

# **Discovery in Song-Beverly Litigation** **(Fresno Superior Court)**

*Counsel in receipt of this document is obligated to expeditiously share it with other counsel in the litigation.*

In response to any request for a Pretrial Discovery Conference or discovery motion, the court will insist on prior strict compliance with these directives and admonitions pertaining to discovery in Song-Beverly litigation.

**1. Discovery Generally:**

- a. Pursuant to Code of Civil Procedure section 2019.020, subdivision (b), the court has determined that the sequence and timing of discovery in all Song-Beverly litigation should be the subject of management by the court in the interests of justice. These directives and admonitions are designed for the convenience of parties and witnesses and to lessen the burden on the court in resolving discovery disputes.
- b. The parties are free to stipulate in writing to modify these directives and admonitions, as they deem appropriate. A party may also seek to modify any of these directives and admonitions via a noticed motion upon a showing of good cause.

**2. Production of Documents:** Within 60 days of the filing of the Complaint, both plaintiff and defendant shall provide to the other side copies of the following documents which are in their possession, custody or control:

- a. Purchase or lease contracts concerning the subject vehicle, including any associated documents reflecting OEM or aftermarket equipment installed at the dealership, ELWs or service contracts, and any other writings signed by plaintiff at the point of sale.
- b. Work orders, repair orders and invoices (including accounting and warranty versions) for any maintenance, service and repair activity concerning the subject vehicle.
- c. Rental car or loaner agreements regarding alternative transportation provided during service or repair visits concerning the subject vehicle.
- d. Records of communications with dealer personnel, and/or factory representatives and defendant's call center or customer assistance personnel concerning the subject vehicle.
- e. Warrant claims submitted to and/or approved by defendant concerning the subject vehicle.
- f. Warranty Policy and Procedure Manual or similar policies or claim-handling procedures published by defendant from the date the subject vehicle was purchased or leased to the date the lawsuit was filed.

- g. Defendant's written statements of policy and/or procedures used to evaluate customer requests for repurchase or replacement pursuant to "Lemon Law" claims, including ones brought under the Song-Beverly Consumer Warranty Act, from the date the subject vehicle was purchased or leased to the date the lawsuit was filed.
- h. A list of or compilation of customer complaints in defendant's electronically stored information database that are substantially similar to the alleged defects claimed by plaintiff, in vehicles purchased in California for the same year, make and model of the subject vehicle. A substantially similar customer complaint would be the same nature of reported symptom, malfunction, dashboard indicator light, or other manifestation of a repair problem as the description listed in any work order or repair order for the subject vehicle, other than routine or scheduled maintenance items. The list provided by defendant may be in the chart or spreadsheet format, and shall include the VIN, date of repair visit, dealership or other reporting location, and text of the other customers' reported complaint, but shall not include the other customers' names, addresses, phone numbers, e-mail addresses, or other personal identifying information.
- i. Technical Service Bulletins and Recall Notices for vehicle purchased or leased in California for the same year, make and model of the subject vehicle.
- j. Copies of any repair instruction, bulletin, or other diagnostic/repair procedure identified in any of the repair order/invoice records for the subject vehicle.
- k. Receipts or other written evidence supporting any incidental or consequential damages claimed by plaintiff.

If the producing party believes that any of the aforementioned information should be subject to a protective order, the opposing party must be promptly notified of that concern and the parties must promptly meet and confer on the subject.

The aforementioned information may be provided to the opposing party in electronic form as a PDF at the option of the producing party.

Plaintiff and defendant shall serve timely verifications with the documents they produce.

Any additional requests for documents may only be propounded by stipulation or court order (via motion upon showing of good cause).

3. **Interrogatories:** Within the time limits allowed by law, plaintiff and defendant may propound one set of Judicial Council Form Interrogatories and one set of maximum of 35 special interrogatories. Any additional

special interrogatories may only be propounded by stipulation or court order (via motion upon showing of good cause).

