

1. BLY-CHESTER v. COUNTY OF EL DORADO

22CV1334

Attorney's Fees

TENTATIVE RULING #1: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 20, 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).

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. IN THE MATTER OF J.G. WENTWORTH ORIGINATIONS

23CV0994

Transfer of Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents. This finding is supported by the payee's Declaration, dated July 28, 2023, filed on June 26, 2023.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits A and B to the Petition. *See also*, Petition at p. 3-4.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. This finding is supported by Amended Exhibits A (filed on June 26, 2023) and Exhibit B.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority This finding is supported by the payee's Declaration, dated June 21, 2023, filed on June 26, 2023.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests. The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction.

The Petition and its attachments contain the information required by the Insurance Code for court approval of this transaction. The court finds that the proposed transfer is fair and reasonable, and in the payee's best interests.

TENTATIVE RULING #2: ABSENT OBJECTION, 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.

3. IN THE MATTER OF J.G. WENTWORTH ORIGINATIONS

23CV1019

Transfer of Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents. The Petition at page 4 states that a declaration will be filed to support this finding, but no such declaration has been filed.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits A and B to the Petition.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. The court cannot make this finding because Cal. Insurance Code § 10136(b) **requires** Petitioner to provide ten-day advance notice of legally required disclosures prior to entering into a transfer agreement, but both the contract (Petition, Exhibit A) and the required disclosure statement are dated on June 21, 2023. (Petition, Exhibit B)
4. That the transfer does not contravene any applicable statute or the order of any court or government authority. There is no declaration on file from the payee (*e.g.* as to any child support obligations), other than the representations of J.G. Wentworth's attorneys and Vice-President, that would support this finding.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests. The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction. There is no evidence in the court's record that would support these findings.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 18, 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.

4. DEOLIVEIRA v. DEOLIVEIRA 22CV0995

Prove Up -Stipulated Judgment

Plaintiff Jason Deoliveira co-owns real property with Defendant Aaron Troy Deoliveira, with each party owning an undivided 50 percent interest as tenants in common. Declaration of Jason Deoliveira, dated June 26, 2023.

Default judgment was entered as to Defendant Aaron Troy Deoliveira on February 24, 2023.

Plaintiff requests the court to order the partition of the real property by sale, with the proceeds to be used to pay the lienholder Citibank N.A./Citigroup, Inc. and the remainder to be divided by the parties according to their respective interests, with Plaintiff to be reimbursed for his expenses for property maintenance and repairs and for attorney's fees and costs in bringing this action. Plaintiff further requests that Citibank, N.A./Citigroup, Inc., be dismissed from the action without prejudice.

Following hearing on July 28, 2023, the court continued this matter to August 18, 2023. Plaintiff was instructed by the court to give notice of the new hearing date. There is no proof of service of notice on file with the court.

TENTATIVE RULING 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 18, 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.

5. LEVOS v. M&M AUTOBODY & TOWING

22CV1323

Motion for Attorney Withdrawal

Counsel for the Defendants has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the communication with clients has degraded to such a degree that counsel can no longer continue representing the plaintiff.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendants at their last known address and on counsel for Plaintiff was filed on July 7, 2023.

The next hearing scheduled for the case is a case management conference set for October 30, 2023. A trial date has not been set.

TENTATIVE RULING #5: ABSENT OBJECTION, THE MOTION IS GRANTED EFFECTIVE AS THE FILING OF THE PROOF OF SERVICE INDICATING SERVICE OF THE ORDER ON DEFENDANTS. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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

08-11-23
Dept. 9
Tentative Rulings

**TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING
INFORMATION WILL BE PROVIDED.**

6. MUIR v. GENERAL MOTORS

PC20210130

Motion to Compel

This motion was filed on April 18, 2023, to strike Defendant's objections and compel testimony from Defendant's Person Most Knowledgeable ("PMK") regarding matters for examination 1 through 34 and the related Request for Production of Documents, numbers 1-16.

Plaintiff alleges that Defendant failed to provide a witness to a noticed deposition and failed to provide adequate responses to Plaintiff's document requests.

In a now-familiar set of objections to a plaintiff's Song-Beverly Act discovery requests, Defendant General Motors objects to these requests as compound, overbroad, unduly burdensome, vague, ambiguous, irrelevant, subject to attorney-client privilege, seeking protected trade secret and proprietary information, failing to specify materials with reasonable particularity, oppressive, harassing, financially burdensome, impracticable, and seeking materials outside Defendant's custody, possession or control. Declaration of Harry Terzian, dated April 14, 2023, ("Terzian Declaration"), Exhibit 6.

Meet and Confer Requirement

This Motion to Compel was originally filed on July 6, 2022, following Plaintiff's first January 25, 2022 Notice of Deposition. Terzian Declaration Exhibit 5. In addition to the catalogue of objections to the scope of Plaintiff's inquiry listed above, Defendant's February 4, 2022 response objected to that deposition because it claimed that it hadn't been asked beforehand whether the specified date and time set for the deposition would be convenient. Defendant's objection represented that it would provide a witness "at a mutually convenient time and place." Terzian Declaration, Exhibit 6; Declaration of Jesse Valencia, dated May 19, 2023 ("Valencia Declaration"), ¶4.

