Tentative Rulings for June 14, 2022
Department 501

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

17CECG01480 ***Juana Reynoso v. Geil Enterprises*** **is continued to Thursday, July 7, 2022 at 3:30 in Department 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20) **Tentative Ruling**

Re: ***Starkey v. Geyer***
Superior Court Case No. 15CECG01747

Hearing Date: June 14, 2022 (Dept. 501)

Motion: Application for Order to Show Cause re Contempt

Tentative Ruling:

To grant and set the order to show cause hearing on July 21, 2022, at 3:30 p.m. in Dept. 501. Counsel for plaintiff shall submit to the court for signature a revised order to show cause as discussed below.

Explanation:

When contempt is not committed in the immediate view and presence of the court, the facts constituting the contempt shall be presented to the court in an affidavit. (Code Civ. Proc., § 1211, subd., (a).) After notice to the opposing party's lawyer, the court (if satisfied with the sufficiency of the affidavit) must sign an order to show cause re contempt in which the date and time for a hearing are set forth. (Code Civ. Proc., § 1212; *Arthur v. Superior Court* (1965) 62 Cal.2d 404, 408 ["an order to show cause must be issued"].) Indirect contempt (based on conduct outside the presence of the court) requires a showing of the following elements: (1) issuance of a valid order; (2) knowledge of the order; (3) ability to comply with the order; and (4) willful disobedience of the order. (*Conn. v. Superior Court* (196 Cal.App.3d 774, 784.)

Here, the papers and affidavit filed by plaintiff show that defendants are in violation of the Stipulation and Settlement Agreement, which became an order of the court on 3/3/17, by obstructing the easement road on 5/1/22. And having failed to pay attorneys' fees as directed, defendants are also in violation of the 11/5/21 Order. (See Starkey Decl., ¶¶ 10-12.) All of the elements of indirect contempt appear to be satisfied, an order to show cause shall issue.

Plaintiff must revise the order to show cause, however, as it only indicates that defendants are in violation of the 11/5/21 Order, which imposed monetary sanctions. The 11/5/21 Order did not impose any injunction, which is found in the Stipulation and Settlement Agreement and 3/3/17 Order. The OSC shall also be revised to include a deadline for personal service of the OSC, and filing deadlines for opposition and reply papers, with the court to fill in the dates.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: DTT on 6/8/2022.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Duong v. California State University Fresno***
Case No. 18CECG03478

Hearing Date: June 14, 2022 (Dept. 501)

Motion: by Plaintiff to Reinstate His Fifth and Seventh Causes of Action

Tentative Ruling:

To deny.

Explanation:

First of all, plaintiff's motion is procedurally defective. There is no separate notice of motion, no points and authorities brief, and no admissible evidence to support the motion. (See Cal. Code Civ. Proc. § 1010; Cal. Rules of Court, rules 3.1110; 3.1112, and 3.1113.) The brief in support of the motion is 46 pages long, which is about three times the page limit for points and authorities briefs. (Cal. Rules of Court, rule 3.1113(d).) Plaintiff's brief also does not contain any cognizable legal argument or citations to authorities that would support his contentions. It is simply a copy of the second amended complaint with random citations to documents and deposition testimony, without any explanation or reasoning that would support the requested relief.

Plaintiff's compendium of evidence is also not supported by a declaration under penalty of perjury, and plaintiff has not laid a foundation for the documents he submits or attested that they are true and correct copies of the documents. Defendant has objected to plaintiff's evidence, and the court intends to sustain the objections on the grounds of lack of foundation and lack of authentication. Therefore, the motion does not comply with the California Rules of Court or the Code of Civil Procedure regarding noticed motions, and is unsupported by admissible evidence, citations to legal authorities, or legal argument. As a result, the court would be justified in disregarding the motion and refusing to consider its merits.

However, even if the court did consider the merits of the motion, it would still deny it. Plaintiff has not explained what the factual or legal basis for his motion is. It appears that he simply disagrees with the court's prior order granting the motion for judgment on the pleadings as to the fifth and seventh causes of action, and seeks to have the court reconsider its decision. To the extent plaintiff seeks reconsideration of the court's decision granting judgment on the pleadings, the motion is untimely and unsupported.

Under Code of Civil Procedure section 1008, subdivision (a), a party moving for reconsideration of a court order must show that there are "new or different facts, circumstances, or law" that justify reconsideration of the order. (Code Civ. Proc. § 1008, subd. (a).) The motion must also be brought within 10 days of the date that the order for which reconsideration is being sought was served. (Code Civ. Proc. § 1008, subd. (a).)

"Case law after the 1992 amendments to section 1008 has relaxed the definition of 'new or different facts,' but it is still necessary that the party seeking that relief offer some fact or circumstance not previously considered by the court." (*Id*. at pp. 212-213, internal citations omitted.) The requirements of section 1008 are jurisdictional, and failure to comply with the requirement of demonstrating new facts, circumstances or law requires denial of a motion for reconsideration. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104.)

"Courts have construed section 1008 to require a party filing an application for reconsideration or a renewed application to show diligence with a satisfactory explanation for not having presented the new or different information earlier." (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839, citing *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46–47 & fns. 14–15 and *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 688–690.) "Section 1008's purpose is '"'to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.'" To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional…" (*Id*. at pp. 839–840.)

Here, the court granted the motion for judgment on the pleadings on July 16, 2020, and the order was served by mail on July 21, 2020. Plaintiff did not file the present motion to reinstate the causes of action until May 18, 2022, almost two years after the court dismissed the fifth and seventh causes of action. Therefore, if plaintiff is seeking reconsideration of the court's order granting judgment on the pleadings, the motion is untimely.

