Section 3.49 (C.E.B.1975); *Daiflon v. Allied Chemical Corporation*, supra, 534 F.2d 221, 226; *Flour Mills of America v. Pace*, 75 F.R.D. 676, 681-682 (E.D.Okl.1977); *Harlem River Consumers Co-op v. Associated Growers of Harlem*, supra, 64 F.R.D. 459, 463; *Budget Rent-A-Car of Missouri, Inc. v. Hertz Corp.*, 55 F.R.D. 354, 356-357 (W.D.Mo.1972).) Further, the other party must be given a reasonable opportunity to examine *all* pertinent records. (*Fuss v. Superior Court*, 273 Cal.App.2d 807, 815, 78 Cal.Rptr. 583 (1969).)" ¶ FN11. Under the comparable federal rule, it has been held that if the answer is available in a more convenient form, the proponent should not be required to search through records in order to obtain the proper data. (*Daiflon v. Allied Chemical Corp.*, 534 F.2d 221, 226 (10th Cir. 1976).)" (Emphasis added.) (Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 784-785.)

Although defendant adequately specified the documents that will be produced that plaintiff could find the information as Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships, the response is ambiguous as to whether those documents have the information concerning defendant making a reasonable and good faith effort to obtain the information concerning the identities of all persons with knowledge of each communication by inquiry to other natural persons or organizations. Defendant merely states that the documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle identify individuals which GM is familiar regarding the subject vehicle. (Emphasis the court's.) The response does not state that any inquiry was made of the repair dealerships to identify persons with knowledge of each communication.

Furthermore, the response is ambiguous as to whether those documents have the information concerning the identities of all persons with knowledge of each communication. It

does not readily appear that documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle identify all individuals with knowledge of each communication.

In addition, paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order on June 14, 2021, to date absolutely no further document production has been received. How can the plaintiff identify from documents to be produced the persons with knowledge of each communication where the document production is not completed?

It appears appropriate under the circumstances presented to order a further response to special interrogatory number 5.

Special Interrogatory Number 14

Special interrogatory number 14 requests that defendant identify all persons who performed warranty repairs upon the subject vehicle.

Defendant initially objected that the term "warranty repairs" is vague and ambiguous, and overbroad.

- Vague, Ambiguous, and Overbroad Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the term "warranty repairs" stated in special interrogatory number 14 is not vague, ambiguous, and/or overbroad. The objection is overruled.

- Response Referring Plaintiff to Records to be Produced by Defendant in Response to Requests for Production

At the conclusion of the objections asserted in response to special interrogatory number 14, defendant stated that subject to and without waiving the objections, GM refers to the Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle, which have been produced and these documents identify the individuals, transaction, dates and times of which GM is familiar regarding the subject vehicle.

"If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them." (Emphasis added.) (Code of Civil Procedure, § 2030.230.)

"This exception applies only if the summary is not available and the party *specifies* the records from which the information can be ascertained. [FN 11.] A broad statement that the information is available from a mass of documents is insufficient. (See California Civil Discovery Practice, Section 3.49 (C.E.B.1975); *Daiflon v. Allied Chemical Corporation*, supra, 534 F.2d 221, 226; *Flour Mills of America v. Pace*, 75 F.R.D. 676, 681-682 (E.D.Okl.1977);

Harlem River Consumers Co-op v. Associated Growers of Harlem, supra, 64 F.R.D. 459, 463; *Budget Rent-A-Car of Missouri, Inc. v. Hertz Corp.*, 55 F.R.D. 354, 356-357 (W.D.Mo.1972).) Further, the other party must be given a reasonable opportunity to examine *all* pertinent records. (*Fuss v. Superior Court*, 273 Cal.App.2d 807, 815, 78 Cal.Rptr. 583 (1969).)" ¶ FN11. Under the comparable federal rule, it has been held that if the answer is available in a more convenient form, the proponent should not be required to search through records in order to obtain the proper data. (*Daiflon v. Allied Chemical Corp.*, 534 F.2d 221, 226 (10th Cir. 1976).)" (Emphasis added.) (Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 784-785.)

Although defendant adequately specified the documents that will be produced that plaintiff could find the information as Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships, the response is ambiguous as to whether those documents have the information concerning defendant making a reasonable and good faith effort to obtain the information concerning the identities of all persons who performed warranty repairs upon the subject vehicle by inquiry to other natural persons or organizations. Defendant merely states that the documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle identify individuals which GM is familiar regarding the subject vehicle. (Emphasis the court's.) The response does not state that any inquiry was made of the repair dealerships to identify all persons who performed warranty repairs upon the subject vehicle.

Furthermore, the response is ambiguous as to whether those documents have the information concerning the identities of all persons who performed warranty repairs upon the subject vehicle. It does not readily appear that documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle identify all individuals who performed warranty repairs upon the subject vehicle.

In addition, paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order on June 14, 2021, to date absolutely no further document production has been received. How can the plaintiff identify from documents to be produced the persons who performed warranty repairs upon the subject vehicle where the document production is not completed?

It appears appropriate under the circumstances presented to order a further response to special interrogatory number 14.

Special Interrogatory Number 23

Special interrogatory number 23 requests defendant to identify all persons who have knowledge of plaintiff's notice(s) of non-conformity provided to defendant or anyone acting on defendant's behalf.

Defendant merely answered by incorporating by reference its response to special interrogatory number 22.

Special interrogatory number 22 requests defendant to state the dates when plaintiff notified defendant or anyone acting on defendant's behalf of the need to repair any nonconformity on the subject vehicle.

Defendant initially objected to special interrogatory number 22 that the term "nonconformity" is vague and ambiguous, and overbroad; the interrogatory improperly assumes there is a nonconformity, it invades the province of the jury, and calls for a legal conclusion; and it seeks information or documents protected from disclosure by the attorney-client privilege and/or work product doctrine.

- Vague, Ambiguous, and Overbroad Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the term "nonconformity" stated in special interrogatory number 23 is not vague, ambiguous, and/or overbroad. The objection is overruled.

- Assumption of Nonconformity, Invades Province of Jury, and Legal Conclusion Objections

The interrogatory only references plaintiff's notice(s) of non-conformity sent to defendant or anyone acting on defendant's behalf. (Emphasis the court's.) It does not state a legal conclusion that there were nonconformities. It does not invade the province of the jury. It does not assume the existence of a nonconformity. It merely references notices that plaintiff sent to defendant or anyone acting on defendant's behalf asserting there were nonconformities in the subject vehicle and to identify all persons with knowledge of those notice(s).

The assumption of nonconformity, invades province of jury, and legal conclusion objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91

Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

The identity of witnesses who have knowledge of plaintiff's notice(s) of nonconformity provided to defendant or anyone acting on defendant's behalf is not protected by the attorney-client privilege or work product doctrine. The objection is overruled.

- Response Referring Plaintiff to Records to be Produced by Defendant in Response to Requests for Production

At the conclusion of the objections asserted in response to special interrogatory number 22, which is incorporated by reference as the response to special interrogatory number 23, defendant stated that subject to and without waiving the objections, GM refers to the Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and

repaired the vehicle, which have been produced and these documents identify the individuals, transaction, and dates and times of which GM is familiar regarding the subject vehicle.

"If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them." (Emphasis added.) (Code of Civil Procedure, § 2030.230.)

"This exception applies only if the summary is not available and the party *specifies* the records from which the information can be ascertained. [FN 11.] A broad statement that the information is available from a mass of documents is insufficient. (See California Civil Discovery Practice, Section 3.49 (C.E.B.1975); *Daiflon v. Allied Chemical Corporation*, supra, 534 F.2d 221, 226; *Flour Mills of America v. Pace*, 75 F.R.D. 676, 681-682 (E.D.Okl.1977); *Harlem River Consumers Co-op v. Associated Growers of Harlem*, supra, 64 F.R.D. 459, 463; *Budget Rent-A-Car of Missouri, Inc. v. Hertz Corp.*, 55 F.R.D. 354, 356-357 (W.D.Mo.1972).) Further, the other party must be given a reasonable opportunity to examine *all* pertinent records. (*Fuss v. Superior Court*, 273 Cal.App.2d 807, 815, 78 Cal.Rptr. 583 (1969).)" ¶ FN11. Under the comparable federal rule, it has been held that if the answer is available in a more convenient form, the proponent should not be required to search through records in order to

obtain the proper data. (*Daiflon v. Allied Chemical Corp.*, 534 F.2d 221, 226 (10th Cir. 1976).)" (Emphasis added.) (Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 784-785.)

Although defendant adequately specified the documents that will be produced that plaintiff could find the information as Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships, the response is ambiguous as to whether those documents have the information concerning defendant making a reasonable and good faith effort to obtain the information concerning the identities of all persons who have knowledge of plaintiff's notice(s) of nonconformity to defendant or anyone acting on defendant's behalf by inquiry to other natural persons or organizations. Defendant merely states that the documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle identify individuals which GM is familiar regarding the subject vehicle. (Emphasis the court's.) The response does not state that any inquiry was made of the repair dealerships to identify all persons who performed warranty repairs upon the subject vehicle.

Furthermore, the response is ambiguous as to whether those documents have the information concerning identities of witnesses who have knowledge of plaintiff's notice(s) of nonconformity provided to defendant or anyone acting on defendant's behalf. It does not readily appear that documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle identify all individuals who have knowledge of plaintiff's notice(s) of nonconformity provided to defendant or anyone acting on defendant's behalf.

In addition, paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order on June 14, 2021, to date absolutely no further document production has been received. How

can the plaintiff identify the persons who have knowledge of plaintiff's notice(s) of nonconformity to defendant or anyone acting on defendant's behalf where the document production is not completed?

It appears appropriate under the circumstances presented to order a further response to special interrogatory number 23.

Special Interrogatory Number 40

Special interrogatory number 40 requests defendant to identify the individual(s) whose responsibility it is to supervise to ensure that defendant is properly determining whether a vehicle should be repurchased or replaced pursuant to the Song-Beverly Warranty Act.

Defendant's response only asserted the following objections: the interrogatory is vague, ambiguous, irrelevant and not calculated to lead to the discovery of admissible evidence as it is not specifically limited to the subject vehicle or issues in this litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breadth of the question; it seeks confidential, proprietary and trade secret information; and it seeks information protected by the attorney-client privilege and/or work product doctrine.

- Scope of Discovery - Vague, Ambiguous, Irrelevant And Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether

there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"Although appellate courts have frequently stated "fishing expeditions" are permissible in discovery, there is a limit. As noted in *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 39 Cal.Rptr.2d 896, "These rules are applied liberally in favor of discovery (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790, 183 Cal.Rptr. 810, 647 P.2d 86 [citation]), and (contrary to popular belief), fishing expeditions *are* permissible in some cases." (*Id.* at p. 1546, 39 Cal.Rptr.2d 896.) However, early in the development of our discovery law our Supreme Court recognized the limits on such "fishing expeditions." In *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 15 Cal.Rptr. 90, 364 P.2d 266, the seminal case in California civil discovery, the court gave examples of improper "fishing" which clearly apply here: "The method of 'fishing' may be, in a particular case, entirely improper (i.e., insufficient identification of the requested information to acquaint the other party with the nature of information desired, attempt to place the burden and cost of supplying information equally available to both solely upon the adversary, placing more burden upon the adversary than the

value of the information warrants, etc.). Such improper methods of 'fishing' may be (and should be) controlled by the trial court under the powers granted to it by the statute." (*Id.* at pp. 384–385, 15 Cal.Rptr. 90, 364 P.2d 266.) The concerns for avoiding undue burdens on the "adversary" in the litigation expressed in *Greyhound* apply with even more weight to a nonparty. ¶ Had the *Greyhound* court been able to anticipate the tremendous burdens promiscuous discovery has placed on litigants and nonparties alike, it might well have taken a stronger stand against such "fishing." *Greyhound* 's optimism in noting the then new discovery system would be "simple, convenient and inexpensive," would "expedite litigation," and "expedite and facilitate both preparation and trial," has certainly proven to have been considerably off the mark. (*Id.* at p. 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 224–225.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking disclosure of the identities of the individuals whose responsibility is to supervise to ensure that defendant is properly determining whether a vehicle should be repurchased or replaced pursuant to the Song-Beverly Warranty Act is well within the scope of permissible discovery, relevant, and not vague, ambiguous, or overbroad. There is sufficient identification of the requested information to acquaint the other party with the nature of information desired, it does not appear that the question is an attempt to place the burden and cost of supplying information equally available to both solely upon the defendant

as defendant is the only party in the best position to have the full information concerning who supervises for defendant Song-Beverly Act claims of entitlement to repurchase or replacement of vehicles to ensure that defendant is properly determining whether a vehicle should be repurchased or replaced pursuant to the Song-Beverly Warranty Act, and does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how identification of the individual(s) whose responsibility it is to supervise to ensure that defendant is properly determining whether a vehicle should be repurchased or replaced pursuant to the Song-Beverly Warranty Act discloses confidential, proprietary, and/or trade secret information. It is not readily apparent how this information could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]'

(*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

The identity of individuals whose responsibility it is to supervise to ensure that defendant is properly determining whether a vehicle should be repurchased or replaced pursuant to the Song-Beverly Warranty Act is not protected from disclosure by the attorney-client privilege or work product doctrine. The objection is overruled.

