05-19-23
Dept. 9
Tentative Rulings

1. CALIFORNIA SPORTFISHING PROTECTION ALLIANCE v. LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD 22CV0841

Case Management Conference

TENTATIVE RULING # 1: HAVING RECEIVED AND APPROVED A STIPULATION OF THE PARTIES VACATING THE MAY 19, 2023 HEARING, THE MATTER IS DROPPED FROM CALENDAR.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. 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 TO 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. JANE DOE ET. AL v ANDREW KAM LEE ET. AL PC20160359

Order of Examination Hearing

This matter was appealed to the Third District Court of Appeals and this court received the Remittitur on July 29, 2022. In accordance with the appellate court's decision, the punitive damages award was vacated and the judgment was otherwise affirmed.

On August 18, 2022, the court ordered Appellants/Plaintiffs to submit an amended judgment to the court no later than September 16, 2022. There is no amended judgment on file with the court.

The matter was dropped from calendar at the hearing of March 3, 2023 when neither party appeared. The court's Tentative Ruling noted that there was no proof of service on file with the court and ordered Plaintiff to provide proof of personal service in compliance with Code of Civil Procedure § 708.110(d) before an examination could take place.

The most recent Application for Order of Examination was filed on April 7, 2023, for the May 19, 2023 hearing date. There is no proof of service on file with the court.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 19, 2023, IN DEPARTMENT NINE. PLAINTIFF IS ORDERED TO PROVIDE THE COURT WITH PROOF THAT THE DEBTOR WAS PERSONALLY SERVED NO LATER THAN TEN DAYS PRIOR TO THE HEARING DATE AS REQUIRED BY CIVIL PROCEDURE SECTION 708.110(d). IF THE COURT DOES NOT RECEIVE THE APPROPRIATE PROOF OF SERVICE, THE EXAMINATION WILL NOT TAKE PLACE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. GONZALEZ v. GENERAL MOTORS, LLC 22CV1379

Motion to Compel

This action was filed on September 26, 2022, alleging (1) violations of Civil Code § 1793.2(d); (2) violations of Civil Code § 1793.2(b); (3) violations of Civil Code § 1793.2(a)(3); (4) breach of express written warranty (Civil Code §§ 1794(a), 1791.2); and (5) breach of implied warranty of merchantability (Civil Code §§ 1791.1, 1794). In essence, this action is brought under the Song-Beverly Consumer Warranty Act (Song-Beverly Act), for defects in a 2019 GMC Sierra vehicle.

The case is in the discovery stage. On March 28, 2023, Plaintiff filed a Motion to Compel Further Responses and Documents to Plaintiff's Request for Production of Documents, Set One ("MTC"). At issue are seven Requests for Production ("RFP"), numbers 16, 19-22, and 25- 27.

The parties exchanged correspondence on the disputed issues during a meet and confer process, but have been unable to come to agreement on eight outstanding requests: Request for Production numbers 16, 19, 20, 21, 22, 25, 26 and 27, which according to Plaintiff's Motion, "relate to Defendant's internal investigations and analysis of the Electrical Defect and Powertrain Defect plaguing Plaintiff's vehicle and establishing that Defendant previously knew of such Defects and knew it could not repair them regardless of repair attempts but nevertheless failed to repurchase the vehicle."

Defendant objects to these requests on the grounds of relevance, that they are vague and ambiguous, overbroad, burdensome and oppressive and request materials that are protectible as confidential materials and trade secrets.

<u>Requests for Production of Documents</u>

"A party to whom a demand for inspection, copying, testing, or sampling 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, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Cal. Civ. Pro. §2031.210. Where a party fails to provide timely responses the party to whom the discovery was directed waives "any objection…including one based on privilege or on the protection of work product…" Cal. Civ. Pro. § 2031.300(a).

A statement that the party will comply shall include a statement "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." Cal. Civ. Pro. § 2031.220.

A statement of inability to comply 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." Cal. Civ. Pro. § 2031.230.

An objection to a request shall identify with particularity what document or object is being objected to and clearly state the extent of and the specific ground for the objection. Cal. Civ. Pro. § 2031.240.

Relevance

"Unless otherwise limited by order of the court in accordance with [the discovery statutes], any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Gonzalez v. Superior Ct., 33 Cal. App. 4th 1539, 1546 (1995). The question is not whether information requested is admissible, the question is whether the information sought might lead to the discovery of admissible evidence. Cal. Code Civ. Pro. § 2017.010. "Doubts as to relevance should be resolved in favor of permitting discovery." Colonial Life & Accident Ins. Co. v. Superior Ct., 31 Cal. 3d 785, 790 (1982).

In response to all of the outstanding Requests for Production Defendant asserts that the discovery requests are not tailored to Plaintiff's case in violation of Code of Civil Procedure § 2019.030 because they involve vehicles other than the Plaintiff's vehicle. Defendant states that Plaintiff's cause of action is "entirely unrelated and incommensurate" to the scope of his discovery requests on the theory that this case is a "simple breach of warranty claim" that only concerns Plaintiff's vehicle and that therefore, Plaintiff should not be allowed to inquire into facts relating to other vehicles of the same year make and model. This is not an accurate argument.

First, there are elements of a Song-Beverly Act claim that are not part of a breach of warranty claim. A breach of warranty for sale of goods is based upon provisions of the California Commercial Code:

The essential elements of a cause of action under the California Uniform Commercial Code for breach of an express warranty to repair defects are (1) an express warranty (Com.Code, § 2313) to repair defects given in connection with the sale of goods; (2) the existence of a defect covered by the warranty; (3) the buyer's notice to the seller of such a

defect within a reasonable time after its discovery (*id.,* § 2607, subd. (3)(A)); (4) the seller's failure to repair the defect in compliance with the warranty; and (5) resulting damages (*id.* §§ 2714, 2715; *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 145, 87 Cal.Rptr.3d 5).

Orichian v. BMW of N. Am., LLC, 226 Cal. App. 4th 1322, 1333–34 (2014).

Plaintiff's Complaint is based upon provisions of the Civil Code specific to consumer purchases of vehicles. Those California Civil Code sections, collectively referenced as the Song-Beverly Consumer Warranty Act, contain elements of knowledge and willfulness that are not present in a breach of warranty action under the Commercial Code. Accordingly, evidence of a defendant's prior knowledge of a problem with a particular vehicle model is relevant to whether a defendant engages with a plaintiff in good faith in deciding whether to attempt to repair a vehicle, or knowing that it cannot be repaired, agrees to repurchase it. To establish this knowledge, information about internal investigations and communications as well as histories of consumer complaints are all relevant inquiries.

