

TENTATIVE RULING(S) FOR JANUARY 14, 2025
Department S37 – Judge Corey G. Lee

Tentative Rulings for Department S37, if posted, are on court’s website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) by 3:00 p.m. and 7:00 p.m. on the court day before the hearing (in some cases, on a non-court day before the hearing). If no tentative ruling is posted by 3:00 p.m., please check again after 7:00 p.m.

Unless you wish to submit on the tentative ruling, you must appear for the hearing either in person, CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If you wish to submit to the tentative, please call the Judicial Assistant at (909) 708-8707 in advance of the hearing. If all parties submit on a tentative ruling, the tentative ruling will become final. The tentative ruling may seek input on particular issues and direct appearance. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court’s ruling unless all parties waive notice of the ruling.

ATTENTION: Since January 9, 2023, the court no longer provides an official Court Reporter to transcribe proceedings. Parties who wish to have a transcript must retain their own private reporter and must submit a “Stipulation and Order to Use Certified Shorthand Reporter.” Please contact the Department if you need this form. Prior to the hearing, you can email the completed Stipulation to Department S37 at AGear@sb-court.org. Parties who do not retain their own reporter have waived the right to one.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

CIVSB2317045: *McGary v. General Motors, LLC*

Motion(s): Motion to Compel Further Responses to Special Interrogatories
Motion to Compel Further Responses to Requests for Production
Movant: Plaintiff Lester McGary
Respondent: Defendant General Motors, LLC

DISCUSSION

Special Interrogatories

At issue are Defendant’s responses to Special Interrogatories 6-7, 18, 20, 24, 26-27, 29, 33, 35-36, 38, and 42.

No. 6

Plaintiff asked Defendant if it contended it was not obligated to repurchase or replace Plaintiff’s vehicle under the Song-Beverly Act and, if so, to state supporting facts. Defendant responded stated in its response “that verifiable concerns were resolved, and the [vehicle] has been adequately repaired within a reasonable number of attempts.” While the substantive portion of this response appears sufficient, it is preceded by numerous objections, including vague and ambiguous; assumes legal conclusion; seeks confidential, proprietary and trade secret information; attorney-client privilege; and work product doctrine. Defendant, however, failed to

substantiate those objections in its opposition. Therefore, Plaintiff is entitled to an objection-free response.

No. 7

This interrogatory is overbroad as Plaintiff asks Defendant to identify all “LEMON LAW DOCUMENTS authored, published, distributed, and/or circulated by YOU to YOUR employees, representatives, and/or agents setting forth YOUR policies and/or procedures concerning the Song-Beverly Act.” This would require Defendant to seek out any employee of General Motors or any individual affiliated with General Motors who ever handed anyone else a document relating to Song-Beverly Act. But this is not a class-action. Plaintiff is suing Defendant for its failure to replace or repurchase Plaintiff’s vehicle. The Song-Beverly procedures used in relation to *Plaintiff’s* attempt to obtain a replacement or repurchase would be relevant, but the request at issue seeks information way beyond that scope. Defendant, however, is compelled to respond by providing documents limited to those involving Song-Beverly procedures used in *Plaintiff’s* attempt to obtain a replacement or repurchase.

Nos. 18 and 20

These interrogatories are irrelevant. As Defendant correctly points out in its response, “[w]hat constitutes a reasonable number of repair opportunities varies in any given case.”

Nos. 24 & 26

Plaintiff asks Defendant to describe how it was first notified of electrical defects (No. 24) and engine defects (No. 26) in Plaintiff’s vehicle. Defendant’s response includes several boilerplate objections, followed by a statement that “pursuant to California Code of Civil Procedure section 2030.230, GM refers Plaintiff to any Service Request Activity Report(s) produced in response to Plaintiff’s [RFPs].” This response is deficient as it fails to justify any of the objections.

Additionally, Defendant’s reliance on Code of Civil Procedure section 2030.230 is misplaced. If the interrogatory seeks information contained in files and records, the responding party is under a duty to provide “complete and straightforward” answers. (Code Civ. Proc., § 2030.220, subd. (a).) However, if the answer would *necessitate* making a compilation or summary of information contained in such records, the responding party has the option to allow the interrogating party to inspect and copy the records in question. In effect, the responding party may shift the burden of compiling the information to the interrogating party. (Code Civ. Proc., § 2030.230.) To answer an interrogatory in this manner, the following must be shown: (1) a compilation, abstract, audit or summary of the responding party’s records is necessary in order to answer the interrogatory; (2) no such compilation, etc. presently exists; and (3) the burden or expense of preparing or making it would be substantially the same for the interrogating party as for the responding party. (Code Civ. Proc., § 2030.230.) Defendant’s objection does not satisfy this showing.

Nos. 27, 29, 33, 35-36, and 38

These interrogatories involve assessments, testing, and investigations of defects in 2017 Chevrolet Volts and databases regarding the same. Defendant's responses are comprised entirely of boilerplate objections, with no substantive response. Although the scope of these interrogatories is *likely* overbroad, and relevance of some of the responsive information seems questionable, Defendant failed to justify any of its objections. Plaintiff is entitled to further responses.