The motion to compel a further response to special interrogatory number 40 is granted.

Special Interrogatory Number 42

Special interrogatory number 42 asks defendant to explain with particularity all aspects of defendant's investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act.

Defendant initially objected to special interrogatory number 42 with the following objections: the interrogatory is vague, ambiguous, irrelevant and not calculated to lead to the discovery of admissible evidence; it seeks confidential, proprietary and trade secret information; and it seeks information protected by the attorney-client privilege and/or work product doctrine.

- Scope of Discovery - Vague, Ambiguous, Irrelevant And Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an

otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.)

Under the circumstances presented, seeking disclosure of all aspects of defendant's investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act, with particularity, is well within the scope of permissible discovery, relevant, and not vague, ambiguous, or overbroad.

The objections are overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how information concerning the specific facts concerning all aspects of defendant's investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act will disclose confidential, proprietary, and/or trade secret information.

In addition, assuming for the sake of argument only, that some of the facts as to how defendant investigates are confidential, proprietary and trade secrets, all aspects of the investigation and the facts uncovered in the investigation could not conceivably be confidential, proprietary and/or trade secrets, except as protected by the attorney-client privilege and/or work product privilege which is being addressed later in this ruling. Defendant was obligated to answer the question to the extent that the investigation facts and documentation were not protected by the claims of confidential, proprietary and trade secrets..

At the conclusion of the objections asserted in response to special interrogatory number 42, defendant stated that subject to and without waiving the objections, defendant is informed and believes that verifiable concerns were resolved and the subject vehicle was adequately repaired within a reasonable number of repair attempts; to the extent that plaintiff or a non-GM authorized facility caused or contributed to plaintiff's concerns or to the extent plaintiff's failure to properly maintain the subject vehicle caused or contributed to plaintiff's concerns, such

concerns are not covered under the warranty; and GM evaluates each case in good faith in accordance with the provisions of the Song-Beverly Act (Civil Code §§ 1794. et seq.).

The only facts concerning the investigation stated in the response is not as complete and straightforward as the information reasonably available to the responding party permits to the extent that the investigation process, investigation facts and documentation were not protected by any purported claim the information was confidential, proprietary and/or trade secrets. There is no statement of facts with particularity concerning any aspects of defendant's investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act. The response only states legal conclusions and a statement on information and belief that the vehicle was satisfactorily repaired.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v.*

Superior Court (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91

Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

While investigations engaged in by counsel in anticipation of litigation and confidential communications related to investigations are protected by the attorney-client privilege and/or work product doctrine, the facts concerning the aspects of defendant's initial investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act before defendant allegedly refused to repurchase or replace the subject vehicle are not protected from discovery merely because defendant passed on the results of the investigation or reported to counsel what it had done to investigate whether to repurchase or replace the subject vehicle. Not having opposed the motion, defendant has not provided any proof of the preliminary fact that a privilege. The same holds true for the work product doctrine. It is reasonable to presume the aspects of defendant's initial investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act before defendant allegedly refused to repurchase or replace the subject vehicle are not confidential communications between defendant and counsel or that the initial investigation by defendant was the work product of counsel.

The attorney-client/work product objection is overruled.

- Response Referring Plaintiff to Records to be Produced by Defendant in Response to Requests for Production

At the conclusion of the objections defendant also stated in response to special interrogatory number 42 that subject to and without waiving the objections, GM refers to the new vehicle limited warranty, Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle..

"If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them." (Emphasis added.) (Code of Civil Procedure, § 2030.230.)

"This exception applies only if the summary is not available and the party *specifies* the records from which the information can be ascertained. [FN 11.] A broad statement that the information is available from a mass of documents is insufficient. (See California Civil Discovery Practice, Section 3.49 (C.E.B.1975); *Daiflon v. Allied Chemical Corporation*, supra, 534 F.2d 221, 226; *Flour Mills of America v. Pace*, 75 F.R.D. 676, 681-682 (E.D.Okl.1977); *Harlem River Consumers Co-op v. Associated Growers of Harlem*, supra, 64 F.R.D. 459, 463; *Budget Rent-A-Car of Missouri, Inc. v. Hertz Corp.*, 55 F.R.D. 354, 356-357 (W.D.Mo.1972).) Further, the other party must be given a reasonable opportunity to examine *all* pertinent records. (*Fuss v. Superior Court*, 273 Cal.App.2d 807, 815, 78 Cal.Rptr. 583 (1969).)" ¶ FN11. Under the comparable federal rule, it has been held that if the answer is available in a more convenient form, the proponent should not be required to search through records in order to obtain the proper data. (*Daiflon v. Allied Chemical Corp.*, 534 F.2d 221, 226 (10th Cir. 1976).)" (Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 784-785.)

Although defendant adequately specified the documents that will be produced that plaintiff could find some the information as the new vehicle limited warranty, Global Warranty History Report, service request activity report(s), and any repair orders that GM may have obtained from the GM authorized dealerships (Emphasis the court's.), the response is ambiguous as to whether those documents have the information concerning whether defendant made a reasonable and good faith effort to obtain all non-privileged information concerning the investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act. Defendant merely states that the documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle contain the facts concerning the investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act. (Emphasis the court's.) The response does not state that any inquiry was made to uncover all the facts concerning the determination of whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act and the only facts uncovered are in the specified documents to be produced.

Furthermore, the response is ambiguous as to whether those documents describe all aspects of defendant's investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act. It does not readily appear that documents that GM may have obtained from the GM authorized dealerships that may have serviced, maintained and repaired the vehicle identify all aspects of defendant's investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act.

In addition, paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order

on June 14, 2021, to date absolutely no further document production has been received. How can the plaintiff identify in the documents to be produced all aspects of defendant's investigation into whether the subject vehicle qualified or was eligible for repurchase or replacement pursuant to the Song-Beverly Act where the document production is not completed?

It appears appropriate under the circumstances presented to order a further response to special interrogatory number 42.

The motion to compel further responses to the specified special interrogatories is granted.

Plaintiff's Motion to Compel Further Responses to Requests for Production Numbers 1, 9, 17, 19, 31, 37, 39, 40, 42, 52, and 53

Plaintiff's complaint seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was allegedly non-conforming as it allegedly had defects and malfunctions.

Plaintiff moves to compel a further verified responses to Requests for Production Numbers 1, 9, 17, 19, 31, 37, 39, 40, 42, 52, and 53 and further production of documents within 30 days. Plaintiff contends that the responses are incomplete and defendant has refused to produce any further documents to complete production. Plaintiff does not seek imposition of any discovery sanctions.

The proof of service declares that notice of the hearing and a copy of the moving papers were served by electronic service to defense counsel on September 10, 2021.

At the time this ruling was prepared, there was no opposition to the motion in the court's file.

"(a) The party to whom an inspection demand has been directed shall respond separately to each item or category of item by any of the following: ¶ (1) A statement that the party will

comply with the particular demand for inspection and any related activities. ¶ (2) A representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item. ¶ (3) An objection to the particular demand. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party. ¶ (c) Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated. (Code of Civil Procedure, § 2031.210.) "A statement that the party to whom an inspection demand has been directed will comply with the particular demand shall state that the production, inspection, and related activity demanded will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." (Code of Civil Procedure, § 2031.220.) "(a) Any documents demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. ¶ (b) If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form." (Code of Civil Procedure, § 2031.280.)

"A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or

organization known or believed by that party to have possession, custody, or control of that item or category of item." (Code of Civil Procedure, § 2031.230.)

"(a) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category." (Code of Civil Procedure, § 2031.240(a).)

"If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made. ¶ (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted." (Code of Civil Procedure, § 2031.240(b).)

"(c)(1)If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Code of Civil Procedure, § 2031.240(c).)

"Privilege logs have long been used by practitioners to list and describe the items to be protected. But the expression " 'privilege log' " appeared nowhere in the Code of Civil Procedure, rather it was merely "jargon, commonly used by courts and attorneys to express

the requirements of [section 2031.240, subdivision (b)]." (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292, 4 Cal.Rptr.3d 883 (*Hernandez*); see *Lockyer, supra,* 122 Cal.App.4th at pp. 1073–1074, 19 Cal.Rptr.3d 324; *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1188–1189, 15 Cal.Rptr.3d 154 (*Best Products*).) " 'The purpose of a "privilege log" is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production. [Citation.] The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.' " (*Ibid.*) In 2012, the Legislature amended section 2031.240 "to codify the concept of a privilege log as that term is used in California case law." (§ 2031.240, subd. (c)(2).) The new section 2031.240, subdivision (c)(1), provides, "If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." In adding this subdivision, the Legislature declared, "Nothing in this subdivision shall be construed to constitute a substantive change in case law." (§ 2031.240, subd. (c)(2).)" (Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, 1125.)

"The party to whom the demand for inspection is directed shall sign the response under oath unless the response contains only objections." (Code of Civil Procedure, § 2031.250(a).)

"On receipt of a response to an inspection demand, the party demanding an inspection may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: ¶ (1) A statement of compliance with the demand is incomplete. ¶ (2) A representation of inability to comply is inadequate, incomplete, or evasive. ¶ (3) An objection in the response is without merit or too general." (Code of Civil Procedure, § 2031.310(a).)

"A motion under subdivision (a) shall comply with both of the following: ¶ (1) The motion shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand. ¶ (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2031.310(b).)

"In the more specific context of a request to produce documents, a party who seeks to compel production must show "good cause" for the request (§ 2031, subd. (*l*))—but where, as here, there is no privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance. [Footnote omitted.] (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial 2 (Rutter 1996) ¶¶ 8:1495.6 to 8:1495.10, pp. 8H–21 to 8H–22.) That showing was made here. (Part I, *ante.*)" (Glenfed Development Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1117.)

An appellate court has expressly found that good cause for discovery of the requested documents and things may be established by reference to the pleadings of the action. That appellate court held: "A party seeking to compel discovery must therefore "set forth specific facts showing good cause justifying the discovery sought." (§ 2031.310, subd. (b)(1); see *Calcor Space Facility, Inc. v. Superior Court, supra,* 53 Cal.App.4th at p. 223, 61 Cal.Rptr.2d 567.) To establish good cause, a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact. ¶ The facts of consequence in the New York lawsuit between UMG and Escape may be found in UMG's complaint and Escape's affirmative defenses and counterclaims." (Digital Music News LLC v. Superior Court (2014) 226 Cal.App.4th 216, 224.)

With the above-cited legal principles in mind, the court will rule on plaintiff's motion to compel further responses to Requests for Production Numbers 1, 9, 17, 19, 31, 37, 39, 40, 42, 52, and 53.

Request Number 1

Request number 1 seeks production of all repair orders, including the front and back of each page, any hand written notes, any hard cards and accounting copies regarding, pertaining, or relating to the subject vehicle.

Defendant asserted the following objections to the request: the terms "regarding, pertaining, or relating to" are vague and ambiguous; the request seeks documents beyond defendant GM's possession, custody, or control, because such documentation is within the possession of dealerships owned and operated independently of GM; it assumes that GM repaired the car after it left GM's possession, custody and control; the request is overbroad, unduly burdensome, oppressive, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the issues in the litigation; and the requests confidential, proprietary and trade secret information.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "regarding, pertaining, or relating to" repair to

the subject vehicle stated in request for production number 1 is not vague or ambiguous. The objection is overruled.

- Documents within the Possession, Custody, or Control of Defendant

"A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (Code of Civil Procedure, § 2031.230.)

While defendant GM states that it does not have possession, custody or control of repair orders or accounting records of new vehicle warranty repairs it has done at authorized repair facilities located at GM dealerships, defendant's response does not affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand; and fails to set forth the names and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.. It merely states that subject to and without waiving the objections, it will produce any repair orders that GM may have obtained from GM authorized dealerships who have serviced, maintained, or repaired the subject vehicle. This is an insufficient response due to the lack of a verified statement that affirms that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand; and failure to set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

Furthermore, the verified response does raise the question of how defendant obtained the subject warranty repair documents it states it may have obtained from GM authorized dealerships without any control over its own authorized dealerships to provide it with warranty repair records on demand. Absent explanation of how these documents came into defendant's possession, defendant has admitted it has some control over documentation held by the dealerships who do warranty repairs.