Also, plaintiff has not stated what new or different facts, circumstances or law support his motion for reconsideration, or why he did not present the new or different facts, circumstances, or law in time for the hearing on the motion for judgment on the pleadings. In fact, plaintiff has not presented any admissible evidence that would tend to show the existence of any new or different facts, circumstances, or law that might support his request to reinstate his claims. Instead, he seems to make the same arguments he made in opposition to the motion for judgment on the pleadings, namely that his union grievances satisfied the requirement to file a government tort claim. However, the court rejected this argument when it granted the motion for judgment on the pleadings. In any event, plaintiff's argument is not a new or different fact, circumstance or law that would support a motion for reconsideration. As a result, to the extent plaintiff seeks reconsideration of the prior order granting judgment on the pleadings, the motion is untimely and completely unsupported.

Likewise, if plaintiff seeks relief from the order granting judgment on the pleadings under Code of Civil Procedure section 473, subdivision (b), the motion is also untimely and unsupported. Code of Civil Procedure section 473, subdivision (b), provides for discretionary relief from a default or default judgment that has been entered due to mistake, surprise, inadvertence, or excusable neglect. (Code Civ. Proc. § 473, subd. (b).) The party seeking relief must bring his or her motion within a reasonable time, not to exceed six months from the date of entry of the default or default judgment. (*Ibid*.)

"Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice to the opposing party will ensue. In such cases, the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.'" (*Ibid*, internal citations omitted.)

"'[T]he provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits.' [Citation.]" (*Zamora v. Clayborn Contracting Group, Inc*. (2002) 28 Cal.4th 249, 256.) "[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

In determining whether the default was entered against the defendant as a result of his or her reasonable mistake, inadvertence, surprise or excusable neglect, the court must look at whether the mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) However, the court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.) The moving party must also give a satisfactory excuse for allowing the default or order to be entered against him or her, and the party must also act diligently in seeking relief after discovering the default or order. (*Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1420.)

Here, plaintiff did not bring his motion for relief from the order granting judgment on the pleadings until May 2020, almost two years after the court granted the order dismissing the fifth and seventh causes of action. Therefore, the motion was brought well beyond the six-month deadline for relief under section 473, subdivision (b), and the motion is untimely. Plaintiff has also failed to show that he acted diligently in seeking relief from the order after he discovered it. In fact, plaintiff was served with the order granting the motion for judgment on the pleadings in July of 2020, and he did not move for relief until May of 2022, almost two years later, so there is no indication that he has been diligent in seeking relief.

In addition, plaintiff has not submitted any evidence or argument that would tend to show that the court's order dismissing his claims was the result of mistake, surprise, inadvertence or excusable neglect. In fact, plaintiff filed opposition to the motion for judgment on the pleadings and his counsel appeared at the hearing and presented oral argument in opposition to the motion. There is nothing that would tend to show that plaintiff allowed the order to be granted as a result of an oversight, or that he inadvertently failed to present some argument or evidence that might have led to a different outcome. Therefore, plaintiff has not shown that he is entitled to relief from the order under section 473, subdivision (b).

As discussed above, it appears that plaintiff's sole argument in support of his motion to reinstate his causes of action is that his union grievances and his civil complaint were sufficient to satisfy the requirement that he file a tort claim with the State of

California. However, the court has already rejected this argument when it granted the motion for judgment on the pleadings.

In its order, the court stated that, "to the extent that plaintiff contends that he actually complied with the claims filing requirement, he has not pointed to any allegations in the second amended complaint or any judicially noticeable facts that would support his contention. Indeed, he appears to concede in his opposition that he did not file a government tort claim with the Board of Trustees of CSUF. Therefore, he has not shown that his Second Amended Complaint alleges actual compliance, or that he in fact complied with the Government Tort Claims Act." (July 16, 2020 Order, p. 3.)

"Nor has plaintiff shown that he substantially complied with the claims filing requirement… Here, plaintiff points to the fact that he filed several union grievances with CSUF that alleged that he was subjected to discrimination, retaliation and unfair treatment by the individual defendants. (Defendant's Request for Judicial Notice, Exhibits A, B, and C. The court intends to take judicial notice of the union grievances.) Plaintiff contends that these grievances, as well as his subsequent complaint to the DFEH, were sufficient to put defendants on notice of the defamation and intentional infliction claims and allow them to conduct an investigation of such claims." (*Ibid*.)

"However, the grievances were not filed as formal government tort claims, and they do not clearly allege that plaintiff seeks to assert claims for defamation or intentional infliction of emotional distress. The claims only allege that plaintiff was subjected to racial discrimination, retaliation, age discrimination and breach of the collective bargaining agreement. The facts alleged do not state that the individual defendants made false statements about plaintiff that were published to third parties and caused him harm, nor does he allege that defendant's acts were extreme and outrageous and caused him severe emotional distress. Therefore, the grievances were not sufficient to substantially comply with the claims filing requirement." (*Id*. at pp. 3-4.)

Plaintiff's motion to reinstate appears to simply re-state the same argument that he raised in his opposition to the motion for judgment on the pleadings, which the court has already rejected. Since plaintiff has not raised any new legal arguments or cited to any new authorities or evidence that would cause the court to reconsider its earlier ruling, the court intends to deny plaintiff's request to reinstate his fifth and seventh causes of action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT (Judge's initials) on 6/8/2022 (Date).

(35)

Tentative Ruling

Re: ***Perez et al v. American Honda Motor Co., Inc.***
Superior Court Case No. 21CECG03781

Hearing Date: June 14, 2022 (Dept. 501)

Motion: by Defendant for an Order Compelling Arbitration and Staying Action

Tentative Ruling:

To deny the requested relief.

Explanation:

On December 22, 2021, plaintiffs filed the present action regarding the purchase of a 2020 Honda Pilot, which plaintiffs allege came with certain warranties. Problems with the vehicle ensued which form the basis of the Complaint for damages. Plaintiffs brought two causes of action against defendant - for express and implied violations of the Song-Beverly Act regarding warranties.

Compel Arbitration

Defendant moves to compel arbitration on an arbitration clause in a sales contract made between plaintiffs and a non-party, Selma Honda.