On February 22, 2022, Plaintiff sent out an amended Notice of Deposition to be scheduled for March 16, 2022. Terzian Declaration, Exhibit 7; Valencia Declaration, ¶5. This was accompanied by a letter from Plaintiff's counsel to Defendant's counsel (1) offering to address objections based on attorney-client privilege and trade secret protections through a protective order, (2) noting the need for and absence of a privilege log for privilege claims and requesting Defendant to provide one; (3) offering to adjust the date for the scheduled deposition to a date proposed by Defendant; and (4) providing extensive legal analysis as to why Defendant's claimed objections are not sufficient to avoid production of requested materials. Terzian Declaration, Exhibit 8. Notwithstanding this detailed written analysis of Defendant's objections, Defendant represents to this court that "Plaintiffs never even

attempted to address GM's objections or the contested categories before filing the present Motion to Compel." Defendant's Memorandum of Points and Authorities at 4:17-19.

On March 9, 2022, Defendant responded by continuing to claim that the date was inconvenient without proposing alternate dates and repeating its prior objections with a citation to a single case, Calcor Space Facility Inc. v. Superior Court 53 Cal.App.4th 216 (1997). Terzian Declaration, Exhibit 9; Valencia Declaration, ¶6. This response inspired Plaintiff's first July 6, 2022 Motion to Compel. Terzian Declaration, Exhibit 10.

Defendant responded to the first Motion to Compel by offering to produce a witness for deposition in October, 2022 in exchange for the Plaintiff's withdrawal of the motion. Terzian Declaration, Exhibits 11-12. Plaintiff did withdraw the motion, Terzian Declaration, Exhibit 13, but no deposition resulted. Instead, Plaintiff served a new Notice of Deposition on March 13, 2023. Terzian Declaration, Exhibit 14. On April 5, 2023 and again on April 11, 2023, Plaintiff's counsel sent an email to Defendant's counsel requesting a date be set for the deposition. Terzian Declaration, Exhibits 15-16.

Defendant claims that the Plaintiff failed to "meaningfully engage with GM to attempt to resolve this dispute", urges the court to reject Plaintiff's "bad faith discovery tactics", and claims that Defendant demonstrated a "willingness to resolve this discovery dispute without court intervention," yet Defendant does not refer to any instance in which it responded to Plaintiff's repeated communications between March 9, 2022 and April 18, 2023¹. Defendant's Memorandum of Points and Authorities at 2:11-12; 3:7-21; Valencia Declaration, ¶¶6-8.

The court finds that Plaintiff has satisfied its burden to show meet and confer efforts prior to filing the motion. Code of Civil Procedure §§ 2016.040, 2025.450, 2025.480.

Defendant's Objections

Defendant objects to 34 separate categories of information requested by Plaintiff, as well as to 16 document production requests. Defendant has asserted a large number of non-specific objections to each of these fifty separate discovery items. The court will first globally

¹ Defendant expresses concern about the overburdening of the courts with discovery motions that the parties fail to resolve informally, citing partial transcripts of two Los Angeles Superior Court hearings held in 2014 and 2017. Valencia Declaration at ¶9-8 [sic]. However, even if Defendant were in any position to make such an argument, as this court opined on June 30, 2023 in Gonzalez v. General Motors, LLC (22CV1379), those conversations do not amount to legal authority. Cal. Rules of Court, Rule 8.1115; Santa Ana Hosp. Med. Ctr. v. Belshe, 56 Cal. App. 4th 819, 831 (1997) ("a written trial court ruling has no precedential value. (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 763, pp. 730-731.)")

address the basis for several of Defendant's objections in order to narrow the later discussion of objections to each requested category or information or document.

Confidential – Proprietary - Trade Secret Information

Defendant argues that the requested information and materials include its trade secrets² 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. Valencia Declaration, ¶¶9-12.

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

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. The Lu Declaration was executed several years before this action was filed and has no factual relationship to or probative value in this case. This court ruled on the lack of evidentiary value of the Lu Declaration on June 30, 2023 in the case of *Gonzalez v. General Motors, LLC* (22CV1379) and this court's opinion on that issue has not changed.

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 court notes that Plaintiff offered to stipulate to a protective order, and Defendant never responded to that offer, but continues to maintain its objections based on trade secrets. Terzian Declaration, Exhibit 8. Defendant states that it reserves the right to file a motion for a protective order if the court is unpersuaded by its trade secret objections and the parties are unable to agree to the form of a suitable protective order. Defendant has every right to do so, but it might preserve judicial resources if it first responds to Plaintiff’s offer to stipulate by sending Plaintiff a draft of an order that Defendant might propose.

Since Defendant has not made any attempt to negotiate a protective order with the Plaintiff, or to meet its burden to seek court protection of its trade secrets, any objection raised by Defendant related to trade secrets is overruled.

Waiver of privilege

Cal. Code of Civil Procedure § 2031.240(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.” Defendant has provided no such information to support its objections, and without any information the court cannot uphold any objection based on attorney-client privilege or attorney work product.

Defendant’s objections based on attorney-client or work product privilege are overruled.

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. Devo 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, 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 with respect to any of its “burdensome” objections on which the court could base such a finding. Accordingly, any objections based on unspecified burdens on the Defendant are overruled.

Time Parameters

Some of Defendant’s objections relate to a lack of specificity as to the time parameters of various requests. If Defendant is incapable of clarifying specific time parameters for those requests through the meet and confer process in which Defendant has yet to participate, it can raise the need for specific time limitations for those requests in its motion for a protective order from the court.

Likelihood to Lead to Admissible Evidence-Information Related to other Vehicles

“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 many of the outstanding discovery requests Defendant asserts that the 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 the discovery requests on the theory that this case is a “simple breach of warranty action” 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 interpretation of case law.

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 reimburse the purchase price. 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 Motor Co., 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.