The objection is overruled.

- Identity of Who Attempted Repairs

In light of the allegations of the complaint that warranty work was done on a new vehicle produced by defendant GM, which was unsuccessful and repurchase or replacement was rejected by defendant, the face of the request for production does not assume that GM repaired the car after it left GM's possession, custody and control. It merely seeks the warranty repair records that one can reasonably presume that defendant would have possession, custody, and/or control over.

The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing all repair orders, including the front and back of each page, any hand written notes, any hard cards and accounting copies regarding, pertaining, or relating to the subject vehicle discloses confidential, proprietary, and/or trade secret information. It is not readily apparent how this documentation contains information could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an

otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of all repair orders, including the front and back of each page, any hand written notes, any hard cards and accounting copies regarding, pertaining, or relating to the subject vehicle is well within the scope of permissible discovery, relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Sufficiency of Response and Production of Documents

At the conclusion of the objections asserted in response to request for production number 1, defendant stated that subject to and without waiving the objections, the subject vehicle was inspected and repaired at an authorized GM repair facility, not GM; GM has not inspected or repaired the vehicle and GM will comply in part and produce repair orders that GM may have obtained from GM authorized dealerships who have serviced, maintained, or repaired the subject vehicle.

Plaintiff contends that defendant has not produced documents. (Plaintiff's Separate Statement in Support of Motion, page 3, line 19.) Paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order on June 14, 2021, to date absolutely no further document production has been received.

The objections having been overruled, defendant must provide a further verified response and produce all documents responsive to request number 1. The motion to compel a further response and further production related to request number 1 is granted.

Request Number 9

Request number 9 seeks production of all recall documents regarding, pertaining, or relating to the subject vehicle, including, but not limited to, service bulletins and/or technical service bulletins.

Defendant asserted the following objections to the request: the terms "regarding, pertaining, or relating to" are vague and ambiguous; the request is overbroad, unduly burdensome, oppressive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the issues in the litigation; the request is unduly burdensome and oppressive and compliance would be unreasonably difficult and expensive considering the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; whether plaintiff is entitled to relief under the Song-Beverly Act is entirely unrelated and incommensurate to the scope and breadth of the request; the request seeks confidential, proprietary and trade secret information; and the documents contain information protected by the attorney-client privilege and/or work product doctrine.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing all recall documents regarding, pertaining, or relating to the subject vehicle, including, but not limited to, service bulletins and/or technical service bulletins discloses confidential, proprietary, and/or trade secret information. It is not readily apparent how this

documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Undue Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"Although appellate courts have frequently stated "fishing expeditions" are permissible in discovery, there is a limit. As noted in *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539,

39 Cal.Rptr.2d 896, "These rules are applied liberally in favor of discovery (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790, 183 Cal.Rptr. 810, 647 P.2d 86 [citation]), and (contrary to popular belief), fishing expeditions *are* permissible in some cases." (*Id.* at p. 1546, 39 Cal.Rptr.2d 896.) However, early in the development of our discovery law our Supreme Court recognized the limits on such "fishing expeditions." In *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 15 Cal.Rptr. 90, 364 P.2d 266, the seminal case in California civil discovery, the court gave examples of improper "fishing" which clearly apply here: "The method of 'fishing' may be, in a particular case, entirely improper (i.e., insufficient identification of the requested information to acquaint the other party with the nature of information desired, attempt to place the burden and cost of supplying information equally available to both solely upon the adversary, placing more burden upon the adversary than the value of the information warrants, etc.). Such improper methods of 'fishing' may be (and should be) controlled by the trial court under the powers granted to it by the statute." (*Id.* at pp. 384–385, 15 Cal.Rptr. 90, 364 P.2d 266.) The concerns for avoiding undue burdens on the "adversary" in the litigation expressed in *Greyhound* apply with even more weight to a nonparty. ¶ Had the *Greyhound* court been able to anticipate the tremendous burdens promiscuous discovery has placed on litigants and nonparties alike, it might well have taken a stronger stand against such "fishing." *Greyhound* 's optimism in noting the then new discovery system would be "simple, convenient and inexpensive," would "expedite litigation," and "expedite and facilitate both preparation and trial," has certainly proven to have been considerably off the mark. (*Id.* at p. 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 224–225.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will

lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost

and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Defendant not having opposed the motion, defendant has not explained how production of recall documentation, including technical service bulletins and service bulletins, regarding, pertaining, or relating to the subject vehicle, a 2020 GMC Sierra 1500 (Complaint, paragraph 4.) is unduly burdensome and oppressive and compliance would be unreasonably difficult and expensive considering the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation and why plaintiff's claim of entitlement to relief under the Song-Beverly Act is entirely unrelated and incommensurate to the scope and breadth of the request for documents about recalls of that vehicle year and model.

Under the circumstances presented, seeking production of all recall documents regarding, pertaining, or relating to the subject vehicle, including, but not limited to, service bulletins and/or technical service bulletins is well within the scope of permissible discovery, relevant, and not vague, ambiguous, or overbroad. There is sufficient identification of the requested information to acquaint the other party with the nature of information desired, it does not appear that the question is an attempt to place the burden and cost of supplying information

equally available to both solely upon the defendant as defendant is the party in the best position to have the recall documents regarding, pertaining, or relating to the subject vehicle, including, but not limited to, service bulletins and/or technical service bulletins, and the request does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Recall documents regarding, pertaining, or relating to the subject vehicle, including, but not limited to, service bulletins and/or technical service bulletins does not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists. The same holds true for the work product doctrine. It is reasonable to presume that recall documents, including service bulletins and/or technical service bulletins, are disseminated widely and not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

- Sufficiency of Response and Production of Documents

At the conclusion of the objections asserted in response to request for production number 9, defendant stated that subject to and without waiving the objections, GM will comply in part and produce a list of recalls and technical service bulletins issued for vehicles of the same year, make, and model as the subject vehicle; and after it has produced a list of recalls and technical service bulletins, GM will, at plaintiff's request, search for and produce, if located, copies of a reasonable number of recalls and technical support bulletins, if any, that plaintiff has identified as relevant to the conditions alleged in plaintiff's complaint.

Without any proof that production of the documents requested would be unduly burdensome, it is insufficient to respond that defendant will produce a list of recalls and technical service bulletins issued for vehicles of the same year, make, and model as the subject vehicle that plaintiff can review and identify specific documents to be produced and GM will, at plaintiff's request, will search for and produce a reasonable number of recalls and technical support bulletins.

Plaintiff contends that defendant has not produced documents. (Plaintiff's Separate Statement in Support of Motion, page 3, line 19.) Paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order on June 14, 2021, to date absolutely no further document production has been received.

Plaintiff also contends that defendant has failed and refused to provide a privilege log. (Plaintiff's Separate Statement in Support of Motion, page 7, lines 23-25.)

The objections having been overruled, defendant must provide a further response and produce all documents responsive to request number 9. The motion to compel a further response and further production related to request number 9 is granted.

Request Number 17

Request number 17 seeks production of all documents to include, but not be limited to, manuals, publications, directives and direct dealer notifications or advisements regarding pertaining, or relating to handling warranty repairs on the subject vehicle.

Defendant asserted the following objections to the request: the terms "regarding, pertaining, or relating to" and "warranty repairs" are vague and ambiguous; the request is overbroad, unduly burdensome, oppressive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the issues in the litigation; the request

seeks confidential, proprietary and trade secret information; and the documents contain information protected by the attorney-client privilege and/or work product doctrine.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions, it was not repaired despite attempts on three occasions, and defendant has refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act(Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "regarding, pertaining, or relating to" and "warranty repairs" to the subject vehicle stated in request for production number 17 is not vague or ambiguous. The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing all documents to include, but not be limited to, manuals, publications, directives and direct dealer notifications or advisements regarding, pertaining, or relating to handling warranty repairs on the subject vehicle discloses confidential, proprietary, and/or trade secret information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter

involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is

unduly burdensome or expensive, the court takes into account "the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects

and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of all documents to include, but not be limited to, manuals, publications, directives and direct dealer notifications or advisements regarding, pertaining, or relating to handling warranty repairs on the subject vehicle is well within the scope of permissible discovery, relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's

attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory

terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Documents to include, but not be limited to, manuals, publications, directives and direct dealer notifications or advisements regarding, pertaining, or relating to handling warranty repairs on the subject vehicle does not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists. The same holds true for the work product doctrine. It is reasonable to presume that documents to include, but not be limited to, manuals, publications, directives and direct dealer notifications or advisements regarding, pertaining, or relating to handling warranty repairs on the subject vehicle, are disseminated widely and not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

- Sufficiency of Response and Production of Documents

At the conclusion of the objections asserted in response to request for production number 9, defendant stated that subject to and without waiving the objections, GM will comply in part and produce the following responsive documents in its possession, custody, or control: any repair

orders of the subject vehicle that GM may have obtained from GM authorize dealerships; and any service request activity report(s) and global warranty vehicle history printout for the subject vehicle.

The response is insufficient in that the objections have been overruled, defendant has only agreed to produce repair records and not manuals, publications, directives and direct dealer notifications or advisements regarding, pertaining, or relating to handling warranty repairs on the subject vehicle, and defendant is required to produce the documents and things described in request number 17 without regard to the objections.

Plaintiff contends that defendant has not produced documents. (Plaintiff's Separate Statement in Support of Motion, page 10, lines 4-5.) Paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order on June 14, 2021, to date absolutely no further document production has been received.

Plaintiff also contends that defendant has failed and refused to provide a privilege log. (Plaintiff's Separate Statement in Support of Motion, page 9, line 28 to page 10, line 4.)

The motion to compel a further response and further production related to request number 17 is granted.

Request Number 19

Request number 19 seeks production of the computer service file with respect to the subject vehicle, including, but not limited to the deal jacket.

Defendant objected to the request on the ground that it seeks documents beyond GM's possession, custody, or control, such as repair orders within the possession of dealerships owned and operated independently of GM.

- Documents within the Possession, Custody, or Control of Defendant

"A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (Code of Civil Procedure, § 2031.230.)

While defendant GM states that it does not have possession, custody or control of repair orders within the possession of dealerships owned and operated independently of GM, defendant's response does not affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand; and has not set forth the names and addresses of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item. It merely states that subject to and without waiving the objections, it will produce any repair orders that GM may have obtained from GM authorized dealerships; any Service Request Activity Report(s); and the Global Warranty History Report for the subject vehicle. This is an insufficient response due to the lack of a verified statement that affirms that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand; and failure to set forth the names and addresses of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

Furthermore, the verified response does raise the question of how defendant obtained the subject warranty repair documents it states it may have obtained from GM authorized

dealerships without any control over its own authorized dealerships to provide it with warranty repair records on demand. Absent explanation of how these documents came into defendant's possession, defendant has essentially admitted it has some control over documentation.

The objection is overruled.

- Sufficiency of Response and Production of Documents

At the conclusion of the objection asserted in response to request for production number 19, defendant stated that subject to and without waiving the objections, GM will comply in part and produce the following responsive documents in its possession, custody, or control: repair orders that GM may have obtained from GM authorized dealerships; any Service Request Activity Report(s); and the Global Warranty History Report for the subject vehicle.

The response is insufficient in that the objection has been overruled and defendant is required to produce the documents and things described in request number 19 without regard to the objection.

Plaintiff contends that defendant has not produced any documents that show any repairs to prior plaintiff's ownership. (Plaintiff's Separate Statement in Support of Motion, page 13, lines 7-8.) Paragraph 10 of plaintiff's counsel's declaration in support of the motion declares that despite executing and returning defendant's proposed stipulated protective order on June 14, 2021, to date absolutely no further document production has been received.

The objections having been overruled, defendant must produce all documents responsive to request number 19. The motion to compel a further response and further production related to request number 19 is granted.

Request Number 31

Request number 31 seeks production of all documents relating to the customer call center, including but not limited to, all flow charts, processes, and or scripts.

The request was subsequently narrowed in defendant's June 8, 2021 meet and confer letter to only seek documents relating to the customer call center and policies and procedures relating to the customer call center, including, but not limited to, all the flow charts, processes, and/or scripts in place during the relevant period as it relates plaintiff and the subject vehicle. (Plaintiff's Counsel's Declaration in Support of Motion, paragraph 9 and Exhibit 4 – June 8, 2021 Discovery Meet and Confer Letter, page 12.)