4. **Depositions:** Within the time limits allowed by law, defendant may depose plaintiff, and plaintiff may depose the person(s) most knowledgeable (PMK) on up to 5 categories of information, plus a deposition of the PMK as to why the subject vehicle was not repurchased. This is in addition to depositions of any experts designated by the parties pursuant to Code of Civil Procedure section 2034. Parties shall meet and confer as to whether there is a need to take any additional depositions. Any additional depositions may only be noticed and taken by stipulation or court order (via motion upon showing of good cause).

If a deponent resides out of state, the deposition may be taken by video conference or telephone. Neither the parties nor counsel will be required to travel out of their state of residence for a deposition.

5. **Vehicle Inspection (VI):** Within the time limits allowed by law, the subject vehicle may be inspected by the parties at a mutually agreeable time and place. Unless otherwise agreed by the parties, the VI process shall be as follows:
  - a. Defendant shall show plaintiff's representative proof of insurance for the person/company who will be road testing the subject vehicle.
  - b. The defense VI shall commence at 8:00 a.m. at an authorized service and repair facility closest to plaintiff's residence, and may continue until no later than 5:00 p.m. that same day.
  - c. Plaintiff shall deliver the vehicle to the noticed place of inspection. If the subject vehicle has a dead battery, plaintiff's counsel shall notify defendant's counsel at least one court day before the VI, and the VI shall proceed with defendant paying for the tow or jump start to the place of inspection and taking reasonable steps to retrieve stored diagnostic codes and other onboard data before the battery is recharged or replaced.
  - d. Defendant shall provide plaintiff's representative with duplicate copies of all paper and electronic documents created during and because of the VI, such as test results, the stored codes in the vehicle's internal network or in its control units, alignment sheets, etc.
  - e. If the subject vehicle is currently being used by plaintiff, and if requested in writing within a reasonable time prior to the VI, plaintiff shall be provided a loaner or rental vehicle paid for by defendant for the duration of the VI, conditioned on plaintiff providing standard rental car disclosures such as proof of a current driver's license and insurance coverage, and with plaintiff responsible for the loaner vehicle's fuel. The loaner vehicle need not be the same model or

type as the subject vehicle unless plaintiff agrees to pay for an upgrade.

- f. Defendant shall be permitted to run tests of relevant electronic control units (ECUs) and components, conditioned on defendant maintaining, downloading and/or printing out stored data on the existing condition or historical information stored in an ECU.
- g. Plaintiff's representative is permitted to conduct video and/or audio recording of the VI.

6. **Customary Rulings Re Document Requests:** When the court is faced with a discovery dispute in a Song-Beverly case, the court will usually order that plaintiff and defendant provide to the other side copies of the following documents which are in their respective possession, custody or control:

- a. The "Warranty Policy and Procedure Manual" published by defendant and provided to its authorized repair facilities, within the State of California, covering from the date of purchase to the date of production.
- b. Any internal analysis or investigation regarding defects alleged in plaintiff's Complaint in vehicles for the same year, make and model of the subject vehicle. This includes Recall Notices and Technical Service Bulletins. Defendant is not required to do a search of emails.
- c. Any customer complaints relating to defects alleged in plaintiff's Complaint in vehicles purchased in California for the same year, make and model of the subject vehicle.
- d. All documents evidencing policies and procedures used to evaluate customer requests for repurchase pursuant to the Song-Beverly Consumer Warranty Act, covering from the date of purchase to the date of production.
- e. Repair orders and invoices concerning the subject vehicle.
- f. Communications with the dealer, a factory representative or a call center representative concerning the subject vehicle.
- g. Warranty claims submitted to and/or approved by defendant concerning the subject vehicle.
- h. Purchase and/or lease contracts concerning the subject vehicle.
- i. Repair orders and invoices concerning the subject vehicle.
- j. All documents supporting plaintiff's claim for incidental and/or consequential damages.