For example, in the Song-Beverly Act case of Santana v. FCA US, LLC, 56 Cal. App. 5th 334 (2020), the defendant appealed the jury's imposition of a penalty for willfully failing to repurchase a plaintiff's vehicle because, it said, there was not substantial evidence to support the verdict. The appellate court disagreed, holding that "[b]y the time Chrysler's duty to repurchase arose, it was aware of the electrical defect in Santana's vehicle, which it chose not to repair adequately." Id. at 338. The evidence supporting that determination of liability for willful failure to comply with the Song-Beverly statute was associated with a "totally integrated power module" ("TIPM") that was installed in vehicles other than the plaintiff's vehicle beginning several years before the plaintiff's purchase. In years before and after the plaintiff purchased his vehicle and during the period that the plaintiff sought multiple repairs for mechanical problems, the TIPM was subject to multiple recalls, multiple internal "Issue Detail Reports", discussion in internal emails, the development of informal work-arounds and internal investigations and reports. All of that information was admitted into evidence and directly supported the determination of liability.

Plaintiff argues that Donlen v. Ford, 217 Cal.App.4th 138 (2013), and Doppes v. Bentley Motors, Inc. 174 Cal.App.4th 967 (2009) establish the relevance of mechanical problems in vehicles other than the vehicle belonging to the Plaintiff. Defendant counters that neither of these two cases are applicable to the relevance of evidence concerning other vehicles.

The case of Donlen v. Ford, 217 Cal.App.4th 138 (2013) was a Song-Beverly Act case involving a vehicle. The trial court granted of a new trial after a jury verdict in favor of the buyer because, among other things, it determined that the jury heard evidence regarding vehicles other than the plaintiff's vehicle that was prejudicial to the defendant. The grant of a new trial

was appealed. The appellate court reversed the trial court's determination that a new trial was warranted. In that case a truck was repaired multiple times, and when it continued having mechanical problems plaintiff demanded that Ford repurchase the truck pursuant to the Song-Beverly Act. During trial, Ford sought to exclude evidence of mechanical problems in trucks other than the plaintiff's truck as being unduly prejudicial. The appellate court disagreed, noting that the testimony was limited to the specific part and the same model that malfunctioned in the plaintiff's vehicle and included Ford's communications to its dealers and technicians about problems with that particular part and that particular model. "Thus, everything about which [plaintiff's expert] testified that applied to other vehicles applied equally to plaintiff's vehicle. Such evidence certainly was probative and not unduly prejudicial." Id. at, 154.

Doppes v. Bentley Motors, Inc. 174 Cal.App.4th 967 (2009) was another Song-Beverly Act case in which the appellate court reversed the trial court's refusal to impose terminating sanctions upon the defendant for misuse of the discovery process for withholding documents and violating discovery orders. As a legal precedent this case does not address the relevancy of evidence of vehicles other than the plaintiff's vehicle. However, as a real-world example of a Song-Beverly Act case it demonstrates that discovery in such cases can include information about other similar problems experience by other vehicle owners, as well as searches of electronically stored information, including internal emails, repair histories of similar vehicles, correspondence related to customer complaints and related communications to dealers. The court found that the defendant's persistent failure to comply with discovery orders warranted "the extraordinary, yet justified, determination that the trial court abused its discretion by failing to impose terminating sanctions against defendant for misuse of the discovery process." Doppes v. Bentley Motors, Inc., 174 Cal. App. 4th 967, 971(2009).

The court finds that there is ample legal precedent to support reliance upon evidence from vehicles other than the Plaintiff's vehicle in Song-Beverly Act cases.

Overbreadth, Burdensomeness, Oppressiveness

In its Separate Statement in Support of Opposition to Plaintiff's Motion to Compel Further Responses to Requests for Production of Documents, Set One ("Defendant's Separate Statement") Defendant argues that Plaintiffs requests are so "ridiculously overbroad" that it would be "virtually impossible" to search for the requested documents, that it would require "countless" people "to scour every corner of the global company" and that the task would be "indescribably cumbersome, "unbearable, unnecessary, unduly burdensome and expensive." It asserts that the burden of making the effort to comply would far outweigh the value of the Plaintiff's case.

"The objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing

either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought." W. Pico Furniture Co. of Los Angeles v. Superior Ct. In & For Los Angeles Cnty., 56 Cal. 2d 407, 417 (1961). The court is not able to consider the validity of a claim that a request is burdensome without any information that allows the court to balance the purpose and need for the information by the propounding party against the burden that is claimed by the responding party. Deyo v. Kilbourne, 84 Cal. App. 3d 771, 788–89 (1978); Coriell v. Superior Court, 39 Cal.App.3d 487, 492-493 (1974); Columbia Broad. Sys., Inc. v. Superior Court, 263 Cal.App.2d 12, 19 (1968).

Defendant cites the case of Calcor Space Facility v. Superior Court, 53 Cal.App.4th 216 (1997) to support its arguments. However, that case involved the subpoena of documents from a non-party consisting of a twelve-page demand with 32 requests and six pages of definitions that amounted to a demand for everything in the non-party's possession where "the justifications offered for the production [were] mere generalities." Id. at 224. Unlike Defendant in this case, the responding party in that case specified that "would take two people a minimum of two and one-half to three weeks of full-time effort" to "review the correspondence and general files of all of its departments" in several locations. The court vacated the trial court's order compelling a response to the request and held that such requests must at least describe "categories of documents or materials which are reasonably particularized in relation to the manner in which the producing party maintains such records." Id. at 219.

In this case, Plaintiff has repeatedly offered to negotiate appropriate search terms to facilitate electronic searches of databases for materials that are related to the scope of the discovery-specific electrical and powertrain defects found in vehicles of the same year, make and model as Plaintiff's vehicle. Declaration of Alessandro Manno in Support of Plaintiff's Motion to Compel Further Responses and Documents to Request for Production of Documents, Set One, dated March 28, 2023 ("Manno Declaration"), Exhibits 17-24. Unlike the Calcor case in 1997, the Plaintiff's proposed search parameters (electrical defect and powertrain defect related to vehicles of the same year, make and model) are reasonably particularized, and electronically stored information is machine searchable. If Plaintiff's request represents an undue burden on Defendant, Defendant has yet to specify any quantum of labor or expense that would be involved on which the court could base such a finding.

In support of its arguments on this issue Defendant heavily relies upon partial transcripts of two Los Angeles Superior Court hearings held in 2014 and 2017; however, those conversations do not amount to legal authority[1].

[1] Plaintiff objects to the introduction of unpublished superior court transcripts in as "neither persuasive nor binding". The court agrees. Cal. Rules of Court, Rule 8.1115; Santa Ana Hosp. Med. Ctr. v. Belshe, 56 Cal. App. 4th

Vagueness, Ambiguity

The outstanding requests are limited by two definitions (Electrical System Defect and Powertrain Defect) that apply to vehicles of the same year, make and model as the Plaintiff's vehicle. These requests are specific and reasonably particularized. To the extent that there is any uncertainty as to their application to electronically stored information, the Defendant has been invited during the meet and confer process to cooperate on the development of search parameters that will further limit and define the scope of a manageable request. Manno Declaration, Exhibits 17 19, 23.

Confidential – Proprietary - Trade Secret

Defendant argues that the requested materials include its trade secrets[2] that would cause it competitive harm and that it should not be required to turn over commercially sensitive materials without a heightened showing of need by the Plaintiff.