Defendant asserted the following objections to the request: the terms "relating to", "processes", and "scripts" are vague and ambiguous; the request is overbroad, unduly burdensome, oppressive, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the issues in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breath of the question; it seeks confidential, proprietary and trade secret information; and it seeks information protected by the attorney-client privilege and/or work product doctrine.

The response also stated that no documents will be produced.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions, it was not repaired despite attempts on three occasions, and defendant has refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act(Complaint, paragraphs 9-12 and 30.) Under the circumstances presented,

the terms "relating to", **"**processes", and "scripts" stated in request for production number 31 is not vague or ambiguous. The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing documents relating to the customer call center, including but not limited to, all flow charts, processes, and or scripts discloses confidential, proprietary, or trade secret information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v.*

Volkswagenwerk Aktiengesellschaft (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not

necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

As stated earlier in this ruling, the scope of request number 31 was limited during the meet and confer process to documents relating to the customer call center, including but not limited to, all flow charts, processes, and/or scripts, in place during the relevant period as it relates plaintiff and the subject vehicle.

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of documents relating to the customer call center and policies and procedures relating to the customer call center, including, but not limited to, all the flow charts, processes, and/or scripts in place during the relevant period as it relates plaintiff and the subject vehicle is well within the scope of permissible discovery,

relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California*

(1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91

Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Documents relating to the customer call center, including but not limited to, all flow charts, processes, and/or scripts, in place during the relevant period as it relates plaintiff and the subject vehicle does not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists. The same holds true for the work product doctrine. It is reasonable to presume that documents relating to the customer call center, including but not limited to, all flow charts, processes, and/or scripts, in place during the relevant period as it relates plaintiff and the subject vehicle are not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

The response is insufficient in that the objections have been overruled and defendant is required to produce the documents and things described in request number 31 without regard to the objections.

Request Number 37

Request number 37 seek production of all documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with the check engine light illuminating.

Defendant asserted the following objections to the request: the terms "evidencing, relating, or referring to" and "issues" are vague and ambiguous; the request is overbroad, unduly burdensome, oppressive, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the subject vehicle and issues in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space

Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breath of the question; it seeks confidential, proprietary and trade secret information; and it seeks information protected by the attorney-client privilege and/or work product doctrine.

The response also stated that no documents will be produced.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions, it was not repaired despite attempts on three occasions, and defendant has refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act(Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "evidencing, relating, or referring to" and "issues" stated in request for production number 37 is not vague or ambiguous. The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with the check engine light illuminating discloses confidential, proprietary, or trade secret information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an

otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of all documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with the check engine light illuminating is well within the scope of permissible discovery, relevant, and not overbroad, unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano*

Warehouse & Transportation Corp. (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product

merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with the check engine light illuminating do not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists. The same holds true for the work product doctrine. It is reasonable to presume that documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with the check engine light illuminating are not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

The response is insufficient in that the objections have been overruled and defendant is required to produce the documents and things described in request number 37 without regard to the objections.

Request Number 39

Request number 39 seeks all documents which evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with the check engine light illuminating.

Defendant asserted the following objections to the request: the terms "evidence, describe, relate or refer to" and "issues" are vague and ambiguous; the request is overbroad, unduly burdensome, oppressive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the issues in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breath of the question; it seeks confidential, proprietary and trade secret information; and it seeks information protected by the attorney-client privilege and/or work product doctrine.

The response also stated that no documents will be produced.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions, it was not repaired despite attempts on three occasions, and defendant has refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act(Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "evidence, describe, relate or refer to" and "issues" stated in request for production number 39 are not vague or ambiguous. The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing documents relating to documents that evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with the check engine light illuminating discloses confidential, proprietary, or trade secret information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v.*

Volkswagenwerk Aktiengesellschaft (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not

necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of all documents that evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with the check engine light illuminating is well within the scope of permissible discovery, relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity

and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Documents that evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with the check engine light illuminating do not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists. The same holds true for the work product doctrine. It is reasonable to presume that documents that evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with the check engine light illuminating are not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

The response is insufficient in that the objections have been overruled and defendant is required to produce the documents and things described in request number 39 without regard to the objections.

Request Number 40

Request number 40 seeks production of all documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with a faulty particulate matter sensor protection tube.

Defendant asserted the following objections to the request: the terms "evidencing, relating, or referring to" and "issues" are vague and ambiguous; the request is overbroad, unduly burdensome, oppressive, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the issues in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breath of the

question; it seeks confidential, proprietary and trade secret information; and it seeks information protected by the attorney-client privilege and/or work product doctrine.

The response also stated that no documents will be produced.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions, it was not repaired despite attempts on three occasions, and defendant has refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act(Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "evidencing, relating, or referring to" and "issues" stated in request for production number 40 is not vague or ambiguous. The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with a faulty particulate matter sensor protection tube discloses confidential, proprietary, or trade secret information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter

involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is

unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects

and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of all documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with a faulty particulate matter sensor protection tube is well within the scope of permissible discovery, relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's

attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory

terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with a faulty particulate matter sensor protection tube does not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists. The same holds true for the work product doctrine. It is reasonable to presume that documents evidencing, relating, or referring to complaints by owners of the same year, make, and model as the subject vehicle regarding issues with a faulty particulate matter sensor protection tube are not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

The response is insufficient in that the objections have been overruled and defendant is required to produce the documents and things described in request number 40 without regard to the objections.

Request Number 42

Request number 42 seeks production of all documents which evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with a faulty particulate matter sensor protection tube.

Defendant asserted the following objections to the request: the terms "evidence, describe, relate or refer to", "issues", and "faulty particulate matter sensor protection tube" are vague and ambiguous; the request is overbroad, unduly burdensome, oppressive, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the issues in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breath of the question; it seeks confidential, proprietary and trade secret information; and it seeks information protected by the attorney-client privilege and/or work product doctrine.

The response also stated that no documents will be produced.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which was non-conforming as it had defects and malfunctions, it was not repaired despite attempts on three occasions, and defendant has refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act(Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "evidence, describe, relate or refer to", "issues", and "faulty particulate matter sensor

protection tube" stated in request for production number 42 is not vague or ambiguous. The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing documents which evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with a faulty particulate matter sensor protection tube discloses confidential, proprietary, or trade secret information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well

calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of all documents which evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with a faulty particulate matter sensor protection tube is well within the scope of permissible discovery, relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity

and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Documents which evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with a faulty particulate matter sensor protection tube does not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists. The same holds true for the work product doctrine. It is reasonable to presume that documents which evidence, describe, relate or refer to the numbers of owners of the same year, make, and model as the subject vehicle who have complained of issues with a faulty particulate matter sensor protection tube are not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

The response is insufficient in that the objections have been overruled and defendant is required to produce the documents and things described in request number 42 without regard to the objections.

Request Number 52

Request number 52 seeks production of all documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, Including training manuals, videos, and flow charts.

Defendant asserted the following objections to the request: the terms "investigate and/or evaluate" are vague and ambiguous; the request seeks documents beyond defendant GM's possession, custody, or control; the request is overbroad, unduly burdensome, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the subject vehicle or issues in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th

216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breath of the question; it seeks confidential, proprietary and trade secret information; it seeks confidential information about GM's agreements with non-parties to this lawsuit; and it seeks information protected by the attorney-client privilege, the common interest privilege, and/or work product doctrine.

The response also stated that no documents will be produced.

- Vague and Ambiguous Objection

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, the terms "investigate and/or evaluate" stated in request for production number 52 is not vague or ambiguous. The objection is overruled.

- Documents within the Possession, Custody, or Control of Defendant

"A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (Code of Civil Procedure, § 2031.230.)

While defendant GM states that it does not have possession, custody or control of the documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, including training manuals, videos, and flow charts, defendant's response does not affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand; and does not set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item. It merely states that the request seeks documents beyond defendant GM's possession, custody, or control. This is an insufficient response due to the lack of a verified statement that affirms that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand; and failure to set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

Furthermore, the verified response does raise the question of who provided the documents to Alorica, Inc. to investigate and/or evaluate whether a new vehicle manufactured by defendant qualifies for repurchase or replacement under the Song-Beverly Warrant Act. It is reasonable to presume the documents used to investigate and/or evaluate whether a new vehicle manufactured by defendant qualifies for repurchase or replacement under the Song-Beverly Warrant Act came from the defendant manufacturer potentially responsible under the Act to repurchase or replace the vehicle. Absent explanation of where these documents came from, it is reasonable to presume defendant had some control over documentation provided to Alorica, Inc., who is responsible to investigate and/or evaluate.

The objection is overruled.

- Confidential, Proprietary, and Trade Secret Information Objection

Plaintiff contends: that defendant utilizes Alorica, Inc. to field and investigate consumer complaints regarding non-conformities with GM vehicles; to avoid civil penalty liability GM can assert the defense that it acted in good faith to comply with the Song-Beverly Act, to include replacement or refund obligations; and the discovery of all documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warranty Act, including training manuals, videos, and flow charts directly relate to whether defendant failed to conduct a pre-litigation investigation in the face of plaintiff's express request for a buy-back, and the issue of whether defendant willfully violated its statutory repurchase obligations or instead made a reasonable decision; and defendant is entitled to know which documents defendant and/or its affiliate, Alorica, Inc. used to evaluate whether to repurchase the subject vehicle, the contents of those documents, and how those documents are used in the evaluation process. (See Plaintiff's Separate Statement in Support of Motion, page 25, lines 2-11 and lines 20-22; page 27, line 21 to page 28, line 8.)

Defendant GM essentially asserts in the objections that Alorica, Inc. is a non-party/third-party and documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warranty Act, including training manuals, videos, and flow charts are protected from production in discovery, because they contain confidential, proprietary, and/or trade secret information, and/or are protected by a common interest, the attorney work product doctrine, and attorney-client privilege.

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing all documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, Including training manuals, videos, and flow charts discloses confidential, proprietary, or trade secret

information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will

lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost

and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

Plaintiff contends: that defendant utilizes Alorica, Inc. to field and investigate consumer complaints regarding non-conformities with GM vehicles; to avoid civil penalty liability GM can assert the defense that it acted in good faith to comply with the Song-Beverly Act, to include replacement or refund obligations; and the discovery of all documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, including training manuals, videos, and flow charts directly relate to whether defendant failed to conduct a pre-litigation investigation in the face of plaintiff's express request for a buy-back, and the issue of whether defendant willfully violated its statutory repurchase obligations or instead made a reasonable decision; and defendant is entitled to know which documents defendant and/or its affiliate, Alorica, Inc. used to evaluate whether to repurchase the subject vehicle, the contents of those documents, and how those documents are used in the evaluation process. (See Plaintiff's Separate Statement in Support of Motion, page 25, lines 2-11 and lines 20-22; page 27, line 21 to age 28, line 8.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of all documents given to Alorica, Inc.

to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, Including training manuals, videos, and flow charts is well within the scope of permissible discovery, relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Plaintiff contends: that defendant utilizes Alorica, Inc. to field and investigate consumer complaints regarding non-conformities with GM vehicles; to avoid civil penalty liability GM can assert the defense that it acted in good faith to comply with the Song-Beverly Act, to include replacement or refund obligations; and the discovery of all documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, including training manuals, videos, and flow charts directly relate to whether defendant failed to conduct a pre-litigation investigation in the face of plaintiff's express request for a buy-back, and the issue of whether defendant willfully violated its statutory repurchase obligations or instead made a reasonable decision; and defendant is entitled to know which documents defendant and/or its affiliate, Alorica, Inc. used to evaluate whether to repurchase the subject vehicle, the contents of those documents, and how those documents are used in the evaluation process. (See Plaintiff's Separate Statement in Support of Motion, page 25, lines 2-11 and lines 20-22; page 27, line 21 to age 28, line 8.)

Defendant GM essentially asserts in the objections that Alorica, Inc. is a non-party/third-party and documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warranty Act, including training manuals, videos, and flow charts are protected from production in discovery, because

they contain confidential, proprietary, and/or trade secret information, and/or are protected by a common interest, the attorney work product doctrine, and attorney-client privilege.

"As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship." (Emphasis added.) (Evidence Code, § 952.)