The case of Donlen v. Ford Motor Co., 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.

Specific Categories subject to Defendant's Objections

This motion to compel is made in the context of a deposition, and at the outset the court notes that the individual witness produced may or may not have comprehensive knowledge of or have access to all discoverable facts and documents in each of the 34 subject matter categories that are the subject of the motion. The following discussion of each category addresses only the discoverability of the subjects listed in the context of the objections raised by Defendant.

Category 1: Plaintiff's requests for GM to repurchase Plaintiff's vehicle.

Defendant argues this is not information that is likely to lead to admissible evidence, and that it improperly assumes the legal conclusion that Defendant is required to repurchase Plaintiff's vehicle under applicable law.

The court finds that this category of information is relevant to the vehicle manufacturer's knowledge of the problems the plaintiff experienced with the vehicle.

Defendant has cited no authority for the proposition that the discovery request has an improper scope. The request does not refer to any legal conclusion, it merely asks for communications within described parameters. Even if a Plaintiff's assertion within a communication might be legally unsupported, the communication is relevant to the dispute and as such it is discoverable. "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).

Defendant's objections to Category 1 are overruled.

Category 2: GM's policies, procedures, guidelines regarding responding to consumer complaints in which the consumer alleges that MICHAEL SKAGGS and AYDE ROBLE'S vehicle is defective from 2016 to present.

Defendant is correct that this category is vague as written, and not designed to lead to admissible evidence, because it refers to two individuals who are not party to the lawsuit. Defendant's objections to Category 2 are sustained.

Category 3: *All communications with Plaintiffs.*

Defendant objects that the word "communications" is vague, but it is defined in the Notice of Deposition using common terms referring to means of exchanging information that are commonly used.

Defendant also claims that this category is overbroad, oppressive and not reasonably calculated to lead to admissible evidence. A request related to exchanges between the vehicle manufacturer and the owners of a single identified vehicle is not overbroad or oppressive. Communications between the parties on the subject of the transaction at issue is indisputably relevant.

Defendant's objections to Category 3 are overruled.

Category 4: *Defendant's response to Plaintiffs' request for vehicle repurchase.*

See discussion under Category 1. Defendant's objections to Category 4 are overruled.

Category 5: *Defendant's research and investigation, if any, regarding Plaintiffs' request for vehicle repurchase.*

Defendant claims that the terms "research and investigation" are vague, ambiguous and oppressive. The court disagrees. The subject matter of the request is related to the knowledge and willfulness of the Defendant and is likely to lead to discovery of admissible evidence. Defendant's objections to Category 5 are overruled.

Category 6: *All communications between Defendant and its agents or authorized repair facilities regarding the Subject Vehicle.*

See discussion under Category 3 regarding Defendant's confusion about the word "communications." Defendant's objections that the request is overbroad, vague, ambiguous and oppressive are bald allegations made without supporting explanations. Defendant claims that the scope of this request reaches beyond the issues in this action, which is unconvincing since the request seeks specific information about the Subject Vehicle. Defendant's objections to Category 6 are overruled.

Category 7: *All communications between Defendant and any third parties regarding the Subject Vehicle.*

See discussion above regarding the word “communications.” Defendant’s objections that the request is overbroad, vague, ambiguous are not well-taken because the request relates to a single, identified vehicle. The request is clearly relevant since it concerns the vehicle that is at issue in this case. Defendant’s objections to Category 7 are overruled.

Category 8: *All warranty claims made to Defendant with regard to the Subject Vehicle.*

Defendant, a major vehicle manufacturer, asserts that the term “warranty claims” is vague and ambiguous. The court finds that the term is clear and unambiguous. Defendant’s objections to Category 8 are overruled.

Category 9: *All repairs and services performed on the Subject Vehicle.*

Defendant, a major vehicle manufacturer, asserts that the words “repairs” and “services” are vague and ambiguous. The court finds that the term is clear and unambiguous.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The request goes directly to the matters at issue in this case and is focused on the single identified vehicle that is central to the Plaintiffs’ Complaint.

Defendant’s objections to Category 9 are overruled.

Category 10: *All documents that Defendant reviewed, if any, in determining Defendant’s response to any of Plaintiff’s buyback requests [including but not limited to] (i) which documents were reviewed, ii) when they were reviewed, iii) by whom they were reviewed, iv) any written reports or other documents that were created summarizing or otherwise reporting the results of such investigations, v) any oral reports that were made summarizing or otherwise reporting the results of such investigation, and vi) any memorandum or emails drafted regarding Plaintiff’s request and/or Defendant’s investigation and response.*

Defendant objects that the term “investigations” is vague and ambiguous. The court finds that the term is clear and unambiguous. Defendant further objects that the request is overbroad and irrelevant. This request addresses matters related to a single identified vehicle, the same vehicle at issue in this case. Defendant’s objections to Category 10 are overruled.

Category 11: *All documents that Defendant reviewed, if any, in investigating the cause of the complaints alleged regarding the Subject Vehicle.*

Defendant objects that the term “reviewed”, and “cause of the complaints” are vague and ambiguous. The court finds that the terms are clear and unambiguous in the context of the allegations contained in the Complaint (“cause of the complaints . . . regarding the Subject Vehicle”) and clear in light of common usage (“reviewed”).

Defendant's objections to Category 11 are overruled.

Category 12: *All persons that Defendant talked to, interviewed, or made any other type of inquiries from in determining Defendant's response to Plaintiffs' buyback requests.*

Defendant objects that the term "interviewed", and "other type of inquiries" are vague and ambiguous.