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc. § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Ca1.App.4th 1497, 1505) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Defendant is not a signatory to the arbitration agreement in question. (*See* Declaration of Kellie Lewison, ¶ 5, and Ex. A.) Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it. (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.) Strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration. (*Buckner v. Tamarin* (2002) 98 Cal.App.4th 140, 142.) However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement. (*DMS Services, LLC v. Super. Ct.* (2012) 205 Cal.App.4th 1346, 1352.) Here, defendant contends it may compel arbitration because plaintiffs expressly agreed to it and under the theory of equitable estoppel or alternatively as a third party

beneficiary of the contract. (*Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486, 496; *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 230.) These are considered in turn.

Pertinent Language of the Arbitration Agreement

As pertinent to the issue of standing to compel arbitration based on either equitable estoppel or as a third party beneficiary, the arbitration provision included in the agreement plaintiffs signed reads as follows:

> 1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
>
> […]
>
> Any claim or dispute, whether in contract, tort, statute or otherwise…between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. (Lewison Decl., ¶ 5, Ex. A.)

The first page of the agreement indicates that the word "you" refers to "the Buyer" (i.e., plaintiffs), and the words "we" or "us" refers to the "Seller – Creditor" (i.e., Selma Honda). (Lewison Decl., ¶ 5, Ex. A.) Defendant is neither of these parties and cannot be said to have "express" authority to compel arbitration under the plain language of the Arbitration Agreement.

Defendant argues, in the alternative, that plaintiffs are equitably estopped from spurning arbitration of this matter, and that it is in any event a third party beneficiary to the arbitration agreement.

Equitable Estoppel

"The *sine qua non* for allowing a nonsignatory to enforce an arbitration clause based on equitable estoppel is that the claims the plaintiff asserts against the nonsignatory are dependent on or inextricably bound up with the contractual obligations of the agreement containing the arbitration clause." (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 213-214.) Even if a plaintiff's claims touch matters relating to the arbitration agreement, the claims are not arbitrable unless the plaintiff relies on the agreement to establish its cause of action. (*Fuentes v. TMCSF, Inc.* (2018) 26 Cal.App.5th 541, 552.) "The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract." (*DMS Services, LLC, supra,* 205 Cal.App.4th at p. 1354.)

Defendant argues that the claims for warranties are premised on, and arise out of the purchase agreement that houses the arbitration agreement. Specifically, defendant argues that had there not been a purchase agreement, defendant would not have

issued any of the warranties upon which plaintiffs now rely. A plain reading of the purchase agreement reveals that, as to warranties:

> **If you do not get a written warranty, and the Seller does not enter into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.**
>
> This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide. If the Seller has sold you a certified used vehicle, the warranty of merchantability is not disclaimed. (Lewison Decl., ¶ 5, Ex. A [emphasis original].)

In other words, the purchase agreement distinguishes and separates the manufacturer warranties from its terms.

Defendant relies on a federal decision, *Mance v. Mercedes-Benz USA* (N.D.Cal. 2012) 901 F.Supp.2d 1147, for the premise that the warranties of the manufacturer must be related to the purchase agreement. (*Id.* at p. 1157.) The *Mance* court reasoned that, as defendant argues, the purchaser would not have received any warranty without the sales, and therefore the warranties arose from the sales agreement. (*Mance*, *supra*, 901 F.Supp.2d at p. 1157.) In support of that reasoning, the *Mance* court cited to an unpublished federal district court opinion. (*Id.*, *citing Fujian Pacific Elec. Co. Ltd. V. Bechtel Power Corp.* (2004) 2004 WL 2645974.)

In opposition, plaintiffs also rely on, among other decisions, a federal decision, *Ngo v. BMW of North America, LLC* (2022) 23 F.4th 942, which held that Song-Beverly Act claims are not intertwined with the terms of the purchase agreement. (*Id.* at pp. 949-950.) The *Ngo* court rejected the manufacturer's argument that the warranties and the purchase agreement were intertwined because no warranties would have issued absent the purchase. (*Ibid*.) The *Ngo* court stated that, "under California law, warranties from a manufacturer that is not a party to the sales contract are 'not part of [the] contract of sale.'" (*Id.* at p. 949, *citing Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Cavanaugh* (1963) 217 Cal.App.2d 492, 514.)

Decisions by federal courts interpreting California law are not binding, and are merely persuasive. (*Finely v. Super. Ct.* (2000) 80 Cal.App.4th 1152, 1160.) It is only proper to look at federal decisions interpreting California law where the reason is analytically sound. (*Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 110, fn. 9.)

The court finds the *Ngo* holding on this issue persuasive, as the reasoning relies on California law and is analytically sound. A careful review of the complaint reveals no claims being made under the purchase agreement, only under those warranties related to the Song-Beverly Act codified under Civil Code section 1790 et seq. Had plaintiffs made a cash purchase rather than financed under the purchase agreement, such warranties still would have been issued under the Song-Beverly Act. (*See also Corp of Presiding Bishop*, *supra*, 217 Cal.App.2d at p. 514.) Moreover, consistent with California

law, the terms of the purchase agreement make a clear separation between it and manufacturer warranties. (Lewison Decl., ¶ 5, Ex. A.)

Defendant further argues that plaintiffs are equitably estopped from resisting arbitration under the agreement because the arbitration agreement covers disputes arising out of the condition of the vehicle. Because the Song-Beverly Act issues arise from the condition of the vehicle, defendant concludes that the Complaint is subject to arbitration.

Defendant relies on a recent opinion out of the Third District Court of Appeal, *Felisilda v. FCA US LLC*, in arguing that it, as a non-signatory to the arbitration agreement may still compel arbitration under equitable estoppel. In *Felisilda*, the motion to compel arbitration was filed by the dealership (Elk Grove Dodge), and included a request that its co-defendant, manufacturer FCA, US, LLC ("FCA") also be included as a party to the arbitration. (*Felisilda*, *supra*, 53 Cal.App.5th at p. 498.) FCA filed a notice of nonopposition. (*Ibid.*) The trial court granted the motion. After the motion was granted, plaintiff dismissed Elk Grove Dodge. (*Id.* at p. 489.) FCA prevailed at arbitration, and the Felisildas appealed. The appellate court found that it was appropriate to compel arbitration based on the theory of equitable estoppel. (*Id.* at p. 497.) Defendant argues that this case controls, and mandates that this court find that it has standing to compel arbitration pursuant to the purchase agreement which is virtually identical to the one in *Felisilda*.