"(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege), when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, lawyer referral service, physician, psychotherapist, sexual assault counselor, domestic violence counselor, or human trafficking caseworker was consulted, is not a waiver of the privilege." (Emphasis added.) (Evidence Code, § 912(d),)

"It is appropriate that the proponent of the privilege has the burden of proving that a third party was present to further the interest of the proponent because, in this situation, where the privilege turns on the nature of the relationship and content of communications with the third party in question, the proponent is in the better posture to come forward with specific evidence explaining why confidentiality was not broken." (*Sony,* at p. 634, fn. 1.) In other words, the

opponent of the party claiming the privilege under section 952 "cannot demonstrate that each communication between [the party claiming the privilege and a third party] was *not* reasonably necessary to accomplish the purpose for which a lawyer was consulted" because, "[a]s a practical matter, it is impossible to know whether any of the disclosures of purportedly privileged information ... were reasonably necessary to accomplish the purpose for which a lawyer was consulted without knowing in at least a general sense the communication's content." (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 895, 9 Cal.Rptr.3d 621.)" (Emphasis added.) (Behunin v. Superior Court (2017) 9 Cal.App.5th 833, 845.)

All documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, Including training manuals, videos, and flow charts does not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists or that third party Alorica, Inc. was present during confidential communications with counsel or was provided confidential communications to further the interest of the defendant. The same holds true for the work product doctrine. It is reasonable to presume that documents relating to the customer call center, including but not limited to, all flow charts, processes, and/or scripts, in place during the relevant period as it relates plaintiff and the subject vehicle are not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

The response is insufficient in that the objections have been overruled and defendant is required to produce the documents and things described in request number 52 without regard to the objections.

Request Number 53

Request number 53 seeks production of defendant GM's operating agreement with Alorica, Inc.

Defendant asserted the following objections to the request: the request is overbroad, unduly burdensome, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence as it is not limited to the subject vehicle or issues in the litigation; as a simple, individual lemon law case with limited issues, the request violates Calcor Space Facility, Inc. v Superior Court (1997) 53 Cal.App.4th 216; the issue of whether plaintiff is entitled to relief under the Song Beverly Act is entirely unrelated and incommensurate to the scope and breath of the question; it seeks confidential, proprietary and trade secret information; it seeks confidential information about GM's agreements with non-parties to this lawsuit; and it seeks information protected by the attorney-client privilege, the common interest privilege, and/or work product doctrine.

The response also stated that no documents will be produced.

- Confidential, Proprietary, and Trade Secret Information Objection

Plaintiff incorporated its legal argument for further response to request number 52 into plaintiff's legal argument for further response to request number 53. (See Plaintiff's Separate Statement in Support of Motion, page 29, lines 12-13.) Plaintiff contends: that defendant utilizes Alorica, Inc. to field and investigate consumer complaints regarding non-conformities with GM vehicles; to avoid civil penalty liability GM can assert the defense that it acted in good faith to comply with the Song-Beverly Act, to include replacement or refund obligations; and the discovery of all documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, including training manuals, videos, and flow charts directly relate to whether defendant failed to conduct

a pre-litigation investigation in the face of plaintiff's express request for a buy-back, and the issue of whether defendant willfully violated its statutory repurchase obligations or instead made a reasonable decision; and defendant is entitled to know which documents defendant and/or its affiliate, Alorica, Inc. used to evaluate whether to repurchase the subject vehicle, the contents of those documents, and how those documents are used in the evaluation process. (See Plaintiff's Separate Statement in Support of Motion, page 25, lines 2-11 and lines 20-22; page 27, line 21 to age 28, line 8.)

Defendant GM essentially asserts in the objections that Alorica, Inc. is a non-party/third-party and a bare bones claim of privileges of confidentiality, proprietary information and trade secret protects from disclosure defendant GM's operating agreement with Alorica, Inc.

Defendant has not opposed the motion, therefore, there is no explanation whatsoever as to how producing defendant GM's operating agreement with Alorica, Inc. under the circumstances presented discloses confidential, proprietary, or trade secret information. It is not readily apparent how this documentation contains information that could constitute protected confidential, proprietary, and/or trade secret information

The objections are overruled.

- Burden and Oppression and Scope of Discovery - Not Calculated To Lead To The Discovery Of Admissible Evidence Objections

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The Third District Court of Appeal has held that "A request for discovery is not subject to the objection that the proponent is engaged in a 'fishing expedition.' In our discovery statutes the Legislature has authorized 'fishing expeditions' and thus 'the claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes.' (*Greyhound Corp. v. Superior Court*, supra, 56 Cal.2d at pp. 385-386, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal.App.4th 733, 739, fn 4.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether

there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"It may develop that the facts discovered will not serve [a trial] purpose or that the [plaintiffs] have no thought of producing those facts at the trial. These circumstances do not necessarily preclude the discovery of the facts sought because the intent of the [ ] discovery procedures is to discover facts for trial preparation as well as for use at the trial itself. (Citation.)" (Darbee v. Superior Court, San Mateo County (1962) 208 Cal.App.2d 680, 688.)

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount **40 in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) "Some time ago, this court recognized the potential for such abuse in *Mannino v. Superior*

Court (1983) 142 Cal.App.3d 776, 191 Cal.Rptr. 163, when we noted 'We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense....' (Id. at p. 778, 191 Cal.Rptr. 163.) Our observations of the day to day practice of law lead us to conclude this cancer is spreading and judges must become more aggressive in curbing these abuses. Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 221.)

"Because of the potential for promiscuous discovery imposing great burdens, even though ultimately the probative value of the discovered material may be questionable, trial judges must carefully weigh the cost, time, expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if the discovery is ordered. A carelessly drafted discovery order may result in cost and inconvenience far outweighing the potential usefulness of the material ordered to be produced. Because of the difficulty in drawing clear lines as to what is and what is not proper, this danger is particularly great with respect to orders requiring the production of materials." (Calcor Space Facility, Inc. v. Superior Court (1997) 53 Cal.App.4th 216, 223.)

Plaintiff incorporated its legal argument for further response to request number 52 int plaintiff's legal argument for further response to request number 53. (See Plaintiff's Separate Statement in Support of Motion, page 29, lines 12-13.) Plaintiff contends: that defendant utilizes Alorica, Inc. to field and investigate consumer complaints regarding non-conformities with GM vehicles; to avoid civil penalty liability GM can assert the defense that it acted in good faith to comply with the Song-Beverly Act, to include replacement or refund obligations; and the discovery of all documents given to Alorica, Inc. to investigate and/or evaluate whether a

vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, including training manuals, videos, and flow charts directly relate to whether defendant failed to conduct a pre-litigation investigation in the face of plaintiff's express request for a buy-back, and the issue of whether defendant willfully violated its statutory repurchase obligations or instead made a reasonable decision; and defendant is entitled to know which documents defendant and/or its affiliate, Alorica, Inc. used to evaluate whether to repurchase the subject vehicle, the contents of those documents, and how those documents are used in the evaluation process. (See Plaintiff's Separate Statement in Support of Motion, page 25, lines 2-11 and lines 20-22; page 27, line 21 to age 28, line 8.)

This action seeks damages for breach of the warranty of merchantability and breach of express warranty under the Song-Beverly Warranty Act related to the alleged sale and delivery of a new vehicle to plaintiff, which allegedly was non-conforming as it allegedly had defects and malfunctions, it was allegedly not repaired despite attempts on three occasions, and defendant allegedly refused to make restitution or replace the vehicle despite plaintiff's written notice and demand pursuant to the Song-Beverly Act. (Complaint, paragraphs 9-12 and 30.) Under the circumstances presented, seeking production of defendant GM's operating agreement with Alorica, Inc**.** is well within the scope of permissible discovery, relevant, and not overbroad unduly burdensome or oppressive. It does not appear to place more burden upon defendant than the value of the information warrants.

The objections are overruled.

- Attorney Client Privilege and/or Work Product Doctrine Objections

"When a party asserts the attorney-client privilege it is incumbent upon that party to prove the preliminary fact that a privilege exists. (*Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940, 191 Cal.Rptr. 425.) Once the foundational facts have been presented, i.e., that a

communication has been made 'in confidence in the course of the lawyer- client ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential,' or that an exception exists. (Evid.Code, § 917; *BP Alaska Exploration, Inc. v. Superior Court*, supra, 199 Cal.App.3d at p. 1262, 245 Cal.Rptr. 682.)" (State Farm Fire & Casualty Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., §

2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

Plaintiff incorporated its legal argument for further response to request number 52 int plaintiff's legal argument for further response to request number 53. (See Plaintiff's Separate Statement in Support of Motion, page 29, lines 12-13.) Plaintiff contends: that defendant utilizes Alorica, Inc. to field and investigate consumer complaints regarding non-conformities

with GM vehicles; to avoid civil penalty liability GM can assert the defense that it acted in good faith to comply with the Song-Beverly Act, to include replacement or refund obligations; and the discovery of all documents given to Alorica, Inc. to investigate and/or evaluate whether a vehicle qualifies for repurchase or replacement under the Song-Beverly Warrant Act, including training manuals, videos, and flow charts directly relate to whether defendant failed to conduct a pre-litigation investigation in the face of plaintiff's express request for a buy-back, and the issue of whether defendant willfully violated its statutory repurchase obligations or instead made a reasonable decision; and defendant is entitled to know which documents defendant and/or its affiliate, Alorica, Inc. used to evaluate whether to repurchase the subject vehicle, the contents of those documents, and how those documents are used in the evaluation process. (See Plaintiff's Separate Statement in Support of Motion, page 25, lines 2-11 and lines 20-22; page 27, line 21 to age 28, line 8.)

Defendant GM essentially asserts in the objections that Alorica, Inc. is a non-party/third-party and defendant GM's operating agreement with Alorica, Inc. is protected from production in discovery, because it contains confidential, proprietary, and/or trade secret information, and/or is protected by a common interest, the attorney work product doctrine, and attorney-client privilege.

"As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and

includes a legal opinion formed and the advice given by the lawyer in the course of that relationship." (Emphasis added.) (Evidence Code, § 952.)

"(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege), when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, lawyer referral service, physician, psychotherapist, sexual assault counselor, domestic violence counselor, or human trafficking caseworker was consulted, is not a waiver of the privilege." (Emphasis added.) (Evidence Code, § 912(d),)

"It is appropriate that the proponent of the privilege has the burden of proving that a third party was present to further the interest of the proponent because, in this situation, where the privilege turns on the nature of the relationship and content of communications with the third party in question, the proponent is in the better posture to come forward with specific evidence explaining why confidentiality was not broken." (*Sony,* at p. 634, fn. 1.) In other words, the opponent of the party claiming the privilege under section 952 "cannot demonstrate that each communication between [the party claiming the privilege and a third party] was *not* reasonably necessary to accomplish the purpose for which a lawyer was consulted" because, "[a]s a practical matter, it is impossible to know whether any of the disclosures of purportedly privileged information ... were reasonably necessary to accomplish the purpose for which a lawyer was consulted without knowing in at least a general sense the communication's content." (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 895, 9

Cal.Rptr.3d 621.)" (Emphasis added.) (Behunin v. Superior Court (2017) 9 Cal.App.5th 833, 845.)

Defendant GM's operating agreement with Alorica, Inc. does not appear to be confidential communications between defendant and counsel employed by defendant and not having opposed the motion defendant has not provided any proof of the preliminary fact that a privilege exists or that third party Alorica, Inc. was present during confidential communications with counsel or was provided confidential communications to further the interest of the defendant. The same holds true for the work product doctrine. It is reasonable to presume that defendant GM's operating agreement with Alorica, Inc.is not maintained as confidential only between defendant and its counsel.

The attorney-client privilege and work product doctrine objections are overruled.

The response is insufficient in that the objections have been overruled and defendant is required to produce the documents and things described in request number 53 without regard to the objections.

The motion to compel further verified responses and production is granted.

TENTATIVE RULING # 10: PLAINTIFF'S MOTION TO COMPEL A FURTHER VERIFIED RESPONSE TO FORM INTERROGATORY NUMBER 12.1 IS GRANTED. DEFENDANT IS ORDERED TO PROVIDE A FURTHER VERIFIED RESPONSE TO FORM INTERROGATORY, NUMBER 12.1 WITHIN 30 DAYS. PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, NUMBERS 5, 14, 23, 40, AND 42 IS GRANTED. DEFENDANT IS ORDERED TO PROVIDE FURTHER VERIFIED RESPONSES TO SPECIAL INTERROGATORIES, NUMBERS 5, 14, 23, 40, AND 42 WITHIN 30 DAYS. PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION NUMBERS 1, 9, 17, 19, 31, 37, 39, 40, 42, 52, AND 53 IS GRANTED.