The court finds that the terms are clear and unambiguous in light of common usage. Defendant's objections to Category 12 are overruled.

Category 13: *Any other investigation that Defendant conducted in determining Defendant's response to any of Plaintiff's buyback requests.*

Defendant argues that the words "any other investigation" are vague and ambiguous. The court finds that the term is clear and unambiguous. Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is directly related to and focused on the issues in this case. Defendant's objections to Category 13 are overruled.

Category 14: *All investigations or other analysis that Defendant performed to determine the cause of the problems complained of by Plaintiffs regarding the Subject Vehicle [including but not limited to] (i) which documents were reviewed, ii) when they were reviewed, iii) by whom they were reviewed, iv) any written reports or other documents that were created summarizing or otherwise reporting the results of such investigations, v) any oral reports that were made summarizing or otherwise reporting the results of such investigation, and vi) any memorandum or emails drafted regarding Plaintiff's request and/or Defendant's investigation and response.*

Defendant argues that the words "investigation", "cause" and "problems complained of" are vague and ambiguous. The court finds that those terms are clear and unambiguous, as they refer back to the Subject Vehicle and the subject matter of Plaintiffs' Complaint. Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is directly related to and focused on the issues in this case. Defendant's objections to Category 14 are overruled.

Category 15: *All telephone calls made by anyone, including Plaintiffs, to Defendant's 1-800 customer assistance number regarding the Subject Vehicle.*

Defendant argues that the words "all telephone calls made by anyone" are vague and ambiguous. The court finds that the phrase is clear and unambiguous. Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The

court finds that the request is directly related to and focused on the issues in this case. Defendant's objections to Category 15 are overruled.

Category 16: *All policies, procedures, or other guidelines regarding recording calls made to Defendant's customer assistance number.*

Defendant argues that the phrase "other guidelines" is vague and ambiguous. The court finds that the phrase is clear and unambiguous in light of common usage and the context of the request. Defendant further claims that the request is overbroad and oppressive. The court finds that the request is sufficiently specific.

Defendant claims that the request is unrelated to the issues in this action. However, Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 16 are overruled.

Category 17: *Defendant's policies, procedures or other guidelines for repurchasing or replacing vehicles under the Song-Beverly Consumer Warranty Act.*

Defendant argues that the phrase "other guidelines" is vague and ambiguous. The court finds that the phrase is clear and unambiguous in light of common usage and the context of the request. Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and directly relevant to the central issues in the case. Defendant's objections to Category 17 are overruled.

Category 18: *All documents, including recordings, produced by Defendant in this litigation thus far.*

Defendant argues that the request is overbroad, ambiguous and oppressive and not reasonably calculated to lead to admissible evidence. The court finds that the request is sufficiently specific and directly related to the issues in this case, as it pertains to documents already produced in discovery. Defendant's objections to Category 18 are overruled.

Category 19: *The nature of Defendant's relationship with the company(s) that handles calls from consumers to Defendant's 1-800 customer assistance number.*

Defendant objects that the word "handles" is vague and ambiguous. Defendant also argues that the request is overbroad and oppressive. The court further finds that the request is sufficiently specific and not oppressive.

Defendant claims that the request is unrelated to the issues in this action. However, Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 19 are overruled.

Category 20: *The policies and procedures to be followed by the customer service company(s) that handles calls to Defendant's 1-800 customer assistance number when receiving a call from a consumer regarding a Defendant's vehicle.*

Defendant objects that the term "handles" is vague and ambiguous. The court finds that the use of the word is clear and unambiguous in light of common usage and the context of the request. Defendant argues that the request is overbroad and not reasonably calculated to lead to admissible evidence. Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 20 are overruled.

Category 21: *Defendant's oversight of the customer service company(s) that handles calls to Defendant's 1-800 customer assistance number.*

Defendant objects that the terms "oversight" and "handles" are vague and ambiguous. The court finds that those terms are clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request not overbroad or oppressive.

Defendant argues that the request is not reasonably calculated to lead to admissible evidence. Defendant has raised the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 21 are overruled.

Category 22: *Defendant's policies and procedures for honoring California Lemon Law buyback and replacement requests from 2016 to present.*

Defendant argues that the word “honoring” is vague and ambiguous. The court finds that the use of the word is clear and unambiguous in light of common usage and the context of the request. Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is directly relevant to the central issues in the case. Defendant’s objections to Category 22 are overruled.

Category 23: *Defendant’s policies and procedures with regard to informing consumers of their rights under the California Lemon Law when customers call Defendant’s customer service center from 2016 to present.*

Defendant objects that the phrase “with regard to informing” is vague and ambiguous. Defendant also argues that the request is overbroad and oppressive. The court finds that the phrase is clear and unambiguous in light of common usage and the context of the request. The court further finds that the request is sufficiently specific and not oppressive.

Defendant argues that the request is unrelated to the issues in this action. However, Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant’s relationship to its customer call center could lead to admissible evidence. Defendant’s objections to Category 23 are overruled.

Category 24: *All tasks and duties Defendant authorized the company(s) that handles Defendant’s 1-800 customer assistance service number to perform, including but not limited to: handling; managing; implementing, decision making; reviewing; and auditing of any claims related to a Defendant’s vehicles pursuant to the Song-Beverly Act from 2016 to present.*

Defendant argues that the words “handles,” “handling” “reviewing”, “claims” and “related to” are vague and ambiguous. The court finds that the terms are clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant’s relationship to its customer call center could lead to admissible evidence. Defendant’s objections to Category 24 are overruled.