However, there are important distinctions between the facts of that case and the one at bench. The motion there was by the dealership and not the manufacturer, which took no part in the motion beyond filing a notice of nonopposition. Here, the dealership is not the party seeking to compel arbitration. Nor is the dealership even a party to this action. This is a significant difference and limits the application of *Felisilda*. At best, *Felisilda* stands for the proposition that, where a plaintiff buyer files a complaint against both the dealership and the manufacturer, the dealership can compel plaintiff to arbitrate the claims against both. This is consistent with the language of the arbitration agreement, since it provides that any claim or dispute "which arises out of or relates to your . . . purchase or condition of this vehicle . . . or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, *at your or our election* be resolved" by arbitration. (Lewison Decl., ¶ 5, and Ex. A [emphasis added].) As defined by the contract, the word "our" means Selma Honda, not defendant. Thus, under the express language of the arbitration clause, arbitration could be compelled on behalf of a third party non-signatory, and there is nothing in this language authorizing it to be compelled by a third party non-signatory.

As the appellate court in *Felisilda* clearly stated, "It is the motion that determines the relief that may be granted by the trial court." (*Felisilda, supra,* 53 Cal.App.5th at p. 498.) The motion before that trial court, and, thus, the issue considered on appeal in *Felisilda*, was whether the dealership's motion, asking for arbitration to also be compelled on behalf of the nonsignatory manufacturer, was correctly granted. Therefore, the court had no cause to consider whether a nonsignatory manufacturer, as sole defendant, could successfully compel arbitration. That was not the posture of the case. As the *Felisilda* court summed up its holding, since the dealership's motion argued that the claim against both defendants should be arbitrated, "the trial court had the prerogative to

compel arbitration of the claim against FCA." (*Id.* at p. 499.) Also, the phrase "had the prerogative" suggests that the court of appeal was supporting the trial court's use of discretion in making its ruling, and was not finding that compelling arbitration was mandated under the equitable estoppel theory.

Another important distinction between *Felisilda* and the case at bench is that there the plaintiffs' complaint consisted of one combined cause of action against both the manufacturer and the dealership. (*Felisilda, supra,* 53 Cal.App.5th at p. 491.) No doubt that factor was significant to the court's finding that the plaintiffs' claims were so intertwined that it was fair to require arbitration to proceed against both. Here, however, the dealership is not even a party to this action.

In short, it is not clear how the Third District Court of Appeal would have ruled had the trial court ruling emanated from a motion brought by the sole defendant, the nonsignatory manufacturer, as here. This court will not extend *Felisilda* beyond its borders, and declines to apply *Felisilda* to the present matter.[1]

Defendant further argues that the fact that plaintiffs' claims concern the "condition of the vehicle" and this term being mentioned in the agreement as a potential subject of a claim where arbitration could be compelled. Defendant refers to the allegations of the complaint that plaintiffs brought the vehicle to defendant's authorized repair facility who failed to replace or make restitution on the vehicle to find that such acts confirm the intertwining of the purchase agreement and the arbitration clause.

Plaintiffs' claims about the condition of the vehicle clearly do not depend upon any language in the agreement in order to bring them. As above, if plaintiffs had paid cash for the vehicle, and thus would not have signed the purchase agreement, they still could bring claims under the Song-Beverly Act and under common law concerning the "condition of the vehicle." (See, *e.g., Fuentes, supra,* 26 Cal.App.5th p. 553 [finding no standing to compel arbitration based on equitable estoppel because "[e]ven if he had paid cash for the motorcycle, his complaint would be identical."]) It is accurate to say that plaintiffs' claim is intimately founded in "the condition of the vehicle," but the fact that this term can also be plucked from the agreement does not mean plaintiffs' claims are intimately founded in that contract. Therefore, it is inaccurate to say that in plaintiffs' causes of action against defendant are "intertwined" with the agreement, such that it would be equitable to find that plaintiffs are estopped from avoiding its terms requiring arbitration.

Third Party Beneficiary

Third-party beneficiaries are permitted to enforce arbitration clauses even if not named in the agreement. (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019)

[1] Defendant additionally argues that where *Felisilda* and *Ngo* disagree, *Felisilda* must prevail for being a California court decision. As defendant concedes however, *Ngo* applied the test created from a California Supreme Court decision, *Goonewardene*, to support its findings. This court is aware of no basis for which a California Court of Appeal decision controls over a California Supreme Court decision. In any event, as above, the court finds *Felisilda* inapposite to the facts of the present matter.

31 Cal.App.5th 840, 856.) Defendant contends that it can enforce the arbitration agreement as a third party beneficiary to the agreement. The arbitration provision expressly states it applies to "any resulting transaction or relationship (*including any such relationship with third parties who do not sign this contract*) . . . ." (Lewison Decl., ¶ 5, Ex. A [emphasis added].)

"A third party beneficiary is someone who may enforce a contract because the contract is made expressly for his benefit." (*Jensen v. U-Haul Co. of Cal.* (2017) 18 Cal.App.5th 295, 301, *citing and quoting Matthau v. Super. Ct.* (2007) 151 Cal.App.4th 593, 602.) The intent to benefit that third party must appear from the terms of the contract. (*Jensen*, *supra*, 18 Cal.App.5th at p. 301.) Specifically, the third party must show that the arbitration clause was "made expressly for his benefit." (*Fuentes*, *supra*, 26 Cal.App.5th at p. 552.) "A nonsignatory is entitled to bring an action to enforce a contract as a third party beneficiary if the nonsignatory establishes that it was likely to benefit from the contract, that a motivating purpose of the contracting parties was to provide a benefit to the third party, and that permitting the third party to enforce the contract against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." (*Hom v. Petrou* (2021) 67 Cal.App.5th 459, 471 *citing Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 821.)