DEFENDANT IS ORDERED TO PROVIDE FURTHER VERIFIED RESPONSES TO AND PRODUCTION OF THE DOCUMENTS SOUGHT IN REQUESTS FOR PRODUCTION NUMBERS 1, 9, 17, 19, 31, 37, 39, 40, 42, 52, AND 53 WITHIN 30 DAYS. PLAINTIFF NOT HAVING REQUESTED MONETARY SANCTIONS, THE COURT DOES NOT AWARD ANY SANCTIONS. NO HEARING ON THESE MATTERS WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, OCTOBER 22, 2021

EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

11. COUNTY OF EL DORADO v. COST PC-20210165

Defendant's Motion to Consolidate Case Number PC-20210227 with Case Number PC-20210165.

On April 1, 2021 plaintiff County filed an action under case number PC-20210165 against defendant to recover worker's compensation benefits paid for the benefit of two employees allegedly injured during the course and scope of their employment by defendant when his vehicle allegedly negligently collided with the employees' vehicle.

On April 23, 2021 the two employees and others filed an action under case number PC-20210227 against defendant Cost for alleged injuries arising from the same motor vehicle accident.

Defendants James Cost and Cynthia Cost move to consolidate the two cases.

The proof of service in the courts file declares that on August 26, 2021 the notice of hearing and moving papers were served by email to the counsels for the other parties in both cases. There is no opposition to the motion in the court's file.

The counsels for the parties in both actions have stipulated and agreed to consolidate the cases. (Declaration of Terrence T. Snook in Support of Motion, paragraph 9 and Exhibit A.)

"When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (Code of Civil Procedure, § 1048(a).)

The fact that all the parties are not the same does not bar a consolidation. (Jud Whitehead Heater Co. v. Obler (1952) 111 Cal.App.2d 861, 867.)

"…Consolidation under section 1048 is permissive, and the trial court granting consolidation must determine whether the consolidation will be for all purposes or will be limited. (*General Motors Corp. v. Superior Court* (1966) 65 Cal.2d 88, 92, 52 Cal.Rptr. 460, 416 P.2d 492.)" (Committee for Responsible Planning v. City of Indian Wells (1990) 225 Cal.App.3d 191, 196, fn.5.)

The court has discretion to consolidate actions, which have common questions of fact or law. Code of Civil Procedure, § 1048(a). "…Therefore it is possible that actions may be thoroughly "related" in the sense of having common questions of law or fact, and still not be "consolidated," if the trial court, in the sound exercise of its discretion, chooses not to do so." (Askew v. Askew (1994) 22 Cal.App.4th 942, 964.)

It appears appropriate under the circumstances presented to grant the motion.

TENTATIVE RULING # 11: DEFENDANTS JAMES COST'S AND CYNTHIA COST'S MOTION TO CONSOLIDATE CASE NUMBER PC-20210227 WITH CASE NUMBER PC-20210165 IS GRANTED. CASE NUMBER PC-20210165 IS ORDERED CONSOLIDATED WITH CASE NUMBER PC-20210227 FOR ALL PURPOSES. CASE NUMBER PC-20210165 IS THE LEAD CASE. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT

WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, OCTOBER 22, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

12. MAICO ASSET MANAGEMENT v. WOODS PC-20210228

Defendant Chase International Real Estate's Motion to Transfer Case to the South Lake Tahoe Session.

Plaintiff filed an action against defendants asserting causes of action for intentional misrepresentation, constructive fraud, negligent misrepresentation, negligence, and breach of fiduciary duty allegedly arising from the sale of real property located in South Lake Tahoe. The initial complaint included allegations concerning fictitious Does 1-20, whose true names were allegedly unknown and who are being sued under those fictitious names. (See Complaint, paragraph 9.) An amendment to the complaint identifying Distinctive Homes, Tahoe as defendant Doe 1 was filed on July 27, 2021. On September 17, 2021 the 1st amended complaint was filed.

Defendant Chase International Equities Corporation (Chase International) moves to transfer the action from the Placerville Session to the South Lake Tahoe Session of the El Dorado County Superior Court. Defendant Chase International asserts that good cause exists to transfer the case to South Lake Tahoe for the following reasons: plaintiff's claims arise from the sale of real property in South Lake Tahoe; defendants Daryl Woods and Jessica Woods ae located in South Lake Tahoe; the complaint against defendant Chase International is premised upon respondeat superior liability for the conduct of defendant Daryl Woods, whose alleged actions took place in South Lake Tahoe; defendant Chase International is headquartered in Zephyr Cove, Nevada near South Lake Tahoe; and the South Lake Tahoe Session is a more convenient forum for witnesses, such as witnesses who are experts in the valuation of South Lake Tahoe property, witnesses who are local government officials from the City of South Lake

Tahoe, El Dorado County, and the Tahoe Regional Planning Agency who will testify as to the permit process in South Lake Tahoe, and local contractor witnesses.

The proof of service in the court's file declares that notice of the hearing and the moving papers were served by mail to plaintiff's counsel on September 8, 2021. There is no opposition to the motion in the court's file.

"Except as otherwise provided by law: ¶ (1) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be filed. ¶ (2) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be heard or tried. ¶ (3) A superior court may not dismiss a case, and the clerk may not reject a case for filing, because it is filed, or a person seeks to file it, in a court location other than the location specified by local rule. However, the court may transfer the case on its own motion to the proper court location." (Code of Civil Procedure, § 402(a).)

"A superior court may transfer an action or proceeding filed in one location to another location of the superior court. This section does not affect the authority of the presiding judge to apportion the business of the court as provided by the California Rules of Court." (Code of Civil Procedure, § 402(b).)

"Any action or proceeding may, for good cause, be transferred from the South Lake Tahoe Session to the Session at the County Seat, or vice versa, on motion of any party or the Courts." (Local Rule 2.00.08D(6).)

Therefore, the standard to apply in transfers between the El Dorado County Superior Court Sessions is good cause, which includes the presiding judge's authority to apportion the business of the Court.

Actions or proceedings that may be heard in the South Lake Tahoe Session include all jury and non-jury actions or proceedings wherein the subject matter arises in the South Lake Tahoe

Area and non-jury actions or proceedings involving title to or possession of real property located the South Lake Tahoe Area in whole or in part. (Local Rule 2.00.08D.) Cases may only be transferred between the Placerville and South Lake Tahoe Sessions with the specific consent of the Presiding Judge. (Local Rule 2.00.09A.)

It appears from the face of the complaint and 1st amended complaint that this action arises in the South Lake Tahoe Area.

The court by Local Rule has apportioned the business of the court by designating the Superior Court Sessions where the actions that may be heard being transactionally or geographically connected to the geographic location of that Session.

After due consideration of the moving papers filed in support of the motion, absent opposition, it appears appropriate under the circumstances presented to grant the motion and with the consent of the Presiding Judge to transfer the action to the South Lake Tahoe Session.

TENTATIVE RULING # 12: THE MOTION IS GRANTED. UPON CONSENT OF THE PRESIDING JUDGE, THIS MATTER WILL BE TRANSFERRED TO THE SOUTH LAKE TAHOE SESSION OF THE EL DORADO COUNTY SUPERIOR COURT. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED

AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, OCTOBER 22, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

13. JP MORGAN CHASE BANK v. DALTON PCL-20200596

Plaintiff's Motion for Order Admitting Truth of Requests for Admission.

Plaintiff's counsel declares: on April 9, 2021 requests for admission were served on defendant; the time to respond expired on May 19, 2021; and defendant failed to provide any responses to the requests for admission. Plaintiff moves for an order deeming admitted the requests for admission. Plaintiff has not requested an award of monetary sanctions.

The proof of service in the court's file declares that on July 22, 2021 notice of the hearing and copies of the moving papers were served by UPS overnight delivery to defendant's address of record.

By ex parte order of the court, dated August 31, 2021, the court continued the September 10, 2021 hearing date to October 22, 2021 due to the Caldor Fire. The ex parte minute order was mailed to plaintiff's counsel and defendant's address of record on August 31, 2021.

There is no opposition to the motion in the court's file.

Where a party fails to timely respond to requests for admission, the court is mandated to deem such requests admitted, "…unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." (Code of Civil Procedure, § 2033.280(c).)

Absent opposition, it appears appropriate under the circumstances to grant the motion to deem admitted the requests for admission.

TENTATIVE RULING # 13: PLAINTIFF'S MOTION FOR ORDER ADMITTING TRUTH OF REQUESTS FOR ADMISSION IS GRANTED. THE COURT ORDERS DEEMED ADMITTED REQUESTS FOR ADMISSION, SET ONE.NO SANCTIONS HAVING BEEN REQUESTED, THE COURT DOES NOT AWARD ANY DISCOVERY SANCTIONS. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30

A.M. ON FRIDAY, OCTOBER 22, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

14. FOULDS v. COLD SPRINGS MOBILE HOME PARK PC-20210033

(1) Defendants Cold Springs Mobile Home Manor's, Monolith Properties, Inc.'s Marlow's Natho's, and Brache's Demurrer to 1st Amended Complaint.

(2) Defendants Cold Springs Mobile Home Manor's, Monolith Properties, Inc.'s Marlow's Natho's, and Brache's Motion to Strike Entire 1st Amended Complaint.

Defendants Cold Springs Mobile Home Manor's, Monolith Properties, Inc.'s Marlow's Natho's, and Brache's Demurrer to 1st Amended Complaint.

Plaintiff filed a 1st amended complaint on April 26, 2021 asserting 11 causes of action arising from his rental of a mobile home space at Cold Springs Mobile Manor.

On July 28, 2021 the 8th cause of action was dismissed without prejudice upon request of plaintiff.

Defendants Cold Springs Manor, LLC, Ingrid Marlow, Carolyn Natho, Thomas Brache, and Monolith Properties, Inc. demur to the remaining ten causes of action on the following grounds: plaintiff's failure to allege compliance with the pre-notice requirements set forth in Civil Code, § 798.84 is fatal to all remaining causes of action of the 1st amended complaint; no claim for relief can be premised upon the alleged removal of trees from the subject premises; plaintiff can not state a cause of action for trespass premised upon cutting down oak trees on the premises, because the mobile home residency law (MRL) authorizes the management to enter the land and grounds of a space, including plaintiff's space for tree maintenance; plaintiff has failed to allege sufficient facts specific to this cause of action that establishes a business practice was unfair, unlawful, or fraudulent that caused actual damages to plaintiff; the allegations of the 1st amended complaint are conclusory and are insufficient to state a cause of action for injunctive relief; and the causes of action are uncertain as they are premised upon

improper matters, such as not stating any causes of action for cutting down the oak trees and all causes of action are barred by failure to provide the Section 798.84 notice prior to commencing litigation, leaving nothing to constitute any cause of action against defendants.

Plaintiff opposes the demurrers on the following grounds: the allegations have been stated with sufficient specificity, there is substantial compliance with the pre-notice requirements set forth in Civil Code, § 798.84, and the 1st amended complaint cam be amended to allege substantial compliance with the pre-notice requirements set forth in Civil Code, § 798.84; a demurrer can not address only a part of a cause of action; defendants had no authority to trespass on plaintiff's home site; plaintiff has adequately alleged a cause of action against defendants for trespass; plaintiff has adequately alleged a cause of action for unfair business practices; plaintiff has adequately alleged a claim for injunction; and should a demurrer be sustained, leave to amend should be granted.

Defendants replied to the opposition and requested judicial notice of driver's licenses.

Defendants argue that the 55 year old residency requirement is fulfilled by one resident and the subject space alleged in the 1st amended complaint is leased to the decedent lessor's sister, Caroline Malley, whose judicially noticed age on her driver's license is 75 years old.

The 1st amended complaint alleges that defendants admitted the deceased neighbor's under age son, wife, and children to move into the mobile home. (Emphasis added.) There is no allegation that decedent's sister resides in the space. Judicial notice of the sister's age is of no help to defendants as the allegations of the 1st amended complain taken as true for the purposes of demurrer do not establish that the decedent's sister is a resident of that space and, therefore, the fact is a matter of proof in defense against the action and not a matter for determination on demurrer or motion to strike.

General Demurrer Principles

When any ground for objection to a complaint appears on its face, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by demurrer to the pleading. (Code of Civil Procedure, § 430.30(a).)

"'A demurrer admits all material and issuable facts properly pleaded. [Citations.] However, it does not admit contentions, deductions or conclusions of fact or law alleged therein.' (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) Also, '... "plaintiff need only plead facts showing that he may be entitled to some relief [citation]." [Citation.] Furthermore, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint.' (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].)" (Highlanders, Inc. v. Olsan (1978) 77 Cal.App.3d 690, 696-697.)