Category 25: *Defendant's ownership interest, including, but not limited to, its percentage of ownership in the company(s) authorized to handle its 1-800 customer assistance number call line.*

Defendant argues that the word "handle" is vague and ambiguous. The court finds that the word is clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 25 are overruled.

Category 26: *The persons at the company(s) who handle Defendant's 1-800 customer assistance number who have authority to offer a repurchase or replacement of a vehicle under the Song-Beverly Act in California.*

Defendant argues that the word "handle" is vague and ambiguous. The court finds that the word is clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 26 are overruled.

Category 27: *Any guidance provided by Defendant to the company(s) that handle Defendant's 1-800 customer assistance number regarding as to what constitutes a "non-conformity" under the Song-Beverly Act.*

Defendant argues that the words "guidance" and "handle" are vague and ambiguous. The court finds that the terms are clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Defendant has asserted the affirmative defense of apportionment in this case,

raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 27 are overruled.

Category 28: *Any guidance provided by Defendant to the company(s) that handle Defendant's 1-800 customer assistance number as to what constitutes a "reasonable number of repair attempts" under the Song-Beverly Act.*

Defendant argues that the words "guidance" and "handle" are vague and ambiguous. The court finds that the terms are clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Defendant has asserted the affirmative defense of apportionment in this case, raising the possibility that it might attribute any failure to comply with legal requirements to the conduct of third parties. Accordingly, any requests related to the conduct of and Defendant's relationship to its customer call center could lead to admissible evidence. Defendant's objections to Category 28 are overruled.

Category 29: *All changes to Defendant's policies and procedures related to handling customer complaints under the Song-Beverly Act from 2016 to present.*

Defendant argues that the words "changes", "related to" and "handling" are vague and ambiguous. The court finds that the terms are clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Given that a customer complaint under the Song-Beverly Act is the central issue in this case, the court finds that this request could lead to admissible evidence. Defendant's objections to Category 29 are overruled.

Category 30: *Any and all facts supporting any and all of the affirmative defenses that [Defendant has] asserted or intend[s] to assert in this action.*

Defendant argues that the request is overbroad and oppressive and unlikely to lead to admissible evidence. The court finds that the request is specific to Defendant's own assertions and not oppressive. Defendant's objections to Category 30 are overruled.

Category 31: *Any and all facts relating to Defendant's decisions with respect to Plaintiffs' buy-back requests having to do with the Subject Vehicle at any time.*

Defendant argues that the words "relating to" and "having to do with the Subject Vehicle at any time" are vague and ambiguous. The court finds that the terms are clear and unambiguous in light of common usage and the context of the request.

Defendant argues that the request is overbroad and oppressive and unlikely to lead to admissible evidence. The court finds that the request is specific to the Plaintiffs' vehicle at issue in this case and not oppressive. The court further finds that Defendant's decision-making process with respect to Plaintiffs' buy-back requests of the specific vehicle at issue in this case is directly relevant. Defendant's objections to Category 31 are overruled.

Category 32: *Any and all pleadings filed by the Defendant in this Action.*

Defendant argues that the request is overbroad and oppressive and unlikely to lead to admissible evidence. The court finds that the request is specific to the Defendant's own documents filed in this case and not oppressive. The court further finds that Defendant's pleadings in this case are directly relevant to the controversy. Defendant's objections to Category 32 are overruled.

Category 33: *Any and all responses by Defendant to Plaintiff's discovery requests in this Action.*

Defendant argues that the request is overbroad and oppressive and unlikely to lead to admissible evidence. The court finds that the request is specific to the Defendant's own discovery responses produced in this case and not oppressive. The court further finds that Defendant's discovery responses in this case are directly relevant to the controversy. Defendant's objections to Category 33 are overruled.

Category 34: *All documents (including all recordings) produced by Defendant in this litigation so far [including but not limited to] i) the interpretation and meaning of all terms used, and data reported in such documents; ii) the source, including the author and creation date of all such documents, iii) the purpose for which such documents were authored or created; iv) the practices and procedures for preparing such documents, including the practices and procedures for measuring, recording, and reporting all data contained therein; v) the identities and location of all other persons who have copies of such documents; and vi) the date upon which Defendant created, received, or otherwise first came unto possession of such documents.*

Defendant argues that the phrases "terms used", "data reported" and "first came into possession" are vague and ambiguous. The court finds that the terms are clear and unambiguous in light of common usage and the context of the request.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive, in that it is limited to documents produced by Defendant in response to discovery in this action. Since these documents have been produced within the scope of discovery in this case, the court finds that this request could lead to admissible evidence. Defendant's objections to Category 34 are overruled.

Requests for Documents to be Produced

Defendant raises various objections to sixteen of Plaintiffs' Requests for Production of Documents ("RFP"). In general, 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.

Objections to Specific Document Production Requests

RFP #1: *Produce YOUR entire original file regarding the SUBJECT VEHICLE.*

Defendant claims that this request is overbroad and oppressive and not reasonably calculated to lead to the discovery of admissible evidence in this action. The court finds that the request is sufficiently specific and not oppressive.

Defendant's objections to RFP #1 are overruled.

RFP #2: *All DOCUMENTS [as defined] that set forth the Defendant's policies, procedures or other guidelines (if any) regarding what Defendant's authorized repair facilities should do when a consumer complains that a Defendant's vehicle is defective.*

Defendant objects to this request because, among other reasons, it is overbroad. The Song-Beverly Consumer Warranty Act is a statute applicable only within the State of California, and Defendant does business in other states where that statute does not apply. Accordingly, this request goes beyond the scope of this litigation. Defendant's objection to RFP #2 is sustained.