As applied to the facts here, simply pointing out that the provision contains a reference to "third parties" and that defendant is a "third party" does not show that the arbitration clause was expressly intended to benefit any particular third party, much less does it show that this provision was made expressly for defendant's benefit. There is nothing in the agreement indicating that the motivating purpose for the parties to the contract was to benefit defendant, or that allowing defendant to independently compel arbitration was within the parties' reasonable expectations at the time of contracting. Rather, as above, the purchase agreement draws distinctions against the manufacturer as to at least one provision. The court cannot find defendant to be a third party beneficiary of the arbitration agreement.[2]

For the reasons stated above, the motion for an order compelling arbitration is denied and the request for an order staying the proceedings pending arbitration is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 6/10/2022.
(Judge's initials) (Date)

[2] Based on the present findings, the court does not address plaintiffs' arguments in opposition regarding arbitrability and waiver, which would only have merit if the court found that defendant had standing to compel arbitration.

(24)

Tentative Ruling

Re: ***In re: Ahmya McCray***
Superior Court Case No. 22CECG01408

Hearing Date: June 14, 2022 (Dept. 501)

Motion: Expedited Petition for Approval of Compromise of Disputed Claim of Minor, as Amended

Tentative Ruling:

To grant. Proposed Orders to be signed. No appearances necessary.

Explanation:

The Amended Petition addresses all of the court's concerns.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 6/13/2022.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Porras v. General Motors LLC***
Superior Court Case No. 20CECG01880

Hearing Date: June 14, 2022 (Dept. 501)

Motion: by Plaintiff for an Order Compelling Further Responses to Special Interrogatories, Set One, Further Responses to Form Interrogatories, Set One, and Further Responses to Requests for Production of Documents, Set One and Compelling the Deposition of Defendant's Person Most Knowledgeable with Production of Documents

Tentative Ruling:

To grant plaintiff's motion to compel further responses to the special interrogatories, set one, numbers 14, 42, 43, 45 and 57. To deny the motion to compel further responses to interrogatories numbers 40, 41 and 44. (Code Civ. Proc. § 2030.300.)

To grant plaintiff's motion to compel further responses to form interrogatories, set one, number 12.1. (Code Civ. Proc. § 2030.300.)

To grant plaintiff's motion to compel further responses to document requests, set one, numbers 1, 3, 9, 13-17, 43-51, 55-60, 67-69 and 73-81. To deny the motion to compel further responses to request numbers 37-42, 52-54, 61-66, 70-72 and 82-84. (Code Civ. Proc. § 2031.310.)

Defendant shall serve verified supplemental responses without objections within 20 days of the date of service of this order.

To grant in part plaintiff's motion to compel the deposition of defendant's person most knowledgeable. Defendant General Motors LLC shall produce the person most qualified to testify regarding categories 3, 4, 6, 8. 9, 15, 16, 17, 20 and 21. To find moot the motion to compel as to categories 1, 2, 5, 7, 10-14 and 18-19 as defendant has agreed to produce a witness. To grant plaintiff's motion to compel document production with limitations described below.

Explanation:

Meet and Confer

To the extent defendant argues that plaintiff's counsel did not meet and confer in good faith before bringing the motions to compel, it appears that plaintiff's counsel engaged in adequate and good faith meet and confer efforts. Plaintiff's counsel exchanged multiple meet and confer letters with defense counsel about the disputed responses in August and September 2021 after receiving defendant's responses to the discovery and objections to the deposition. When defendant refused to provide further

responses, plaintiff requested a pretrial discovery conference. Defendant did not respond to the request. This is unfortunate because many of the disputes could have been resolved with the assistance of a pretrial discovery conference.

The order on the requests for pretrial discovery conference indicated the time to file a motion was tolled 31 days and advised that defendant's lack of response could be viewed as a concession that plaintiff's position is correct. These motions were timely filed following the order on the request for pretrial discovery conference.

Motion to Compel Special Interrogatories

Plaintiff seeks to compel further responses to special interrogatories, which seek the identities of the people who (1) performed warranty repairs on the subject vehicle (Special Interrogatory No. 14), (2) who made the decision whether or not to repurchase the subject vehicle(No. 45), (3)those who supervise to ensure proper repurchase procedures are followed and how they perform their duties (Nos. 40 and 41), and (4) all persons involved in the investigation with whom GM communicated regarding plaintiff's vehicle (No. 43.). The other special interrogatories at issue seek to have plaintiff explain its investigation into whether the vehicle was eligible for repurchase (No. 42) and identify all documents used in that investigation (No. 44). The last request seeks to know the total number of days the plaintiff's vehicle was out of service for warranty repairs (No. 57).

Defendant raised objections that the interrogatories seek irrelevant information, that they are vague and ambiguous, seek confidential trade secret information and that the information is protected by attorney-client privilege. Defendant then referred plaintiff to various other documents, which allegedly contain the information plaintiff seeks.

However, defendant has made no effort to justify the objections based on relevance or vagueness. Of course, plaintiff does not have to show that the information he seeks is directly relevant to his claims. He is entitled to discover the information as long as it is reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.)

"For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.' Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. The phrase 'reasonably calculated to lead to the discovery of admissible evidence' makes it clear that the scope of discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial. 'Thus, the scope of permissible discovery is one of reason, logic and common sense.' These rules are applied liberally in favor of discovery." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611–1612, internal citations and italics omitted.)

<u>Special Interrogatory Nos. 14, 42, 43 and 45</u>

The identities of the people who inspected, attempted to repair, or refused to repurchase the subject vehicle (Nos. 14, 43 and 45) are highly relevant to plaintiff's claims, or at least likely to lead to the discovery of admissible evidence. In the same vein, a description of the aspects of that investigation into plaintiff's vehicle (No. 42) is also likely

to lead to admissible evidence. Plaintiffs are alleging that defendant was unable to repair their defective vehicle and that it then refused to repurchase it in violation of the requirements of the Song-Beverly Consumer Warranty Act. As a result, plaintiffs have a strong interest in learning the identities of the people who worked on, inspected, and refused to repurchase their vehicle so that they can depose them and call them as trial witnesses. Plaintiffs have no access to the dealership personnel records or other documents that would allow them to obtain the identities of the people who inspected and attempted to repair their truck. They also have no way to obtain the identities of the people who denied their request to repurchase the truck other than through the discovery process.