Defendant's claims of trade secret are subject to certain protections in discovery. Cal. Evidence Code § 1060. However, those protections do not amount to a license to commit wrongs, and so "the privilege exists under this section only if its application will not tend to conceal fraud or otherwise work injustice." Law Revision Commission Comments, Cal. Evid. Code § 1060; *see also* Willson v. Superior Ct. of California, in & for Los Angeles Cnty., 66 Cal. App. 275 (1924); Agric. Lab. Rels. Bd. v. Richard A. Glass Co., 175 Cal. App. 3d 703 (1985) (trade secret claimant has the burden of furnishing sufficient information to allow the court to balance whether the trade secret's value to the claimant outweighs the other party's need for the information, and if the trade secret privilege exists, to show why a protective order would not solve the problem.)

In Bridgestone/Firestone, Inc. v. Superior Ct., 7 Cal. App. 4th 1384 (1992), a case that included breach of warranty claims, the court held that "a court is required to order disclosure

819, 831 (1997) ("a written trial court ruling has no precedential value. (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 763, pp. 730-731.)")

[2] In support of this argument, Defendant has submitted a declaration of Huizhen Lu, dated October 28, 2018 ("Lu Declaration") in which the declarant purports to be "familiar with the categories of documents that may be produced" related to the "subject vehicle" as within GM's trade secrets, commercially sensitive business information, confidential and proprietary information and intellectual property, regarding which "GM LLC is filing a Motion for Entry of a Protective Order to assign a 'Highly Confidential' designation to certain categories of documents that may be produced . . . in the instant litigation." The declaration further warns that any attempt to access warranty data may lead to personally identifiable information such as social security numbers and contact information that are associated with an individual. Plaintiff has filed an evidentiary objection to the Lu Declaration, as it was executed several years before this action was filed. This objection is sustained as the Lu Declaration is irrelevant and has no factual relationship to or probative value in this case.

of a trade secret unless, after balancing the interests of both sides, it concludes that under the particular circumstances of the case, no fraud or injustice would result from denying disclosure. What is more, in the balancing process the court must necessarily consider the protection afforded the holder of the privilege by a protective order as well as any less intrusive alternatives to disclosure proposed by the parties." Bridgestone/Firestone, Inc. v. Superior Ct., 7 Cal. App. 4th 1384, 1393 (1992).

> [T]he party claiming the privilege has the burden of establishing its existence. (Evid.Code, § 405; *ALRB, supra,* 175 Cal.App.3d at p. 715, 221 Cal.Rptr. 63.) Thereafter, the party seeking discovery must make a prima facie, particularized showing that the information sought is relevant and necessary to the proof of, or defense against, a material element of one or more causes of action presented in the case, and that it is reasonable to conclude that the information sought is essential to a fair resolution of the lawsuit. It is then up to the holder of the privilege to demonstrate any claimed disadvantages of a protective order. Either party may propose or oppose less intrusive alternatives to disclosure of the trade secret, but the burden is upon the trade secret claimant to demonstrate that an alternative to disclosure will not be unduly burdensome to the opposing side and that it will maintain the same fair balance in the litigation that would have been achieved by disclosure.

Id.

The parties in this case are caught in an unending spiral with respect to Defendant's trade secret claims: Plaintiff requests data that would result from a search of electronically stored information but Defendant refuses to provide it, declaring that the requested materials are trade secrets. Defendant has not cooperated with Plaintiff's requests to define search parameters, and without having search parameters the specific materials that would result from such a search cannot be identified. Defendant demands a showing of heightened need for trade secret materials, but without knowing what materials would materialize as a result of a search, Plaintiff cannot make a showing of the need for those materials.

To unravel this Gordian knot, the parties must first agree on search terms, identify the databases that are subject to search and a format for production of electronically stored information responsive to the outstanding Requests for Production. After performing searches of relevant databases pursuant to those parameters, Defendant must identify materials subject to trade secret protection with sufficient specificity for Plaintiff's response. Plaintiff must then make a particularized showing of the need for those materials to support its case in a manner that is sufficient for this court to weigh the plaintiff's need for the information against the Defendant's legitimate trade secret interests. Defendant is tasked with demonstrating to the court why a protective order would or would not be sufficient to protect its interests.

The court notes that Defendant demanded and Plaintiff supplied an executed protective order, but that Defendant has not responded with any additional information or in any way modified its objections in response to that protective order. Manno Declaration, Exhibits 21, 23.

Failure to Meet and Confer

Defendant argues that Plaintiff has failed to meet and confer prior to filing this Motion to Compel Further Responses to Plaintiff's Request for Production of Documents, citing Code of Civil Procedure § 2025.450 (which governs failure to appear for a deposition notice), and that the parties' extensive correspondence between January 11, 2023 and March 22, 2023 was "disingenuous", lacking in substantive reasoning or analysis and did not amount to a "good faith" effort to "meet and confer". Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel Further Responses to Plaintiff's Requests for Production of Documents, Set One, at page 3-4.

The court has reviewed the 18 pages of meet and confer correspondence that Plaintiff initiated on January 11, 2023, and the 10 pages that Defendant sent in response, and finds that the Plaintiff's correspondence does constitute a meaningful, substantive and good faith effort to meet and confer to resolve the discovery issues and that Plaintiff has met the requirements of Code of Civil Procedure § 2016.040. Manno Declaration, paragraphs 25-33 and Exhibits 17-24.

Waiver of privilege

Plaintiff requests the court to deem Defendant's objections waived, including objections based on privilege, as an abuse of discovery sanction. However, a trial court "may not impose a waiver of the attorney-client privilege or work product doctrine as a sanction for failing to provide an adequate response to an inspection demand or an adequate privilege log." Catalina Island Yacht Club v. Superior Ct., 242 Cal. App. 4th 1116, 1126–28 (2015). Further, as of March 3, 2023, Defendant in its meet and confer letter of that date has represented that no documents have been withheld on the basis of privilege. Manno Declaration, Exhibit 22.

Sanctions

Under the Civil Discovery Act the court shall impose a monetary sanction against a party who unsuccessfully makes or opposes a motion to compel further responses, unless the court finds that that party acted with substantial justification or the imposition of sanctions would be unjust. Cal. Code Civ. Pro. § 2031.310(h). The court finds that Plaintiff has succeeded on the majority of the requests and therefore sanctions against Defendant are appropriate.

Upon review of the file, the court cannot find any information from Plaintiff regarding fees expended for this motion or other information that might assist the court in making an

appropriate award of sanctions. The court orders Plaintiff to file a declaration detailing fees incurred for this motion and any other information that might assist the court in determining the amount of sanctions by June 2, 2023. If Defendant wishes to respond, they may file a response by June 9, 2023, after which the court will issue an order for sanctions.