RFP #3: *Produce all COMMUNICATIONS [as defined] between [Defendant] and Folsom Buick GMC, located at 12640 Auto Mall Circle, Folsom, CA 95630, regarding the SUBJECT VEHICLE.*

Defendant argues that the word “communications” is vague and ambiguous, but it is defined in the Notice of Deposition using common terms referring to means of exchanging information that are commonly used.

Defendant further claims that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. As it addresses Plaintiffs’ vehicle the court finds that it is reasonably calculated to lead to admissible evidence. Defendant’s objections to RFP #3 are overruled.

RFP #4³: *All DOCUMENTS or files maintained by [Defendant] regarding the SUBJECT VEHICLE.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. As it addresses Plaintiffs’ vehicle the court finds that it is reasonably calculated to lead to admissible evidence. Defendant’s objections to RFP #4 are overruled.

RFP #5: *All handwritten notes regarding Plaintiff’s requests that Defendant repurchase the SUBJECT VEHICLE.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Notes regarding the Plaintiffs and the vehicle at issue in the case are likely to lead to the discovery of admissible evidence.

RFP #6: *All handwritten notes regarding the SUBJECT VEHICLE.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Notes regarding the specific vehicle at issue in the case are likely to lead to the discovery of admissible evidence.

RFP #7: *All call logs regarding Plaintiff or the SUBJECT VEHICLE.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Call logs regarding the Plaintiffs in this case and the specific vehicle at issue in the case are likely to lead to the discovery of admissible evidence.

RFP #8: *All DOCUMENTS setting forth the deponent’s job description.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive.

³ Beginning with RFP #4 the court will refer to the numbering in Defendant’s Separate Statement.

The Plaintiff is entitled to information about the job responsibilities of the deponent offered to the Plaintiff as the “person most knowledgeable” in their role as Defendant’s employee.

RFP #9: *All DOCUMENTS that Defendant reviewed in determining Defendant’s response to Plaintiff’s buyback requests.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. These records relating to Plaintiffs’ complaints regarding the specific vehicle at issue in the case are likely to lead to the discovery of admissible evidence.

RFP #10: *All DOCUMENTS consulted or relied upon in preparing for this deposition.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Subject to any applicable limitations on the scope of this request under Evidence Code § 771, Defendant’s objections to RFP #10 are overruled.

RFP #11: *All policy and procedure DOCUMENTS that Defendant made available to its [sic] all PERSONS who are charged with determining whether a vehicle qualifies for a repurchase under the Song-Beverly Consumer Warranty Act on behalf of Defendant.*

Defendant objects to this request because, among other reasons, it is overbroad. The court agrees that Song-Beverly Consumer Warranty Act policy and procedure documents that Defendant made available to “all PERSONS” goes beyond the scope of this litigation. Defendant’s objection to RFP #11 is sustained.

RFP #12: *All training materials provided to Defendant’s employees regarding the handling of consumer requests for a vehicle repurchase.*

Defendant objects to this request because, among other reasons, it is overbroad. The Song-Beverly Consumer Warranty Act is a statute applicable only within the State of California, and Defendant does business in other states where that statute does not apply. Accordingly, this request goes beyond the scope of this litigation. Defendant’s objection to RFP #12 is sustained.

RFP #13: *All DOCUMENTS related to Defendant’s policies and procedures for determining whether particular defects substantially impair the vehicle’s use, value of [sic] safety.*

Defendant objects to this request because, among other reasons, it is overbroad. The Song-Beverly Consumer Warranty Act is a statute applicable only within the State of California, and Defendant does business in other states where that statute does not apply. Accordingly, this request goes beyond the scope of this litigation. Defendant’s objection to RFP #13 is sustained.

RFP #14: *All DOCUMENTS related to Defendant's policies and procedures for determining what constitutes a reasonable number of opportunities to repair a defect.*

Defendant objects to this request because, among other reasons, it is overbroad. The Song-Beverly Consumer Warranty Act is a statute applicable only within the State of California, and Defendant does business in other states where that statute does not apply. Accordingly, this request goes beyond the scope of this litigation. Defendant's objection to RFP #14 is sustained.

RFP #15: *All Technical Service Bulletins ("TSB's") which have been issued for vehicles of the same year, make, and vehicle model as the SUBJECT VEHICLE.*

Defendant argues that the request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. These records relating to Plaintiffs' complaints regarding the vehicles of the same year, make and model as the vehicle at issue in the case are likely to lead to the discovery of admissible evidence.

RFP #16: *All DOCUMENTS that support [Defendant's] affirmative defenses that [Defendant] intends to assert in this action.*

Defendant objects that this request is overbroad and oppressive and unrelated to the issues in this action. The court finds that the request is sufficiently specific and not oppressive. Defendant's affirmative defenses are manifestly relevant to the case. Defendant further notes that its investigations are ongoing and that any such production would not be complete at this time, however it lists several documents responsive to this request that have already been provided. The court overrules Defendant's objections, with the understanding that it will produce any responsive documents that it has assembled at the time of the deposition.

Discovery Sanctions

Code of Civil Procedure § 2025.450(g)(1) provides: "If a motion [for an order compelling the deponent's attendance . . . and the production for inspection of any document. . . described in the deposition notice] is granted, the court shall impose monetary sanctions under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification"

Section 2023.010 defines the misuse of the discovery process to include: "(d) [f]ailing to respond or to submit to an authorized method of discovery . . . (e) [m]aking, without substantial justification, an unmeritorious objection to discovery . . . (h) . . . opposing, unsuccessfully and without substantial justification, a motion to compel . . . discovery . . . (i)

[f]ailing to confer . . . with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery.”