While GM claims that plaintiff can obtain the information from the other documents it has produced, plaintiff contends that the other documents do not contain any names or identities of the people sought in the interrogatories. GM is not allowed to simply refer plaintiff to other documents; it must provide a full, complete and straightforward response to the interrogatories. "Answers must be complete and responsive. Thus, it is not proper to answer by stating, 'See my deposition,' 'See my pleading,' or 'See the financial statement.'" (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783-784.)

Also, to the extent that GM claims that it does not have access to the information about the dealership's employees and thus cannot provide information about who inspected and repaired the vehicle, GM's response is misleading at best. The dealership was clearly acting as the agent of GM, since it is an authorized service center for GM and plaintiff was required to take his vehicle there for warranty repairs before he could request that it be repurchased. As such, the dealership and its employees were acting as GM's agents, and GM should either have or be able to obtain the identities of the employees who worked on plaintiffs' truck.

Therefore, the objections are overruled and defendant is ordered to provide further responses to Special Interrogatories Nos. 14, 42, 43 and 45.

Special Interrogatories Nos. 40 and 41

The information sought in special interrogatory Nos. 40 and 41 is not limited to those persons involved with the repairs and/or investigation into plaintiff's vehicle and would encompass multiple persons with no clear relationship to this vehicle. To the extent it seeks identities of those persons who were involved in the investigation of plaintiff's vehicle, those persons would be identified in response to special interrogatory No. 43. The objection for overbreadth should be sustained. Given the reliance upon the response to No. 40 in responding to No. 41, the objection is be sustained.

Special Interrogatory No. 44

Request No. 44 requests defendant to identify all documents reviewed during its investigation and in its response GM refers plaintiffs to the response to Special Interrogatory No. 42 which identifies multiple documents. The response directs the reader to the identity of the documents sought as requested in the interrogatory. No further response is required.

Special Interrogatory No. 57

Defendant's response to special Interrogatory No. 57, requesting the number of days the vehicle was out of service is a reference to a list of documents requiring plaintiffs to interpret the documents to find the responsive information. As discussed above, this is not a proper response and further response is required.

Therefore, objections are overruled and further response to special interrogatory No. 57 is ordered.

Motion to Compel Further Responses to Form Interrogatories

Plaintiff seeks further response to form interrogatory 12.1. Defendant's response refers plaintiffs to documents produced in the concurrently served responses to requests for production. Form interrogatory 12.1 requests the identifying information of witnesses. Although there is not a single "incident" there are certain representatives, agents and employees of defendants that have communicated with plaintiffs or been involved with the investigation of their many complaints regarding their vehicle. The records referred to do not contain sufficient identifying information to allow plaintiffs to subpoena those persons identified within the documents. As with the discussion regarding special interrogatory nos. 14, 43 and 45, defendant is in the best position to know the identities of those persons identified in its records and provide that information to the plaintiffs. GM is not allowed to simply refer plaintiff to other documents; it must provide a full, complete and straightforward response to the interrogatories. "Answers must be complete and responsive. Thus, it is not proper to answer by stating, 'See my deposition,' 'See my pleading,' or 'See the financial statement.'" (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783-784.)

Further response to form interrogatory 12.1 is ordered.

Motion to Compel Further Responses to Requests for Production

A motion to compel must "set forth specific facts showing good cause justifying the discovery sought by the inspection demand." (Code Civ. Proc., § 2031.310 (b)(1).) Absent a privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance. (*Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) If "good cause" is shown by the moving party, the burden is then on the responding party to justify any objections made to document disclosure. (*Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.)

Declarations are generally used to show the requisite "good cause" for an order to compel inspection. The declarations must contain "specific facts" rather than mere conclusions. (*Fireman's Fund Ins. Co. v. Superior Court* (1991) 233 Cal.App.3d 1138, 1141.)

Though the declaration in support of the motion makes no attempt to establish good cause, sufficient information is set forth in plaintiffs' separate statement to proceed to the merits of the motion to compel.

Plaintiff seeks to compel further responses to requests for production numbers 1, 3, 9, 13-16, 17, 37-84. The disputed requests seek documents about five categories: (1) those relating to plaintiff's truck (request no. 1, 3), (2) statements taken and documents evidencing communications regarding the vehicle (request Nos. 13-16); (3) those relating to defendants technical service bulletins and recall issuance policies and procedures (request nos. 9); (4) manuals and publications regarding handling warranty repairs on the plaintiff's vehicle (request no. 17); and (5) those relating to defendant's knowledge, internal investigations, analysis and publications of defects like the ones in plaintiff's vehicle (request nos. 37-84).

Request Nos. 1 and 3, 13-16

Defendant's responses to request for production Nos. 1, 3 and 13-16 indicate responsive documents in its possession, custody or control have been produced. Plaintiff brings this motion on the basis that there are documents within defendant's control that have not been identified or produced. The response does not indicate that *all* responsive documents within its possession, custody or control have been produced and as such it is not in compliance with Code of Civil Procedure section 2031.220.

To the extent defendant objects based upon the documents being in the possession, custody or control of a GM authorized dealership, the dealership was acting as an agent of GM and GM should be able to obtain the documents from the dealership even if they are not technically in GM's possession at the moment. GM cannot claim that it has no documents in its possession if it can readily obtain them from another source that is within its control.

Therefore, the motion is granted and further responses to request nos. 1, 3 and 13-16 that comply with Code of Civil Procedure section 2031.220 are required.