"A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140 [248 Cal.Rptr. 276].) We therefore treat as true all of the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (*Id*. at p. 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].) We can also consider the facts appearing in exhibits attached to the complaint. (See *Dodd v. Citizens Bank of Costa Mesa*, supra, 222 Cal.App.3d at p. 1627.) We are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185].)" (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

""To determine whether a cause of action is stated, the appropriate question is whether, upon a consideration of all the facts alleged, it appears that the plaintiff is entitled to any

judicial relief against the defendant, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. (*Elliott v. City of Pacific Grove*, 54 Cal.App.3d 53, 56, 126 Cal.Rptr. 371.) Mistaken labels and confusion of legal theory are not fatal because the doctrine of "theory of the pleading" has long been repudiated in this state. (*Lacy v. Laurentide Finance Corp*., 28 Cal.App.3d 251, 256-257, 104 Cal.Rptr. 547.)" (Spurr v. Spurr (1979) 88 Cal.App.3d 614, 617.)

The rule is that a general demurrer should be overruled if the pleading, liberally construed, states a cause of action under any theory. (Brousseau v. Jarrett (1977) 73 Cal.App.3d 864, 870-871.)

"A demurrer does not lie to a portion of a cause of action. (Citations Omitted.)" (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1682.) Where a portion of the cause of action is defective on the face of the complaint, the appropriate remedy is to bring a motion to strike that portion of the complaint. (PH II, Inc., supra at pages 1682-1683.)

With the above cited principles in mind, the court will rule on the demurrers to the 1st amended complaint.

Civil Code, § 798.84 Pre-Litigation Notification

Defendants argue that since each and every cause of action is premised upon a failure to maintain the common facilities and there are no allegations of compliance with the Section 798.84 requirement of 30 days advance notice of the purported failure to maintain, all causes of action are fatally defective and demurrers must be sustained as to all causes of action without leave to amend.

Plaintiff argues in opposition: there has been substantial compliance with the pre-notice requirement of Section 798.84; the pre-suit notification to management required for Section

798.84 is for alleged failure to maintain the common facilities, the actions for trespass, breach of contract, negligence, and nuisance are common law claims that arise due to interference with the plaintiff's rented home site and not common facilities; defendants have been adequately noticed regarding the common facility deficiencies by various homeowners at the park more than 30 days prior to the filing of the lawsuit, which complied with Section 798.84(b); and any deficiency in allegations can be remedied by amendment.

"(a) No action based upon the management's alleged failure to maintain the physical improvements in the common facilities in good working order or condition or alleged reduction of service may be commenced by a homeowner unless the management has been given at least 30 days' prior notice of the intention to commence the action. ¶ (b) The notice shall be in writing, signed by the homeowner or homeowners making the allegations, and shall notify the management of the basis of the claim, the specific allegations, and the remedies requested. A notice by one homeowner shall be deemed to be sufficient notice of the specific allegation to the management of the park by all of the homeowners in the park. ¶ (c) The notice may be served in the manner prescribed in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. ¶ (d) For purposes of this section, management shall be deemed to be notified of an alleged failure to maintain the physical improvements in the common facilities in good working order or condition or of an alleged reduction of services upon substantial compliance by the homeowner or homeowners with the provisions of subdivisions (b) and (c), or when management has been notified of the alleged failure to maintain or the alleged reduction of services by a state or local agency. ¶ (e) If the notice is served within 30 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 30 days from the service of the notice. ¶ (f)

This section does not apply to actions for personal injury or wrongful death." (Emphasis added.) (Civil Code, § 798.84.)

To the extent that each cause of action is premised in part on allegations that defendants failed to maintain common facilities (See 1st Amended Complaint paragraphs 17, 19, 20, 21, 25, 28(e)-g), 34, 38(b), 42, 47(e)-(g), 50, 53(e)-(g), 56, 60(e)-(g), 64, 66(e)-(g), 71, 81, 88, 92, 96, and 97.), the causes of action fail to state such causes of action against the defendants due to plaintiff's failure to sufficiently allege facts to establish plaintiff or some other tenant in the park provided the advanced written notice of failure to maintain the common facilities as complained of in the 1st amended complaint at least 30 days prior to filing the initial complaint.

However, that does not mandate the court to sustain the demurrers to all causes of action. The causes of action also allege other grounds for those causes of action, including illegal dumping of sewage and other materials on plaintiff's premises, which created a stench resulting in extreme hardship to plaintiff as his rented space smelled badly for over two months; and allowed four persons who were less than 55 years old to occupy a space in the senior community in violation of Cold Springs Manor Rule 3, resulting in a noise campaign by those occupants designed to disrupt and harass plaintiff and interfere with plaintiff's right to quiet enjoyment of his rented premises and defendants took no action to correct the problem even after plaintiff sent a letter to the management company requesting enforcement of the rule, that the occupants be moved from the space next to plaintiff, and/or evicted. (See 1st Amended Complaint paragraphs 18, 22, 23, 25, 34, 38(d), 50, 53(d), 53(e), 54, 56, 60(c), 60(d), 64, 66(c), 66(d), 71, 74, 81, 88, 92-95, and 97.)

"A demurrer does not lie to a portion of a cause of action. (Citations Omitted.)" (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1682.)

The demurrer on the ground of failure to allege compliance with the pre-notice requirement of Section 798.84 is overruled.

Removal of Oak Trees on Premises Leased to Plaintiff

Defendants argue that all causes of action are fatally defective because none of the causes of action can be premised upon the alleged removal of oak trees from the space rented by plaintiff. Defendants assert that the terms of plaintiff's rental agreement expressly provide that the oak trees are owned by the Park and they may be removed at the Park's option.

Citing the provisions of Civil Code, § 798.37.5(a), plaintiff asserts that the 1st amended complaint adequately alleges that there was a trespass that occurred when defendants without plaintiff's notice, permission, or consent entered his rented home site and cut down oak trees; and defendants had no absolute right to cut down oak trees on the rented home site, because Section 798.37.5(a) only allows mobile home park management to cut down trees that pose a specific hazard or health and safety violation upon written notice to the homeowner..

Plaintiff also contends that cutting down the oak trees is only one basis for the causes of action asserted against defendants and that the causes of action sufficiently assert other factual grounds sufficient to state such causes of action, which are sufficient to avoid a demurrer to those causes of action as the defendant can not demur to only a portion of a cause of action..

The written mobile home space rental agreement relied upon by plaintiff as the foundation for his claims of rights that he alleges were violated by the landlord, its managers, the management company for the mobile home manor, and the management company's managers has a provision that relates to all plants, shrubs and trees planted on the premises rented and expressly provides: "… they are the property of the Park, which may remove them

at its option." (1st Amended Complaint, paragraph 1 and Exhibit A – Standard Twelve-Month Rental Agreement, paragraph 24.)

The express terms of the written agreement with plaintiff reserves to the park's landlord and management the absolute right to remove trees on plaintiff's space. The provision sets forth no requirement for permission, consent, notice, or any determination that the trees pose a specific hazard or health and safety violation.

The notice that must be provided in mobile home space leases includes a statement of the following: "…Homeowners and park management have certain rights and responsibilities under the MRL. These include, but are not limited to: ¶ * * * 7. Management has the right to enter the space upon which a mobilehome is situated for maintenance of utilities, trees, and driveways; for inspection and maintenance of the space in accordance with the rules and regulations of the park when the homeowner or resident fails to maintain the space; and for protection and maintenance of the mobilehome park at any reasonable time, but not in a manner or at a time that would interfere with the resident's quiet enjoyment of his or her home. (Civil Code Section 798.26)…" (Emphasis added.) (Civil Code, § 798.15(i)(7)

The rental agreement provides: "Resident acknowledges receipt of the Notice of Rights and Responsibilities form required by Civil Code Section 798.15(i), a copy of which is attached to this rental agreement and incorporated herein by reference." (1st Amended Complaint, paragraph 1 and Exhibit A – Standard Twelve-Month Rental Agreement, paragraph 15.)

"(a) Except as provided in subdivision (b), the ownership or management of a park shall have no right of entry to a mobilehome or enclosed accessory structure without the prior written consent of the resident. The consent may be revoked in writing by the resident at any time. The ownership or management shall have a right of entry upon the land upon which a mobilehome is situated for maintenance of utilities, trees, and driveways, for maintenance of

the premises in accordance with the rules and regulations of the park when the homeowner or resident fails to so maintain the premises, and protection of the mobilehome park at any reasonable time, but not in a manner or at a time that would interfere with the resident's quiet enjoyment." (Civil Code, § 798.26(a).)

"(a) With respect to trees on rental spaces in a mobilehome park, park management shall be solely responsible for the trimming, pruning, or removal of any tree, and the costs thereof, upon written notice by a homeowner or a determination by park management that the tree poses a specific hazard or health and safety violation. In the case of a dispute over that assertion, the park management or a homeowner may request an inspection by the Department of Housing and Community Development or a local agency responsible for the enforcement of the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code) in order to determine whether a violation of that act exists." (Civil Code, § 798.37.5(a))

Section 798.37.5(a) does not prohibit a mobile home park landlord from entering the rented space to remove trees on the premises unless written notice is provided and the trees must pose a specific hazard or health and safety violation. That statute only provides that upon written notice by the homeowner to park management, or a determination by park management that the tree poses a specific hazard or health and safety violation, does the park have the sole responsibility to trim, prune, or remove a tree at the cost of the park.

As stated earlier, the express terms of the written agreement with plaintiff reserves to the park's landlord and management the absolute right to remove trees on plaintiff's space; and the provision sets forth no requirement for permission, consent, notice, or any determination that the trees pose a specific hazard or health and safety violation. Furthermore, the statutes

cited above expressly provide that the park management has the right to enter the space upon which a mobilehome is situated for maintenance of trees at any reasonable time.

Plaintiff cites no allegation that cutting down the oak trees was not done at a reasonable time.

Plaintiff has failed to sufficiently allege facts related to removal of the oak trees that would establish any of the causes of action asserted in the complaint.

However, as stated earlier in this ruling, that does not mandate the court to sustain the demurrers to all causes of action. The causes of action also allege other grounds for those causes of action.

"A demurrer does not lie to a portion of a cause of action. (Citations Omitted.)" (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1682.)

The demurrer on the ground that defendant's removal of the oak trees was not wrongful and, therefore, did not support any of the causes of action is overruled.

7th Cause of Action for Trespass

Defendants demur to the 7th cause of action on the ground that plaintiff can not state a cause of action for trespass premised upon cutting down oak trees on the premises, because the mobile home residency law (MRL) authorizes the management to enter the land and grounds of a space, including plaintiff's space for tree maintenance.

Plaintiff opposes the demurrer to the trespass cause of action on the grounds that defendants have no absolute right to enter the plaintiff's home site to cut down trees and deposit buckets of sludge and other material, except in emergency situations as provided in Civil Code, §§ 798.26(a) and 798.26 (b); and there was no emergency or other justification for such conduct.

""Trespass is an unlawful interference with possession of property." (*Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406, 235 Cal.Rptr. 165.) The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm. (See CACI No. 2000.)" (Ralphs Grocery Co. v. Victory Consultants, Inc. (2017) 17 Cal.App.5th 245, 261–262.)

The allegations of the 1st amended complaint adequately allege a cause of action for trespass premised upon defendants and their management dumping sewage, sludge, and other materials on the subject premises rented by plaintiff, or defendants authorized and/or ratified such conduct, which resulted in extreme hardship to plaintiff as the subject property he rented smelled badly for over two months.

The demurrer to the 7th cause of action for trespass is overruled.

10th Cause of Action for Unfair Business Practices

Defendants argue that plaintiff has failed to allege sufficient facts specific to this cause of action that establishes defendants engaged in an unfair, unlawful, or fraudulent business practice that caused actual damages to plaintiff.

"As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code." (Business and Professions Code, § 17200.)

"Section 17200 'borrows' violations from other laws by making them independently actionable as unfair competitive practices. (*Cel-Tech*, supra, 20 Cal.4th at p. 180, 83 Cal.Rptr.2d 548, 973 P.2d 527.) In addition, under section 17200, 'a practice may be deemed

unfair even if not specifically proscribed by some other law.' (*Cel-Tech*, at p. 180, 83 Cal.Rptr.2d 548, 973 P.2d 527.)" (Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal.4th 1134, 1143.)

When a UCL claim is derivative of other substantive causes of action, the claim "stand [s] or fall[s] depending on the fate of the antecedent substantive causes of action." (Krantz v. BT Visual Images, L.L.C. (2001) 89 Cal.App.4th 164, 178.)