TENTATIVE RULING # 3:

1. **DEFENDANT IS ORDERED, WITHIN TEN CALENDAR DAYS, TO IDENTIFY DATABASES CONTAINING INFORMATION RESPONSIVE TO REQUESTS FOR PRODUCTION ## 16, 19, 20, 21, 22, 25, 26, 27 AND PROVIDE TO PLAINTIFF A LIST OF SUCH DATABASES AND A PROPOSED LIST OF SEARCH TERMS DESIGNED TO LOCATE INFORMATION CORRESPONDING TO THESE REQUESTS.**
2. **DEFENDANT IS ORDERED, WITHIN 30 CALENDAR DAYS, TO PROVIDE SUPPLEMENTAL RESPONSES TO REQUESTS FOR PRODUCTION ## 16, 19, 20, 21, 22, 25, 26, 27 THAT INCLUDE:**
    a. **ALL RESULTS OF SEARCHES OF THE SPECIFIED DATABASED USING THE SPECIFIED SEARCH TERMS PROVIDED TO THE PLAINTIFF THAT ARE NOT PROTECTED AS PRIVILEGED OR AS A TRADE SECRET.**
    b. **ANY JUSTIFICATION FOR WITHHOLDING ANY OF THE INFORMATION THAT RESULTED FROM THE SEARCHES OF SPECIFIED DATABASES USING THE SPECIFIED SEARCH TERMS ON THE BASIS OF CLAIMS OF PRIVILEGE, CONFIDENTIALITY OR TRADE SECRET, INCLUDING:**
        i. **A LOG OF EACH CATEGORY OF INFORMATION WITHHELD;**
        ii. **A DESCRIPTION OF THE BASIS OF THE CONFIDENTIALITY, TRADE SECRET OR PRIVILEGE CLAIM FOR THAT CATEGORY OF MATERIAL; AND**
        iii. **A STATEMENT OF WHY THE PROTECTIVE ORDER EXECUTED BY PLAINTIFF AT DEFENDANT'S REQUEST IS NOT SUFFICIENT TO PROTECT EACH CATEGORY OF SUCH MATERIAL.**
3. **THE COURT IMPOSES SANCTIONS ON DEFENDANT FOR ITS UNSUCCESSFUL OPPOSITION TO THE MOTION. THE COURT ORDERS PLAINTIFF TO FILE A DECLARATION DETAILING FEES INCURRED FOR THIS MOTION AND ANY OTHER INFORMATION THAT MIGHT ASSIST THE COURT IN DETERMINING THE AMOUNT OF SANCTIONS BY JUNE 2, 2023. IF DEFENDANT WISHES TO RESPOND, THEY MAY FILE A RESPONSE BY JUNE 9, 2023, AFTER WHICH THE COURT WILL ISSUE AN ORDER FOR SANCTIONS.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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4. RUSSI v. TRAIL BROTHERS, LLC. 21CV0315

Order of Examination Hearing

On February 2, 2023, judgment creditor filed an Application and Order for Appearance and Examination to require judgment debtor Zachary Leyden to appear on March 17, 2023. Personal service of notice of the examination hearing, meeting the requirements of Code of Civil Procedure § 415.10, is required. Cal. Code Civ. Pro. § 708.110(d).

On March 9, 2023, counsel for the judgment creditor filed a declaration stating that there have been multiple attempts to personally serve the judgment debtor. Attached were two declarations by process servers stating that attempts to effectuate personal service have been unsuccessful. Accordingly, the judgment creditor requested postponement of the examination hearing date to give more time to accomplish personal service and the hearing was continued to May 19, 2023.

There is no proof of service that has been filed with the court since the March 17, 2023 hearing. As the proof of personal service must be filed with the court at least ten days prior to the hearing for Order of Examination, it will not be possible for Plaintiff to comply with the requirements of the statute prior to the current hearing date.

TENTATIVE RULING # 4: THIS MATTER IS CONTINUED TO 8:30 A.M., FRIDAY, JULY 14, 2023, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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5. GLIDDEN v. COUNTY OF EL DORADO PC20200282

Prove Up Hearing

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 19, 2023, IN DEPARTMENT NINE.

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6. NAME CHANGE OF JENNIFER CUMMINGS 23CV0386

Petition for Name Change

Petitioner filed a Petition for Change of Name and Order to Show Cause (OSC) on March 22, 2023. Proof of publication was filed on May 1, 2023. A background check was filed on March 28, 2023.

TENTATIVE RULING # 6: THE PETITION IS GRANTED AS REQUESTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. 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 TO 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. LIGHT v. CAMERON PARK SENIOR LIVING LLC 22CV0135

(1) Motion to Compel Further Responses to Special Interrogatories, Request for Production of Documents, Set One

(2) Motion to Compel Further Responses to Request for Production of Documents, Set Two

On March 27, 2023, Plaintiff filed and served a Notice of Motion to Compel Further Reponses to Request for Production, Set Two and Documents from Defendant Cameron Park Senior Living, LLC and for Monetary Sanctions of $1,410, as well as a Memorandum of Points and Authorities, a Separate Statement and a Declaration of Virginia L. Martucci in support of the Motion.

In opposition to the Motion, Defendant filed and served its Memorandum of Points and Authorities on May 1, 2023. Plaintiff's Reply brief was filed and served thereafter on May 4, 2023.

On March 27, 2023, Plaintiff also filed and served a Notice of Motion to Compel Further Reponses to (1) Special Interrogatories, Set One, Nos. 19, 20, 21, 23, 24, (2) Request for Production of Documents, Set One Nos. 74, 75 and Documents from Defendant Cameron Park Senior Living, LLC and for Monetary Sanctions in the Amount of $1,470, as well as a Memorandum of Points and Authorities, a Separate Statement and a Declaration of Virginia L. Martucci in support of the Motion.

In opposition to the Motion, Defendant filed and served its Memorandum of Points and Authorities on May 8, 2023. Plaintiff's Reply brief was filed and served thereafter on May 12, 2023.

<u>Request for Judicial Notice</u>

In support of each Motion, Plaintiffs ask the court to take judicial notice of the Complaint in the present matter, along with other filed papers and pleadings.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which may be judicially noticed, including "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the

request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453. Of course, taking judicial notice of the document is not tantamount to accepting the truth of its contents.

Plaintiffs' Request for Judicial Notice was filed and served on March 27th, well before the hearing on this motion. Thus, Defendant has been provided sufficient notice of the request to prepare for, and object to, if necessary. Further, the request provides the court, and Defendant, with sufficient information regarding those documents requested to be noticed.

Accordingly, the court grants Plaintiff's two Requests for Judicial Notice and takes judicial notice of the fact that a Complaint and other pleadings have been filed in this action.

Request for Production of Documents, Set Two

Plaintiff requests the court to compel production of materials responsive to Request for Production, Set Two ("RFP") numbers 99-107.

"A party to whom a demand for inspection, copying, testing, or sampling 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, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Cal. Civ. Pro. §2031.210. Where a party fails to provide timely responses the party to whom the discovery was directed waives "any objection…including one based on privilege or on the protection of work product…" Cal. Civ. Pro. §2031.300(a).

An objection to a request shall identify with particularity what document or object is being objected to and clearly state the extent of and the specific ground for the objection. Cal. Civ. Pro. § 2031.240.

RFP2 Numbers 99-104: Unusual Incident Reports Submitted to Department of Social Services for all residents during 2016-2021.

It appears that the Plaintiff has already agreed to narrow the scope of this request to the period beginning around July 2016, and Defendant has agreed to provide the responsive materials. Plaintiff's Memorandum of Points and Authorities at 2, note 1; Declaration of David L. Ditora, dated May 1, 2023 ("Ditora Declaration"), Exhibit 4. Accordingly, the court need not further analyze this Request.