Request No. 9

Plaintiff's request no. 9, which seeks all documents regarding GM's recalls and technical service bulletins pertaining to the plaintiff's vehicle, GM has objected that the requests are they are overbroad, unduly burdensome, and seek documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. GM also objects on the ground that the documents contain trade secret information, and may seek privileged attorney-client or work product information, as well as violating *Calcor Space Facility v. Superior Court* (1997) 53 Cal.App.4th 216. GM's response was a list of recalls and technical service bulletins for vehicles of the same year, make and model as the plaintiffs' vehicle rather than producing the actual responsive documents.

In its response, defendant attempts to shift the burden of determining what is responsive to the propounding party by producing a list of recalls and technical service bulletins and agreeing produce copies of a "reasonable number" that plaintiffs identify as relevant to the conditions alleged in their complaint. Plaintiff contends that this list is an improper response and does not comply with Code of Civil Procedure section 2031.280(a). Additionally, it would appear that defendant is in the best position to sort and search its own documents to determine what is applicable to plaintiff's vehicle. A list

of the responsive documents is not a form that is reasonably usable and a further response should be given. (Code Civ. Proc. § 2031.280(d)(1).

In opposition, defendant argues it has not refused to produce documents that relate to the claims regarding plaintiff's vehicle as described in the complaint, however, the plaintiffs have not agreed to narrow the request to those relating to the defects in the complaint. This would seem to be a reasonable compromise that could have been reached if defendant has participated in the court's pretrial discovery conference process.

Therefore the motion is granted as to request no. 9 and further production of the actual records responsive to the request is ordered.

Request No. 17

Plaintiffs seek production of manuals and publications regarding handling warranty repairs on their vehicle. There is good cause for the production of the documents as they are relevant to supporting plaintiffs' allegation that defendant knew the plaintiff's vehicle was defective and was willful in its refusal to repurchase the vehicle.

Defendant's response identifies and produces the repair orders, Service Request Activity Reports and Global Warranty History Report for the vehicle. In its separate statement, GM identifies its "Warranty Policy and Procedure Manual" as a document that was not identified or produced in response to the document request but is responsive to the request. Defendant has agreed to produce the document on the condition that plaintiffs stipulate to a further protective order in addition to the protective order entered into previously. In the event production is ordered, defendant has indicated it intends to file a motion for protective order to ensure the confidential materials and trade secrets therein remain confidential. In support of its objection based upon the trade secret and confidential materials defendant provides the 10/25/18 declaration of Huizhen Lu, a senior manager/technical consultant of engineering analysis for GM. (Kay Decl., Exh. C.) The declaration is prepared generically for application for discovery matters that call for disclosure of materials GM considers highly confidential. It explains its production investigation and warranty materials, which would include the Manual withheld from discovery in this case. (Id. at ¶¶ 28-33.)

It is unclear why the current protective order is not adequate to allow defendant to produce what it appears to concede is a responsive document. Therefore the motion is granted as to request no. 17.

Request Nos. 37-84

The final category of requests seeks all documents regarding other complaints made by other owners or lessees of the same year, make and model of vehicle as plaintiff's vehicle. There are sixteen issues described for which the documents relating to reports of similar problems are sought. Plaintiffs contend the documents are relevant to in demonstrating defendant's knowledge of similar claims or complaints in its vehicles, when it had this information and may demonstrate knowledge of widespread problems and GM's failure to act. GM objected based on ambiguity, vagueness, overbreadth,

undue burden, and lack of relevance. GM also objected based on trade secrets, attorney-client privilege, and work product doctrine. GM refused to produce any documents.

GM's objects based on relevance, however, defendant has made no effort to justify the objections. Plaintiffs do not have to show that the information they seeks is directly relevant to his claims. He is entitled to discover the information as long as it is reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.) As discussed above regarding interrogatories, the rules are applied liberally in favor of discovery. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611–1612.)

Defendant has not produced a privilege log or made any attempt to show that the documents are protected by attorney-client privilege or work product doctrine.

Also, to the extent that GM relies on trade secret protection, any trade secret information would presumably be adequately protected through the protective order filed October 18, 2021 to which the parties have already agreed.

With regard to the question of whether the document requests are overbroad and seek irrelevant information, the Court of Appeal has held in a similar "lemon law" case that evidence of non-warranty repairs to the plaintiff's vehicle was relevant and admissible, as it had a tendency to establish that the transmission problems were not repaired in conformity with the warranty. (*Donlen v. Ford Motor Co*. (2013) 217 Cal.App.4th 128, 148-149.) The Court of Appeal also found that the trial court had not erred when it admitted evidence of other customers' vehicles of the same make and model with similar transmission problems.

"Hughes's 'other vehicle' testimony was not unduly prejudicial. It did not concern simply other vehicles. It was limited to the transmission model Ford installed in plaintiff's truck and other vehicles. Hughes described what Ford itself had done to notify dealers and technicians about problems with this transmission model. Thus, everything about which he testified that applied to other vehicles applied equally to plaintiff's vehicle. Such evidence certainly was probative and not unduly prejudicial." (*Id*. at p. 154.)

Likewise, any documents related to other complaints, problems, and technical service bulletins about similar problems with the same type of vehicle that plaintiff owns would tend to be probative of whether GM knew that its trucks were experiencing the same kind of problems that plaintiff complained of, and yet it refused to repurchase his vehicle. Such evidence could allow plaintiffs to establish that they are entitled to penalties against GM for its wilful refusal to repurchase the vehicle despite its knowledge of other similar problems with other customers' vehicles. While *Donlen* was not a Discovery Act case, its holding is nevertheless applicable to the issue of whether the same type of evidence that plaintiff seeks is relevant and admissible, which is more than enough to support an order compelling defendant to produce the requested documents. Also, the requests are not overbroad, since they are limited to complaints and problems about the same make, model and year of vehicle that plaintiff owns.

The requests at issue seek information for sixteen different issues/complaints plaintiffs had with their vehicle. Some of the issues are narrow based on the description

of the specific problem. For example, Nos. 43-45 seek reports of issues regarding "door weather stripping bubbling and separating." Other issues as described could include a range of complaints regarding the item described. For example, Nos. 37-39 seek report of issues regarding the "check engine light." This could mean any number of ways the check engine light could malfunction. For this reason there is a basis to sustain the "boilerplate" objections that the request is vague and ambiguous as to some of the requests.