No. 42

Plaintiff asks Defendant to identify "all of the databases, custodians, and search terms used to respond to Plaintiffs [sic]" RFPs. Defendant objects to the category on the grounds it is impermissible "discovery on discovery," citing *Advante Int'l Corp. v. Mintel Learning Tech.* (N.D. Cal. Nov. 21, 2006) 2006 U.S. Dist. LEXIS 86334. The court in *Avante* held that discovery about discovery does not constitute information reasonably calculated to lead to the discovery of admissible evidence. (See *id.* at *13-14 ["Mintel is seeking 'discovery about discovery,' rather than information reasonably calculated to lead to the discovery of admissible evidence."].) This objection therefore is valid and Plaintiff is not entitled to a further response.

RFPs

At issue are Defendant's Responses to RFPs 1-3, 5, 6, 8-12, 14-19, 21, 22, 24-25, 27, 28, 30, 31, 33, 34, 36, 37, 39, 40, 42, 43, 45, 46, 48-56, 58-80, 82, 83, 85-88, 90, 91, 93, 94, 96-99, and 101.

At the outset, several of Defendant's objections involve its contention that information relating to vehicles other than Plaintiff's vehicle is irrelevant. However, evidence regarding other vehicles with similar defects as Plaintiff's vehicle could potentially be admissible at trial in a lemon law action. (*Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 154; see also *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 971.)

Some of the requests are deficient on their face because they are not reasonably particularized. Code of Civil Procedure section 2031.030, subdivision (c)(1), requires that a demand for documents or other things designate them "either by specifically describing each individual item or by reasonably particularizing each category or item." The requested items must be reasonably particularized from the standpoint of the party on whom the demand is made. (See *Calcor Space Facility, Inc. v. Sup.Ct. (Thiem Indus., Inc.)* (1997) 53 Cal.App.4th 216, 222.) It is not reasonable to describe documents by categories bearing no relationship to the manner in which the documents are kept, and which require the responding party to determine (at the risk of sanctions) which of its extensive records fit a demand that asks for everything in its possession relating to a specific topic. (*Id.*)

Here, RFPs 1, 2, 9, 11, 15-18, 59, 60, 65-69, 88, 90, and 93 are not reasonably particularized, and thus Plaintiff is not entitled to a further response. For example, in RFPs 1 and 2, Plaintiff requests all documents "relating to" Plaintiff's vehicle. Requests for documents which *relate to* Plaintiff's vehicle are not particularized requests. RFP 11 does the same where

Plaintiff requests all documents “that refer to, relate to, and/or concern” a broad category of communications. Remaining RFPs mentioned in this paragraph suffer the same problem.

As for some of the other requests, Plaintiff has not demonstrated good cause for production. For example, in RFP 8, Plaintiff asks for all warranty policy and procedure manuals published by Defendant since 2015. Plaintiff purchased a 2017 vehicle and filed this lawsuit in 2023. It is not clear why Plaintiff would need Defendant’s policies and procedures from years 2015, 2016, or 2024 (or several of the other years included in the request). In RFP 9, Plaintiff asks Defendant for *all* lemon law documents published and provided to numerous classes of individuals. As discussed in relation to Plaintiff’s interrogatories, the request is overbroad. Unlike as with compelling further interrogatories, Plaintiff carries the burden on this motion of establishing good cause for the documents requested. Plaintiff has failed to do so in relation to RFP 9. The same rationale applies for RFPs 3, 8, 10, 54, 56, 58, 64, 70-79, 91, 97, 98, 99, and 101; Plaintiff has not established good cause for production of further responses for these RFPs.

As to the remaining RFPs, Plaintiff is correct that several of Defendant’s responses are deficient because they involve objections which Defendant has not justified and/or include unilateral qualifications regarding which documents might be produced. This applies to RFPs 5, 6, 12, 14, 19, 21, 22, 25, 25, 27, 28, 30, 31, 33, 34, 36, 37, 39, 40, 42, 43, 45, 46, 48-53, 55, 61-63, 80, 82, 83, 85-87, 94, and 96.

RULING

Based on the foregoing, the Court’s ruling is as follows:

- Plaintiff’s motion to compel further responses to Special Interrogatories is ***granted, in part, and denied, in part***. Defendant is ***ordered*** to serve further responses to Special Interrogatories 6-7, 24, 26-27, 29, 33, 35-36, and 38 ***within 21 days***. Plaintiff’s motion as to Special Interrogatories 18, 20, and 42 is ***denied***.
- Plaintiff’s motion to compel further responses to Requests for Production is ***granted, in part, and denied, in part***. Defendant is ***ordered*** to serve further responses to RFPs 5, 6, 12, 14, 19, 21, 22, 24, 25, 27, 28, 30, 31, 33, 34, 36, 37, 39, 40, 42, 43, 45, 46, 48-53, 55, 61-63, 80, 82, 83, 85-87, 94, and 96 ***within 21 days***. Plaintiff’s motion as to RFPs 1-3, 8-11, 15-18, 54, 56, 58-60, 64-79, 88, 90, 91, 93, 97-99, and 101 is ***denied***.

Counsel for Plaintiff is ordered to give notice of the Court’s findings, rulings and orders as set forth herein.