Section 2023.030 specifies that the court, after notice to any affected party and after opportunity for hearing, may impose sanctions against anyone engaging in conduct that is a misuse of the discovery process.

TENTATIVE RULING #6:

(1) DEFENDANT’S OBJECTIONS TO CATEGORY 2 AND REQUESTS FOR PRODUCTION OF DOCUMENTS #2, #11 #12, #13 AND #14 ARE SUSTAINED.

(2) DEFENDANT’S OBJECTIONS TO ALL OTHER CATEGORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS ARE OVERRULED.

(3) A HEARING ON AN ORDER TO SHOW CAUSE AS TO WHY DEFENDANT SHOULD NOT BE SANCTIONED FOR MISUSE OF DISCOVERY IS SET FOR 8:30 A.M. FRIDAY, OCTOBER 20, 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).

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. NAME CHANGE OF WHITE 23CV0957

Petition for Name Change

Petitioner filed a Petition for Change of Name on May 22, 2023.

Proof of publication was filed on August 4, 2023, as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #7: ABSENT OBJECTION, 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.

8. NAME CHANGE OF KEYT 23CV0120

Petition for Name Change

Petitioner filed a Petition for Change of Name and Order to Show Cause on January 18, 2023. At the hearings of May 5 and June 23, 2023, the court noted that no proof of publication or background check had been filed.

Petitioner is required to publish the OSC in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a), with proof of publication to be filed with the court.

Petitioner is further required to file proof of a background check with the court, as required by Cal. Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #8: THE MATTER IS CONTINUED TO 8:30 A.M., ON FRIDAY, OCTOBER 20, 2023, TO ALLOW PETITIONER TIME TO FILE PROOF OF PUBLICATION AND A BACKGROUND CHECK WITH THE COURT.

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.

9. NAME CHANGE OF HAMES 23CV0645

Petition for Name Change

Petitioner filed a Petition for Change of Name on April 28, 2023.

Proof of publication was filed on June 26, 2023, as required by Code of Civil Procedure § 1277(a).

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file a background check with the court.

TENTATIVE RULING #9: THE MATTER IS CONTINUED TO 8:30 A.M., ON FRIDAY, SEPTEMBER 8, 2023 TO ALLOW PETITIONER TIME TO FILE A BACKGROUND CHECK WITH THE COURT.

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. SASSER v. STARBUCK ROAD 56, LLC 22CV1563

Motion to Expunge

TENTATIVE RULING #10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 20, 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).

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.

11. ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD

PC20200294

Demurrer

TENTATIVE RULING #11: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, NOVEMBER 17, 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).

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.

12. STUART v. CORDANO

PC20210448

Motion for Summary Judgment/Summary Adjudication

Procedural History

A Complaint related to a residential purchase agreement of real property that contained construction defects was filed on August 3, 2021, and included causes of action for breach of contract, intentional and negligent misrepresentation, concealment against the sellers of the property, and for negligence as to the contractor that built the home.

A First Amended Complaint (“FAC”) was filed on May 19, 2023.

An Answer to the Complaint was filed by general contractor and Defendant T.L. Stigall, Inc. asserting various affirmative defenses. Defendants David Cordano, Jeanne Cordano, and Chris Fusano filed a Cross-Complaint against T.L. Stigall, Inc. on December 23, 2021, for equitable indemnity, contribution and declaratory relief.

On March 15, 2022, Defendant T.L. Stigall also filed a Cross-Complaint against Plaintiff and the sellers that included causes of action for express and implied indemnity, contribution, apportionment, and declaratory relief, and subsequently, on April 25, 2022, filed a First Amended Cross-Complaint naming 13 subcontractors, including Cross-Defendant KS Plumbing.

On July 25, 2022, Cross-Defendant K&L Crawford, Inc. dba Dick’s Carpet Outlet filed a Cross-Complaint for equitable indemnity, declaratory relief, and apportionment against Dan Gallagher Floor Covering and Shacks Floor Covering.

On July 7, 2023, Campbell Custom Concrete filed a Cross-Complaint against David Cordano, Jeanne Cordano, Chris Fusano and T.L. Stigall for implied indemnity, apportionment, and declaratory relief.

On August 15, 2023, Pettibone Builders filed a Cross-Complaint against David Cordano, Jeanne Cordano, Chris Fusano and T.L. Stigall for implied indemnity, apportionment, and declaratory relief.

Factual Background

In 2016, Defendants David Cordano, Jeanne Cordano, Chris Fusano (“Moving Defendants”) hired Defendant T.L. Stigall to construct a home on unimproved property in 2002. David Cordano was a general contractor who had a business partnership with Chris Fusano that had substantial experience purchasing vacant lots and building homes for resale. Deposition of David Cordano, dated February 23, 2023, at 31:19-24, Plaintiffs’ Exhibits in Support of Plaintiff’s Opposition to the Motion, Exhibit 1 (“David Cordano Deposition”)

The construction was completed in 2017, and the Moving Defendants sold the property to the Plaintiff in the same year. Plaintiff alleges that the Moving Defendants failed to disclose or intentionally concealed various construction defects. The Complaint alleges Breach of Contract, Intentional and Negligent Misrepresentation, and Fraud/Concealment causes of action against the Moving Defendants.