RFP Number 105: Non-privileged Incident Reports related to resident falls between 2017 to 2021

Defendant responds to this request by indicating that it has provided all such reports related to decedent, but regards the application of this Request to any other resident of its facility during the subject time period as vague, ambiguous, overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

The court agrees with Plaintiff that these reports tend potentially to show notice and ratification of any failure to supervise residents and provide sufficient staffing, and maybe probative of elements of the causes of action alleged n the Complaint.

RFP Number 106: Resident and staff COVID-19 infections from 2020 to the present

"Unless otherwise limited by order of the court in accordance with [the discovery statutes], any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Gonzalez v. Superior Ct., 33 Cal. App. 4th 1539, 1546 (1995). The question is not whether information requested is admissible, the question is whether the information sought might lead to the discovery of admissible evidence. Cal. Code Civ. Pro. § 2017.010. "Doubts as to relevance should be resolved in favor of permitting discovery." Colonial Life & Accident Ins. Co. v. Superior Ct., 31 Cal. 3d 785, 790 (1982).

RFP 106 relates to negligence standards related to COVID-19 infections. Any information that is subsequent to the decedent's death has reduced evidentiary value of negligence due to rapidly evolving health guidelines for COVID-19 prevention and treatment during that period. Accordingly, the court finds that any information requested for the period subsequent to the time of the decedent's death is not likely to lead to admissible evidence.

RFP Number 107: Resident infections 2018-2021

The decedent in this case was diagnosed with a urinary tract infection when she left Defendant's facility to be admitted to a hospital in January, 2021, just before her death. This Requests seeks information regarding any type of infection for all residents of Defendant's facility for several years before and nearly a year after decedent's urinary tract infection diagnosis. In addition to the chronological separation of years between any incidents of infection, any information about other residents' infections would be unique to individual circumstances (e.g. type of infection, underlying health conditions, etc.) and not likely to be probative of the causes of decedent's infection in January, 2021. Because decedent never returned to Defendant's facility after this diagnosis, there is no issue related to Defendant's post-infection treatment that would be informed by similar cases.

As written, the court finds that this Request is not likely to led to admissible evidence in this case.

Sanctions

Plaintiffs seek monetary sanctions in the amount of $1,410 for three hours of work in drafting the Motion and supporting documents and reviewing Defendant's responses at the rate of $450 per hour, plus filing fees.

Defendant opposes the request for sanctions and argues that Plaintiffs failed to meaningfully meet and confer to resolve the issues presented by the motion without the need for court intervention.

An examination of the meet and confer letters (Ditora Declaration, Exhibits 3 and 4), and the footnote 2 of Plaintiff's Memorandum of Points and Authorities proves that the parties had not reached an impasse and the filing of this motion was premature.

"[T]he court shall impose a monetary sanction…against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Cal. Civ. Pro. § 2031.320(b) (emphasis added). Additionally, "[t]he court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process…pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct…If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Cal. Civ. Pro. 2023.030(a)(emphasis added) & 2023.020. Misuse of the discovery process includes, but is not limited to, making an evasive response to discovery, or failing to confer in a reasonable good faith attempt to informally resolve any discovery dispute. Cal. Civ. Pro. § 2023.010. Written interrogatories and requests for production of documents are both authorized forms of discovery. Cal. Civ. Pro. §§ 2030.210, 2031.210.

Here, Plaintiffs' motion has been granted in part and denied in part. Neither party was entirely successful in making or opposing the present motion, which makes sanctions under 2031.320(b) inapplicable. Regarding sanctions pursuant to Sections 2023.030 and 2023.020, if Defendant's objections were not legally sufficient, Plaintiff's engagement in the meet and confer process also fell short. Defendant proposed supplemental responses and requested postponement of this hearing, but Plaintiff declined to engage with Defendant and instead

documented the ongoing negotiation in a footnote to its request for judicial intervention. In light of these facts, Plaintiffs' request for sanctions is denied.

TENTATIVE RULING # 7:

1. **THE HEARING ON PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE Nos 19, 20, 21, 23, 24, AND REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE, Nos. 74 AND 75 IS CONTINUED TO 8:30 A.M., FRIDAY, JULY 14, 2023 IN DEPARTMENT NINE.**
2. **PLAINTIFF'S REQUESTS FOR JUDICIAL NOTICE ARE GRANTED.**
3. **PLAINTIFF'S REQUEST TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO, NUMBERS 99-104, IS MOOT.**
4. **PLAINTIFF'S REQUEST TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO, NUMBER 105 IS GRANTED.**
5. **PLAINTIFF'S REQUEST TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO, NUMBER 106 IS GRANTED AS TO INFORMATION UP TO AND INCLUDING THE DATE OF DECEDENT'S DEATH AND IS DENIED AS TO ANY DATE SUBSEQUENT TO DECEDENT'S DEATH.**
6. **PLAINTIFF'S REQUEST TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO, NUMBER 107 IS DENIED.**
7. **PLAINTIFF'S REQUEST FOR SANCTIONS RELATED TO THE MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO IS DENIED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. PEOPLE v. MACEIUNAS 22CV0482

Forfeiture

On March 15, 2022, the People filed a petition for forfeiture of cash in the amount of $27,000.00 seized by the El Dorado County Sheriff's Department. According to The People, the property became subject to forfeiture pursuant to Health and Safety Code § 11470(f). Claimant Maceiunas filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of petition, along with a proof of service dated May 12, 2022.

Pursuant to Section 11470(f), items which are subject to forfeiture include all moneys and other items of value which are furnished or intended to be furnished in exchange for a controlled substance or which are used or intended to be used to facilitate a violation of a number of enumerated Penal and Health and Safety Code sections. Health & Safety § 11470(f). "[C]onduct which is the basis for the forfeiture [must have] occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." Health & Safety § 11470(f). "Any person claiming an interest in the property seized pursuant to Section 11488 may… within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized … a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property." Health and Safety Code, § 11488.5(a)(1). "If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases." Health & Safety §11488.5(c).

It appears that all procedural matters have been complied with. There is no reference to a pending criminal trial in the file. Accordingly, the parties are ordered to appear to select trial dates.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 19, 2023, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. SANCHEZ v. GENERAL MOTORS, LLC 22CV0884

Motion to Compel

Plaintiff filed this action on June 29, 2022, against defendant (GM) under the Song-Beverly Consumer Warranty Act (Civil Code §§ 1790 *et seq.*) ("Song-Beverly Act"), based on the repair history of a 2021 GMC Sierra 1500 vehicle purchased by plaintiff as a new vehicle in May, 2021.

The case is in the discovery stage. On December 28, 2022, plaintiff filed a Motion to Compel relating to seven requests contained in the plaintiff's Requests for Production of Documents, Set One ("RFP"), dated August 19, 2022. The unresolved requests at issue for the purposes of plaintiff's MTC are RFP numbers 7, 10, 16, 18, 19, 20 and 34.