The following facts are incorporated into the tenth cause of action for unfair business practices: defendants illegally dumped sewage, sludge, and other materials on plaintiff's premises, which created a stench resulting in extreme hardship to plaintiff as his rented space smelled badly for over two months; and allowed four persons who were less than 55 years old to occupy a space in the senior community in violation of Cold Springs Manor Rule 3, resulting in a noise campaign by those occupants designed to disrupt and harass plaintiff and interfere with plaintiff's right to quiet enjoyment of his rented premises and took no action to correct the problem even after plaintiff sent a letter to the management company requesting enforcement of the rule, that the occupants be moved from the space next to plaintiff, and/or evicted. (See 1st Amended Complaint paragraphs 18, 22, 23, 25, 34, 38(d), 50, 53(d), 53(e), 54, 56, 60(c), 60(d), 64, 66(c), 66(d), 71, 74, 81, and 88.)

Plaintiff has sufficiently alleged unfair business practices by defendants that caused actual harm to plaintiff.

The demurrer to the unfair business practices cause of action is overruled.

11th Cause of Action for Injunction

Defendants argue that the allegations of the 1st amended complaint are conclusory and are insufficient to state a cause of action for injunctive relief.

Plaintiff argues in opposition that the 1st amended complaint adequately pled a claim for injunctive relief based upon the express representation that Cold Springs Manor was an over-55 park and after his neighbor passed away, defendants admitted the deceased neighbor's under age son, wife, and children to move into the mobile home and then failed to take action to enforce the regulations after plaintiff sent written notice to defendants about the noise and disturbance.

"An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court." (Code of Civil Procedure, § 525.)

"An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually." (Code of Civil Procedure, § 526(a)(1).)

"A permanent injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action. (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356, 176 Cal.Rptr. 620.)" (County of Del Norte v. City of Crescent City (1999) 71 Cal.App.4th 965, 973.)

As stated earlier in this ruling, the 1st amended complaint alleges: defendants allowed four persons who were less than 55 years old to occupy a space in the senior community in violation of Cold Springs Manor Rule 3, resulting in a noise campaign by those occupants designed to disrupt and harass plaintiff and interfere with plaintiff's right to quiet enjoyment of his rented premises and took no action to correct the problem even after plaintiff sent a letter to the management company requesting enforcement of the rule, that the occupants be moved from the space next to plaintiff, and/or evicted.

The plaintiff has adequately alleged grounds for issuance of an injunction.

The demurrer to the cause of action seeking an injunction is overruled.

Special Demurrer to Causes of Action

Defendants argue that the causes of action are uncertain as they are premised upon improper matters, such as not stating any causes of action for cutting down the oak trees and all causes of action are barred by failure to provide the Section 798.84 notice prior to commencing litigation, leaving nothing to constitute any cause of action against defendants.

Plaintiff opposes the demurrer on the ground that the 1st amended complaint states facts constituting causes of action in ordinary and concise language and the allegations are not ambiguous or unintelligible.

"A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (5 Witkin, Cal.Procedure (3d ed. 1985) Pleading, § 927, p. 364; 1 Weil & Brown, Civil Procedure Before Trial (1990) § 7:85, p. 7-23.)" (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.)

"A special demurrer should be overruled where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. *People v. Lim*, 18 Cal.2d 872, 882, 118 P.2d 472. All that is required of a complaint, even as against a special demurrer, is that it set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of the cause of action. *Smith v. Kern County Land Co.*, 51 Cal.2d 205, 209, 331 P.2d 645." (Gressley v. Williams (1961) 193 Cal.App.2d 636, 643-644.)

The causes of action set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of the causes of action. The special demurrer is overruled.

Defendants Cold Springs Mobile Home Manor's, Monolith Properties, Inc.'s Marlow's Natho's, and Brache's Motion to Strike Entire 1st Amended Complaint.

Plaintiff filed a 1st amended complaint of April 26, 2021 asserting 11 causes of action arising from his rental of a mobile home space at Cold Springs Mobile Manor.

On July 28, 2021 the 8th cause of action was dismissed without prejudice upon request of plaintiff.

Defendants Cold Springs Manor, LLC, Ingrid Marlow, Carolyn Natho, Thomas Brache, and Monolith Properties, Inc. move to strike all remaining causes of action and various portions of the 1st amended complaint on the following grounds: the entire 1st amended complaint must be stricken, because plaintiff has failed to allege compliance with the pre-notice requirements set forth in Civil Code, § 798.84; and the 1st amended complaint fails to allege sufficient facts to establish that punitive damages should be awarded and, therefore, the allegations in support of the claim and prayer for punitive damages must be stricken.

Plaintiff opposes the motion to strike on the following grounds: the 1st amended complaint sufficiently alleges substantial compliance with the notice requirements of Civil Code, § 798.84; the allegations set forth facts that establish defendants acted in willful and conscious disregard of the rights and safety of plaintiff; and punitive damages have been awarded in the context of cases involving landlords/landlords' agents and tenants.

Defendants replied to the opposition and requested judicial notice of driver's licenses.

Motion to Strike Principles

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: ¶ (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. ¶ (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code of Civil Procedure, § 436.)

"The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code of Civil Procedure, § 437(a).) "Where the motion to strike is based on matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, such matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Code of Civil Procedure, § 437(b).)

"A motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true. (See *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255, 79 Cal.Rptr.2d 747 [an order striking punitive damages allegations is reviewed de novo].)" (Blakemore v. Superior Court (2005) 129 Cal.App.4th 36, 53.)

"In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, 11 Cal.Rptr.2d 161; *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 91, 168 Cal.Rptr. 319; see California Judges Benchbook, Civil Proceedings Before Trial (1995) § 12.94, p. 611.) In ruling on a motion to strike, courts do not read allegations in isolation. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6, 172 Cal.Rptr. 427.)" (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.)

With the above-cited principles in mind, the court will rule on defendants'' motion to strike.

Motion to Strike All Remaining Causes of Action

The defendants argue the entire 1st amended complaint must be stricken, because plaintiff has failed to allege compliance with the pre-notice requirements set forth in Civil Code, § 798.84.

The court incorporates by reference the ruling on the defendants' demurrers to the 1st amend complaint which is being heard concurrently with this motion.

For the same reasons as stated in that ruling, the court finds that the causes of action are not irrelevant, false, or improper matters and they were drawn or filed in conformity with the laws of this state, a court rule, or an order of the court as they state such causes of action premised upon grounds other than a failure to maintain the common facilities and such other grounds do not require the Section 798.84 pre-litigation notice. It would be improper to strike the entire 1st amended complaint. Defendants remedy was to strike only the specifically stated portions of the causes of action wherein liability is alleged due to a failure to maintain the common facilities.

The motion to strike the entire 1st amended complaint is denied.

Motion to Strike Punitive Damages Claim

Defendants argue that the 1st amended complaint fails to allege sufficient facts to establish that punitive damages should be awarded and, therefore, the allegations in support of the claim and prayer for punitive damages must be stricken.

Plaintiff opposes the motion to strike the punitive damages allegations and prayer on the grounds that the allegations set forth facts that establish defendants acted in willful and conscious disregard of the rights and safety of plaintiff; and punitive damages have been awarded in the context of cases involving landlords/ landlords' agents and tenants.

"In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants' conduct may adequately plead the evil motive requisite to recovery of punitive damages. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7, 172 Cal.Rptr. 427.)" (Monge v. Superior Court (1986) 176 Cal.App.3d 503, 510.)

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166, 203 Cal.Rptr. 556; *Blegen v. Superior Court* (1981) 125 Cal.App.3d 959, 962–963, 178 Cal.Rptr. 470.) In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, 11 Cal.Rptr.2d 161; *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 91, 168 Cal.Rptr. 319; see California Judges Benchbook, Civil Proceedings Before Trial (1995) § 12.94, p. 611.) In ruling on a motion to strike, courts do not read allegations in isolation. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6, 172 Cal.Rptr. 427.) We review an order striking punitive damages allegations de novo. (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1223, 44 Cal.Rptr.2d 197.)" (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.)

"In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code of Civil Procedure, § 452.)

"Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim. (Citation omitted.)" (Grieves v. Superior Court (1984) 157 Cal.App.3d 159, 166.)

"Punitive damages are "available to a party who can plead and prove the facts and circumstances set forth in Civil Code section 3294." *Hilliard v. A.H. Robins Co.,* 148 Cal.App.3d 374, 392, 196 Cal.Rptr. 117 (1983). "To support punitive damages, the complaint ... must allege ultimate facts of the defendant's oppression, fraud, or malice." *Cyrus v. Haveson,* 65 Cal.App.3d 306, 316–317, 135 Cal.Rptr. 246 (1976). Pleading the language in section 3294 "is not objectionable when sufficient facts are alleged to support the allegation." *Perkins v. Superior Court,* 117 Cal.App.3d 1, 6–7, 172 Cal.Rptr. 427 (1981)." (Altman v. PNC Mortg. (E.D. Cal. 2012) 850 F.Supp.2d 1057, 1085.)

"In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (Civil Code, § 3294(a).)

" 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civil Code, § 3294(c)(1).)

" 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civil Code, § 3294(c)(2).)

" 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civil Code, § 3294(c)(3).)

"The punitive damages theory cannot be predicated on the breach of contract cause of action without an underlying tort. (*Chelini v. Nieri* (1948) 32 Cal.2d 480, 486–487, 196 P.2d 915; *Crogan v. Metz* (1956) 47 Cal.2d 398, 405, 303 P.2d 1029; *Ericson v. Playgirl, Inc.* (1977) 73 Cal.App.3d 850, 854, 140 Cal.Rptr. 921; *Quigley v. Pet, Inc.* (1984) 162 Cal.App.3d 877, 887, 208 Cal.Rptr. 394.) Neither evidence of mere negligence (*Kendall Yacht Corp. v. United California Bank* (1975) 50 Cal.App.3d 949, 959, 123 Cal.Rptr. 848; see *Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d 279, 284–288, 157 Cal.Rptr. 32) nor constructive fraud (*Delos v. Farmers Insurance Group* (1979) 93 Cal.App.3d 642, 656–657, 155 Cal.Rptr. 843, and cases there cited; *Estate of Witlin* (1978) 83 Cal.App.3d 167, 177, 147 Cal.Rptr. 723; compare *Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1160, 217 Cal.Rptr. 89) will support a punitive damages award without a showing of the statutory fraud, malice, or oppression." (Palmer v. Ted Stevens Honda, Inc. (1987) 193 Cal.App.3d 530, 536.)

The causes of action allege that defendants engaged in the following conduct: illegal dumping of sewage, sludge, and other materials on plaintiff's premises, which created a stench resulting in extreme hardship to plaintiff as his rented space smelled badly for over two months; while dumping the sewage, sludge and other foreign material on the plaintiff's rented premises, defendants' park maintenance manger acting as agent and/or employee of Cold Springs Mobile Manor, LLC stated "this is the owners property we can dump anything we want on your property"; the dumping was done intentionally for the purpose of harassing plaintiff; and defendants allowed four persons who were less than 55 years old to occupy a space in the senior community in violation of Cold Springs Manor Rule 3, resulting in a noise campaign by those occupants designed to disrupt and harass plaintiff and interfere with plaintiff's right to quiet enjoyment of his rented premises and took no action to correct the problem even after plaintiff sent a letter to the management company requesting enforcement of the rule, that the

occupants be moved from the space next to plaintiff, and/or evicted. (See 1st Amended Complaint paragraphs 18, 22, 23, 25, 34, 38(d), 50, 53(d), 53(e), 54, 56, 60(c), 60(d), 64, 66(c), 66(d), 71, 74, 81, 88, 92-95, and 97.)

Taking the allegations of the 1st amended complaint as true for the purposes of the motion to strike and not reading allegations in isolation (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.), the court finds that plaintiff has alleged facts that sufficiently alleged malice and oppression to support a claim for punitive damages.

The motion to strike portions of the complaint asserting a claim for punitive damages is denied.

TENTATIVE RULING # 14: THE DEMURRERS TO 1ST AMENDED COMPLAINT ARE OVERRULED. THE MOTION TO STRIKE IS DENIED. NO HEARING ON THESE MATTERS WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE

DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, OCTOBER 22, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

15. PITTAM v CARROLL SC-20190144

Defendant Tahoe Keyes Resort's Motion for Summary Judgment.

On August 21, 2019 plaintiff filed an action against Tahoe Keyes Resort and others. On July 23, 2021 defendant Tahoe Keys Resort, Inc., erroneously served as Tahoe Keyes Resort, filed a motion for summary judgment. An opposition to the motion has not been filed.

On October 8, 2021 the action against Tahoe Keyes Resort was dismissed with prejudice upon request of plaintiff.

TENTATIVE RULING # 15: THE DISMISSAL OF THE MOVING PARTY FROM THIS ACTION WITH PREJUDICE HAVING BEEN ENTERED ON OCTOBER 8, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR AS MOOT.