Motion for Summary Judgment/Summary Adjudication

[S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law.” (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The “party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

“A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]” (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42, 221 Cal. Rptr. 3d 119, 124–25 (2017)

“The first step in analyzing a motion for summary judgment is to identify the issues framed by the pleadings. It is these allegations to which the motion must respond by showing there is no factual basis for relief or defense on any theory reasonably contemplated by the opponent’s pleading. (Citations omitted.)” (6 Witkin, California Procedure (5th ed. 2008) Proceedings Without Trial, § 212, page 650.)

Summary adjudication requires a substantially similar review of the state of the evidence in the case, with respect to each individual cause of action:

(f)(1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary

adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.

Code of Civil Procedure § 437c.

The FAC alleges that Moving Defendants failed to convey the property in the condition that was agreed upon in the Residential Purchase Agreement (“Agreement”) by which the property was transferred.

The FAC further alleges that Moving Defendants represented that the property was free from construction defects, representations which they knew to be false, with the intention of inducing Plaintiffs to purchase the property, and that Plaintiffs purchased the property in justifiable reliance on those false representations.

Triable Issues of Material Fact

Moving Defendants have the initial burden of production to make a prima facie showing that there are no triable issues of fact on these elements of the cause of action, and to meet their burden to establish that they did not breach the parties’ contract, misrepresent the condition of the property or knowingly conceal any construction defects, their separate statement of undisputed material facts relies solely upon on declarations executed by each of them with identical language stating that they disclosed “accurately and completely” all construction issues of which they were aware. See, Chris Fusano Declaration, dated January 20, 2023, at ¶8; David Cordano Declaration, dated January 12, 2023, at ¶8; and Jeanne Cordano Declaration, dated January 12, 2023, at ¶8.

Plaintiffs take issue with the ‘undisputed material facts’ listed in Moving Defendant’s separate statement. Specifically, the Plaintiffs filed evidentiary exhibits supporting their opposition on March 29, 2023.

Included within Plaintiffs’ Exhibits in Support of Plaintiff’s Opposition to the Motion as Exhibit 4 is the Real Estate Transfer Disclosure Statement executed on August 23, 2017 and signed by all the Moving Defendants is a checkbox marked “yes” with respect to Section II.C. Item 7: “Any settling from any cause, or slippage, sliding or other soil problems.” Below that entry there is a line provided with the instruction: “If the answer to any of these is yes, please explain. (Attach additional sheets if necessary.)” There is no explanation of the “yes” response to Item 7 provided by the sellers.

Plaintiffs' Exhibits in Support of Plaintiff's Opposition to the Motion, Exhibit 7 consists of email correspondence dated August 7-9, 2017 between the general contractors who sellers engaged to build the home and subcontractors performing work on the home, in which the general contractor was informed by the drywall subcontractor that "nails are popping and the texture and cracks are forming. In the living room around the entry door, the tape is already separating even though it was just repaired." And, "The movement in this house was significant. Repairs we made were not typical settling issues. Obviously its not done moving around. We only did repairs three weeks ago and it appears they are cracking again or new issues appearing." This email exchange was authenticated by the drywall subcontractor pursuant to Plaintiff's Request for Admissions. Declaration of Nicholas Seliger, dated March 29, 2023, at s Request for Admissions. Declaration of Nicholas Seliger, dated March 29, 2023, at s Request for Admissions. Declaration of Nicholas Seliger, dated March 29, 2023, at ¶16.

Plaintiffs' Exhibits in Support of Plaintiff's Opposition to the Motion, Exhibit 3 is an email thread from March 27-28, 2017 addressed to and forwarded by Chris Fusano identifying a stucco crack at the garage door.

Plaintiffs' Exhibits in Support of Plaintiff's Opposition to the Motion, Exhibit 2 is an engineering report for the building pad that was constructed from fill material, approximately 75 percent of which was from one source and the other 25 percent was from another source. The report states: "If structures are founded in dissimilar materials . . . there is a potential for differential settlement of structures. An evaluation of settlement potential is beyond our scope of services. In lieu of such an evaluation, potential settlement of fill can be estimated to be on the order of one-half to one percent of the fill thickness. The structural engineer may use this range to evaluate the potential effects of differential settlement on the proposed structure." The report further recommends that "[i]f foundation and/or slab are not constructed within 90 days of pad grading, we should observe the building pad to evaluate its suitability for construction." David Cordano testified that he reviewed that report in 2005. David Cordano Deposition at 38:15-24. Construction was commenced at the site eleven years after that report was issued. Id. at 43:19-22. No subsequent soil engineering reports prepared for the property prior to construction. Id. at 43:9-12.

Plaintiffs intend to take additional depositions of Moving Defendants, but scheduling has been delayed by the process of appointment of a Special Master in this case. Declaration of Nicholas Seliger, dated March 29, 2023; Supplemental Declaration of Nicholas Seliger, dated May 24, 2023.

Additional factual information about the knowledge of any construction defects on the part of the Moving Defendants may have been destroyed by David Cordano. In the course of discovery Cordano's counsel represented to opposing counsel that Cordano had deleted emails dated prior to 2022. Plaintiffs' Exhibits in Support of Plaintiff's Opposition to the Motion, Exhibit

11 (email from Gregory Finch to Nicholas Seliger, dated March 6, 2023). Code of Civil Procedure § 437c(h) provides, "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just.

The court finds that there remain triable issues of material fact as between the Plaintiffs and the Moving Defendants.

TENTATIVE RULING #12: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION 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).

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.