Requests for Production of Documents

"A party to whom a demand for inspection, copying, testing, or sampling 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, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Cal. Civ. Pro. §2031.210. Where a party fails to provide timely responses the party to whom the discovery was directed waives "any objection…including one based on privilege or on the protection of work product…" Cal. Civ. Pro. § 2031.300(a).

A statement that the party will comply shall include a statement "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." Cal. Civ. Pro. § 2031.220.

A statement of inability to comply 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." Cal. Civ. Pro. § 2031.230.

An objection to a request shall identify with particularity what document or object is being objected to and clearly state the extent of and the specific ground for the objection. Cal. Civ. Pro. § 2031.240.

Meet and Confer Requirement

The court finds that the obligation to "meet and confer" has been met through exchanges of correspondence and that Plaintiff has met the requirements of Code of Civil Procedure § 2016.040. Declaration of Lara Rogers in Support of Plaintiff's Supplemental Briefing, dated April 21, 2023.

During this process, in October, 2022, the parties entered into a Stipulation and Protective Order for the purpose of protecting any information that is produced during discovery designated by either party as being entitled to confidential treatment under applicable state or federal law.

The court has reviewed the parties' submission on the RFPs in controversy, and concludes as follows:

Request for Production Numbers 7, 10 and 34:

Defendant's filings in response to the MTC indicated that it had already produced some documents, including a warranty policy and procedure manual (RFP #7), a workshop manual (RFP #10). Defendant represented at that time that it was willing to produce its policies and procedures used to evaluate "lemon law" claims and repurchase requests made under the Song-Beverly Act as specified in the RFP (RFP #34).

At the hearing on March 24, 2023, the court ordered defendant to provide supplemental responses to RFP number 7, 10 and 34 in accordance with its own representations by April 10, 2023.

In anticipation of the May 19, 2023, hearing, Defendant asserts that it has provided responsive documents but has not yet provided written responses. Defendant now states in its most recent briefing that it is "willing to produce supplemental written responses to RFPs 7, 10 and 34 pending resolution of Plaintiff's motion to compel." General Motors LLC's Opposition to Plaintiff's Supplemental Briefing in Support of Plaintiff's Motion to Compel Further Responses to Request for Production of Documents, Set One (Defendant's Supplemental Opposition) at 1:15-18.

Plaintiff's position on the state of compliance with RFP numbers 7, 10 and 34 is stated as: "GM did not provide further responses to RFPs 7, 10 and 34 . . . as ordered by this court, and still has not provided further responses. Thus, it is unclear whether GM has produced all responsive documents." Plaintiff's Supplemental Briefing in Support of Plaintiff's Motion to Compel Further Responses to Request for Production of Documents, Set One ("Plaintiff's Supplemental Briefing") at i:7-9.

Defendant states that it has produced responsive documents, but must file supplemental written responses to indicate which of the documents it has produced are responsive to these three requests. Defendant again expresses its willingness to provide these supplemental responses but is waiting for this court's resolution of other outstanding discovery issues before it does so.

To repeat the outcome of the prior hearing, the court orders Defendant to provide any further documents that have not already been provided that fall within the scope of these three requests, and to provide full explanatory written responses to eliminate any confusion held by the Plaintiff as to which documents are responsive to these requests.

Request for Production Numbers 16,18, 19 and 20:

RFP number 16 requests documents:

> regarding the POWERTRAIN DEFECT in vehicles of the same year, make and model as the SUBJECT VEHICLE. [This request shall be interpreted to include, but not be limited to, any such investigation to determine the root cause of such POWERTRAIN DEFECT(S), any such investigation to design a permanent repair procedure for such POWERTRAIN DEFECT(S), any such investigation into the failure rates of parts associated with the POWERTRAIN DEFECT(S), any cost analysis for implementing a proposed repair procedures [sic], any savings analysis not implementing a proposed repair procedures [sic], etc.]

RFP number 18 requests:

> All DOCUMENTS, including but not limited to electronically stored information and electronic mails, concerning or relating to any decision to issue any notices, letters, campaigns, warranty extensions, technical service bulletins and recalls concerning the POWERTRAIN DEFECT in vehicles of the same year, make and model as the SUBJECT VEHICLE.

RFP number 19 requests:

> All DOCUMENTS including but not limited to electronically stored information and electronic mails, concerning customer complaints, claims, reported failures, and warranty claims related to the POWERTRAIN DEFECT, including but not limited to any databases in YOUR possession with information from dealers, service departments, parts departments, or warranty departments, and all documents concerning YOUR response to each complaint, claim or reported failure.

RFP number 20 requests:

> All DOCUMENTS including but not limited to electronically stored information and electronic mails, concerning failure rates of vehicles of the same year, make, and model as the SUBJECT VEHICLE as a result of the POWERTRAIN DEFECT.

While the supplemental pleadings of the parties are not crystal clear on the areas of agreement and disagreement that remain between them on these four requests, since the March 24, 2023, hearing it appears from the supplemental briefings that progress was made toward narrowing the scope of discovery. According to the parties' most recent filings, the parties appear have come to agreement on a narrower definition of POWERTRAIN DEFECT for the purpose of discovery in this action. Defendant's Supplemental Opposition at 1:22-2:9. It appears that the parties agree on the specific list of Technical Service Bulletins that are responsive to RFP #18. Defendant's Supplemental Opposition at 2:10-21.

The remaining dispute appears to relate to the language in RFP number 18, 19 and 20 that requires production of "[a]ll DOCUMENTS including but not limited to electronically stored information and electronic mails" that are responsive to each request. Defendant argues that the scope of these requests is overbroad, burdensome, not relevant to Plaintiff's case and to some extent, intrudes on Defendant's confidential materials and trade secrets.

Relevance

"Unless otherwise limited by order of the court in accordance with [the discovery statutes], any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Gonzalez v. Superior Ct., 33 Cal. App. 4th 1539, 1546 (1995). The question is not whether information requested is admissible, the question is whether the information sought might lead to the discovery of admissible evidence. Cal. Code Civ. Pro. § 2017.010. "Doubts as to relevance should be resolved in favor of permitting discovery." Colonial Life & Accident Ins. Co. v. Superior Ct., 31 Cal. 3d 785, 790 (1982).

In response to all of the outstanding Requests for Production Defendant asserts that the discovery requests are not tailored to Plaintiff's case because they involve vehicles other than the Plaintiff's vehicle. Defendant states that this case is a "simple breach of warranty claim" that only concerns Plaintiff's vehicle and that therefore, Plaintiff should not be allowed to inquire into facts relating to other vehicles of the same year make and model. This is not an accurate argument.

First, there are elements of a Song-Beverly Act claim that are not part of a breach of warranty claim. A breach of warranty for sale of goods is based upon provisions of the California Commercial Code:

The essential elements of a cause of action under the California Uniform Commercial Code for breach of an express warranty to repair defects are (1) an express warranty (Com.Code, § 2313) to repair defects given in connection with the sale of goods; (2) the existence of a defect covered by the warranty; (3) the buyer's notice to the seller of such a defect within a reasonable time after its discovery (*id.,* § 2607, subd. (3)(A)); (4) the seller's failure to repair the defect in compliance with the warranty; and (5) resulting damages (*id.* §§ 2714, 2715; *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 145, 87 Cal.Rptr.3d 5).

Orichian v. BMW of N. Am., LLC, 226 Cal. App. 4th 1322, 1333–34 (2014).

Plaintiff's Complaint is based upon provisions of the Civil Code specific to consumer purchases of vehicles. Those California Civil Code sections, collectively referenced as the Song-Beverly Consumer Warranty Act, contain elements of knowledge and willfulness that are not present in a breach of warranty action under the Commercial Code. Accordingly, evidence of a defendant's prior knowledge of a problem with a particular vehicle model is relevant to whether a defendant engages with a plaintiff in good faith in deciding whether to attempt to repair a vehicle, or knowing that it cannot be repaired, agrees to repurchase it. To establish this knowledge, information about internal investigations and communications as well as histories of consumer complaints are all relevant inquiries.

For example, in the Song-Beverly Act case of Santana v. FCA US, LLC, 56 Cal. App. 5th 334 (2020), the defendant appealed the jury's imposition of a penalty for willfully failing to repurchase a plaintiff's vehicle because, it said, there was not substantial evidence to support the verdict. The appellate court disagreed, holding that "[b]y the time Chrysler's duty to repurchase arose, it was aware of the electrical defect in Santana's vehicle, which it chose not to repair adequately." Id. at 338. The evidence supporting that determination of liability for willful failure to comply with the Song-Beverly statute was associated with a "totally integrated power module" ("TIPM") that was installed in vehicles other than the plaintiff's vehicle beginning several years before the plaintiff's purchase. In years before and after the plaintiff purchased his vehicle and during the period that the plaintiff sought multiple repairs for mechanical problems, the TIPM was subject to multiple recalls, multiple internal "Issue Detail Reports", discussion in internal emails, the development of informal work-arounds and internal investigations and reports. All of that information was admitted into evidence and directly supported the determination of liability.

Plaintiff argues that Donlen v. Ford, 217 Cal.App.4th 138 (2013), and Doppes v. Bentley Motors, Inc. 174 Cal.App.4th 967 (2009) establish the relevance of mechanical problems in vehicles other than the vehicle belonging to the Plaintiff. Defendant counters that neither of these two cases are applicable to the relevance of evidence concerning other vehicles.

The case of Donlen v. Ford, 217 Cal.App.4th 138 (2013) was a Song-Beverly Act case involving a vehicle. The trial court granted of a new trial after a jury verdict in favor of the buyer because, among other things, it determined that the jury heard evidence regarding vehicles other than the plaintiff's vehicle that was prejudicial to the defendant. The grant of a new trial was appealed. The appellate court reversed the trial court's determination that a new trial was warranted. In that case a truck was repaired multiple times, and when it continued having mechanical problems plaintiff demanded that Ford repurchase the truck pursuant to the Song-Beverly Act. During trial, Ford sought to exclude evidence of mechanical problems in trucks other than the plaintiff's truck as being unduly prejudicial. The appellate court disagreed, noting that the testimony was limited to the specific part and the same model that malfunctioned in the plaintiff's vehicle and included Ford's communications to its dealers and technicians about problems with that particular part and that particular model. "Thus, everything about which [plaintiff's expert] testified that applied to other vehicles applied equally to plaintiff's vehicle. Such evidence certainly was probative and not unduly prejudicial." Id. at, 154.

Doppes v. Bentley Motors, Inc. 174 Cal.App.4th 967 (2009) was another Song-Beverly Act case in which the appellate court reversed the trial court's refusal to impose terminating sanctions upon the defendant for misuse of the discovery process for withholding documents and violating discovery orders. As a legal precedent this case does not address the relevancy of evidence of vehicles other than the plaintiff's vehicle. However, as a real-world example of a Song-Beverly Act case it demonstrates that discovery in such cases can include information about other similar problems experience by other vehicle owners, as well as searches of electronically stored information, including internal emails, repair histories of similar vehicles, correspondence related to customer complaints and related communications to dealers. The court found that the defendant's persistent failure to comply with discovery orders warranted "the extraordinary, yet justified, determination that the trial court abused its discretion by failing to impose terminating sanctions against defendant for misuse of the discovery process." Doppes v. Bentley Motors, Inc., 174 Cal. App. 4th 967, 971(2009).

The court finds that there is ample legal precedent to support reliance upon evidence from vehicles other than the Plaintiff's vehicle in Song-Beverly Act cases.

Burdensomeness

"The objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought." W. Pico Furniture Co. of Los Angeles v. Superior Ct. In & For Los Angeles Cnty., 56 Cal. 2d 407, 417 (1961). The court is not able to consider the validity of a claim that a request is burdensome without any information that allows the court to balance the purpose and need for the information by the propounding party against the

burden that is claimed by the responding party. Deyo v. Kilbourne, 84 Cal. App. 3d 771, 788–89 (1978); Coriell v. Superior Court, 39 Cal.App.3d 487, 492-493 (1974); Columbia Broad. Sys., Inc. v. Superior Court, 263 Cal.App.2d 12, 19 (1968).

Defendant cites the case of Calcor Space Facility v. Superior Court, 53 Cal.App.4th 216 (1997) to support its arguments. However, that case involved the subpoena of documents from a non-party consisting of a twelve-page demand with 32 requests and six pages of definitions that amounted to a demand for everything in the non-party's possession where "the justifications offered for the production [were] mere generalities." Id. at 224. Unlike Defendant in this case, the responding party in that case specified that "would take two people a minimum of two and one-half to three weeks of full-time effort" to "review the correspondence and general files of all of its departments" in several locations. The court vacated the trial court's order compelling a response to the request and held that such requests must at least describe "categories of documents or materials which are reasonably particularized in relation to the manner in which the producing party maintains such records." Id. at 219.

Defendant has not supported its argument that these four Requests are burdensome with any information that can be considered by the court.

Vagueness, Ambiguity, Overbreadth

With the exception of RFP number 19, the outstanding requests are limited by the definition of Powertrain Defect that apply to vehicles of the same year, make and model as the Plaintiff's vehicle. These requests are specific and reasonably particularized.

The exception is RFP number 19, which the court finds is overbroad because it does not include the limitation that narrows the inquiry to vehicles that are the same year, make and model of the Plaintiff's vehicle. As written, it requests information regarding all GM vehicles that is beyond what is relevant to the case.

The court finds that Defendant has not articulated a sufficient basis to object to production of documents responsive to RFP numbers 16, 18 and 20 on the grounds of vagueness, overbreadth or ambiguity.

The court finds that RFP number 19 is overbroad in that it omits language included in all of the other requests that limits its scope to vehicles that are the same year, make and model of the Plaintiff's vehicle.

Confidential – Proprietary - Trade Secret

Defendant argues that the requested materials include its trade secrets that would cause it competitive harm and that it should not be required to turn over commercially sensitive materials without a heightened showing of need by the Plaintiff.

Defendant's claims of trade secret are subject to certain protections in discovery. Cal. Evidence Code § 1060. However, those protections do not amount to a license to commit wrongs, and so "the privilege exists under this section only if its application will not tend to conceal fraud or otherwise work injustice." Law Revision Commission Comments, Cal. Evid. Code § 1060; *see also* Willson v. Superior Ct. of California, in & for Los Angeles Cnty., 66 Cal. App. 275 (1924); Agric. Lab. Rels. Bd. v. Richard A. Glass Co., 175 Cal. App. 3d 703 (1985) (trade secret claimant has the burden of furnishing sufficient information to allow the court to balance whether the trade secret's value to the claimant outweighs the other party's need for the information, and if the trade secret privilege exists, to show why a protective order would not solve the problem.)

In Bridgestone/Firestone, Inc. v. Superior Ct., 7 Cal. App. 4th 1384 (1992), a case that included breach of warranty claims, the court held that "a court is required to order disclosure of a trade secret unless, after balancing the interests of both sides, it concludes that under the particular circumstances of the case, no fraud or injustice would result from denying disclosure. What is more, in the balancing process the court must necessarily consider the protection afforded the holder of the privilege by a protective order as well as any less intrusive alternatives to disclosure proposed by the parties." Bridgestone/Firestone, Inc. v. Superior Ct., 7 Cal. App. 4th 1384, 1393 (1992).

> [T]he party claiming the privilege has the burden of establishing its existence. (Evid.Code, § 405; *ALRB, supra,* 175 Cal.App.3d at p. 715, 221 Cal.Rptr. 63.) Thereafter, the party seeking discovery must make a prima facie, particularized showing that the information sought is relevant and necessary to the proof of, or defense against, a material element of one or more causes of action presented in the case, and that it is reasonable to conclude that the information sought is essential to a fair resolution of the lawsuit. It is then up to the holder of the privilege to demonstrate any claimed disadvantages of a protective order. Either party may propose or oppose less intrusive alternatives to disclosure of the trade secret, but the burden is upon the trade secret claimant to demonstrate that an alternative to disclosure will not be unduly burdensome to the opposing side and that it will maintain the same fair balance in the litigation that would have been achieved by disclosure.

Id.

Defendant has not identified any specific responsive materials, or even categories of materials, that it claims are covered by confidentiality or trade secret protection.

Under the Civil Discovery Act the court shall impose a monetary sanction against a party who unsuccessfully makes or opposes a motion to compel further responses, unless the court finds that that party acted with substantial justification or the imposition of sanctions would be unjust. Cal. Code Civ. Pro. § 2031.310(h). The court finds that Plaintiff has succeeded on the majority of the requests and therefore sanctions against Defendant are appropriate.

Specifically, the court finds that 1) Defendant has failed to comply with the court's previous order as to Requests for Production Numbers 7, 10 and 34, and 2). Defendant has asserted unmeritorious objections without substantial justification, including making allegations of burdensomeness, confidentiality and trade secrets without providing the court with the information necessary to balance the Defendant's interests against Plaintiff's need for the information.

Upon review of the file, the court cannot find any information from Plaintiff regarding fees expended for this motion or other information that might assist the court in making an appropriate award of sanctions. The court orders Plaintiff to file a declaration detailing fees incurred for this motion and any other information that might assist the court in determining the amount of sanctions by June 2, 2023. If Defendant wishes to respond, they may file a response by June 9, 2023, after which the court will issue an order for sanctions.

TENTATIVE RULING # 9:

1. **PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE, IS DENIED AS TO REQUEST FOR PRODUCTION NUMBER 19.**
2. **PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE, IS GRANTED AS TO REQUEST FOR PRODUCTION NUMBERS 7, 10, 16, 18, 20 AND 34. DEFENDANT IS ORDERED TO PROVIDE DOCUMENTS AND SUPPLEMENTAL WRITTEN RESPONSES RESPONSIVE TO REQUESTS FOR PRODUCTION NUMBERS 7, 10, 16, 18, 20 AND 34 WITHIN TEN DAYS OF THIS ORDER.**
3. **TO THE EXTENT THAT DEFENDANT WISHES TO ASSERT ANY JUSTIFICATION FOR WITHHOLDING ANY OF THE INFORMATION REQUESTED ON THE BASIS OF CLAIMS OF PRIVILEGE, CONFIDENTIALITY OR TRADE SECRET, DEFENDANT SHALL PROVIDE:**
    a. **A LOG OF EACH CATEGORY OF INFORMATION WITHHELD;**
    b. **A DESCRIPTION OF THE BASIS OF THE CONFIDENTIALITY, TRADE SECRET OR PRIVILEGE CLAIM FOR THAT CATEGORY OF MATERIAL; AND**
    c. **A STATEMENT OF WHY THE PROTECTIVE ORDER IN PLACE IS NOT SUFFICIENT TO PROTECT EACH CATEGORY OF SUCH MATERIAL.**
4. **THE COURT IMPOSES SANCTIONS ON DEFENDANT FOR ITS UNSUCCESSFUL OPPOSITION TO THE MOTION. THE COURT ORDERS PLAINTIFF TO FILE A DECLARATION DETAILING FEES INCURRED FOR THIS MOTION AND ANY OTHER INFORMATION THAT MIGHT ASSIST THE COURT IN DETERMINING THE AMOUNT OF SANCTIONS BY JUNE 2, 2023. IF DEFENDANT WISHES TO RESPOND, THEY MAY FILE A RESPONSE BY JUNE 9, 2023, AFTER WHICH THE COURT WILL ISSUE AN ORDER FOR SANCTIONS.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. 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 TO 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10. FRANCO v. HURST 22CV0708

Leave to File Second Amended Complaint

Plaintiff filed the original Complaint on April 13, 2022, and a First Amended Complaint on January 4, 2023.The two Defendants were served by substituted service of the original Complaint on August 26, 2022, and by personal service on February 6, 2023. All proofs of service are on file with the court.

A Notice of Pendency of Action was filed with the court on March 20, 2023 and was served on Defendants by mail on January 24, 2023.

The Declaration of Stanley Heim in Support of Motion for Leave to File Verified Second Amended Complaint ("Heim Declaration"), dated April 18, 2023, states that the parties engaged in settlement discussions following service of the Complaint, and as a result Plaintiff identified the need to add a quiet title cause of action, which resulted in the First Amended Complaint ("FAC"). The FAC did not contain a specific amount of damages because Plaintiff did not know whether Defendants conduct would continue after the action was filed, and so damages were "according to proof" in the FAC. Although the Defendants failed to respond to the FAC, Plaintiff's counsel could not seek a default judgment because the FAC did not contain a specific amount of damages.

Accordingly, the Second Amended Complaint would add no new causes of action, but would provide a specific amount of damages and attorney's fees and the grounds for requesting attorney's fees.

No discovery has been served. Defendants have not filed any responsive pleading following service of either the original or the First Amended Complaint. The Motion is unopposed.

TENTATIVE RULING # 10: THE PETITION IS GRANTED AS REQUESTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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11. WYNN INNOVATIONS, LLC v. PRICE 22CV1586

Demurrer

TENTATIVE RULING # 11: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 30, 2023, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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