The objection as to ambiguity is sustained to the following requests:

Nos. 37-39: "check engine light"
Nos. 40-42: "throttle body clamp"
Nos. 52-54: "navigation system issues"
Nos. 61-63: "choppy tire tread"
Nos. 64-66: "front shocks"
Nos. 70-72: "front airbag trim"
Nos. 82-84: " 'service steering wheel column lock' message illuminating"

The motion is granted as to the following requests:

Nos. 43-45: "door weather stripping bubbling and separating"
Nos. 46-48: "door weather stripping falling off"
Nos. 49-51: "vehicle jolting forward when accelerating"
Nos. 55-57: "interior pillar warping"
Nos. 58-60: "loud ringing noise coming when at highway speeds"
Nos. 67-69: "intermittent shaking upon acceleration"
Nos. 73-75: "vibration when driving"
Nos. 76-78: "excessive tire noise"
Nos. 79-81: "vehicle not starting"

Motion to Compel Deposition of Defendant's PMK with Production of Documents

Under Code of Civil Procedure section 2025.450, subdivision (a),

> If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.

Also, under section 2025.450, subdivision (b),

(1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.

Here, plaintiffs served a deposition notice on defendant General Motors LLC ("GM"), noticing the deposition of GM's PMK regarding 21 categories of information and requesting production of 14 categories of records, with the deposition set for August 23, 2021. Plaintiff's counsel also offered to consider alternative dates that might be provided by defense counsel if the date was not practical. Defense counsel then timely served various objections and refused to produce the witness at the time and date stated on the deposition notice. However, defense counsel also stated that defendant would produce the witness at another mutually agreed upon time and date and that the witness would discuss relevant and non-privileged aspects of the categories listed in the deposition notice.

Defendant has agreed to produce a witness for categories 1, 2, 5, 7, 10-14 and 18-19. Therefore, there is no need to compel the witness to appear and testify as to these topics.

Defendant objects to and will not produce a witness for the topics falling into several categories: (1) those seeking information about how and why GM issues Technical Service Bulletins and recalls (category nos. 3, 4, 6); (2) GM's policies and procedures for evaluating whether to repurchase a vehicle and those for warranty repairs (category nos. 8, 9); (3) Individuals responsible for ensuring vehicles are repurchased and GM's agreements for the production of these persons at deposition (nos. 15, 16, 17); (4) the identity of a specific customer service representative's employer (No. 20); and (5) Information leading to the issuance of a specific Technical Service Bulletin (No. 21).

Defendant's objections to these categories are primarily that they seek testimony regarding matters that are irrelevant to the plaintiffs' complaint in that the request is not limited to information specific to plaintiff's vehicle. Information sought in discovery must be relevant to the "subject matter" of the pending action or to the determination of a motion in that action. (Code Civ. Proc. § 2017.010.) Information should be regarded as "relevant" to the subject matter if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

Discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial. Thus, the scope of permissible discovery is one of reason, logic and common sense. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611.) Admissibility at trial is not required. Rather, the test is whether the information sought might reasonably lead to other evidence that would be admissible. (Code Civ. Proc. § 2017.010.)

The "relevance to the subject matter" and "reasonably calculated to lead to discovery of admissible evidence" standards are applied liberally. Any doubt is generally resolved in favor of permitting discovery, particularly where the precise issues in the case

are not yet clearly established. (*Colonial Life & Acc. Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790.)

Objections on this basis to are overruled.

Defendant also objects to these categories as they call for the disclosure of confidential and trade secret information. However, there is no indication that the information would not be adequately protected by the protective order filed October 18, 2021 to which the parties have already agreed.

As such, defendant is to produce a witness to categories 3, 4, 6, 8. 9, 15, 16, 17, 20 and 21 where it represented that no witness would be produced.

Demand for Production of Documents

Defendant represents that it has produced all responsive documents for request nos. 1, 2, 3, 4, 5, 7, and 8 in its responses to request for production which are also the subject of a motion to compel further responses. To the extent further responses to these categories are ordered for the previously served responses, those further responses are ordered here as well.

Request No. 6 seeks policies and procedures for evaluating whether a vehicle qualifies for repurchase. This information is relevant in determining whether these policies and procedures were followed in the investigation of plaintiffs' vehicle. As discussed above, given the wide breadth of what is considered relevant and the protective order in place, defendant is ordered to produce responsive documents.

Request Nos. 9, 10, 11, 12, and 13 seek information regarding the identities of persons who investigated whether to repair ore repurchase plaintiff's vehicle and those persons responsible for ensuring a vehicle is repurchased under California's "lemon law." Plaintiffs are alleging that defendant was unable to repair their defective vehicle and that it then refused to repurchase it in violation of the requirements of the Song-Beverly Consumer Warranty Act. As a result, plaintiffs have a strong interest in learning the identities of the people who worked on, inspected, and refused to repurchase their vehicle so that they can depose them and call them as trial witnesses.

Defendant objected to these categories as they call for the disclosure of confidential and trade secret information. However, there is no indication that the information would not be adequately protected by the protective order filed October 18, 2021 to which the parties have already agreed.

The motion is granted as to request nos. 9-13, with the following limitation: Request No. 11 is not limited to those persons involved in the decision regarding plaintiffs' vehicle and further response is limited to those persons responsible for the persons who investigated whether to repurchase plaintiffs' vehicle.

Request No. 14 seeks documents that led to the issuance of a specific Technical Service Bulletin. Defendant's response indicates that it will produce the repair bulletin issued for the one recall issued for the plaintiff's vehicle. Plaintiffs contend this specific TSB

was used to perform repairs on the plaintiffs' vehicle and, as such the documents leading to the issuance of the TSB are relevant to their claims against GM. Defendant's oppose further response as the types of documents sought (number of customer complaints, amounts paid for repairs, technical hotline inquiries, and any and all data/information relied upon or utilized by GM in the issuance and/or publication of the bulletin) is extremely overbroad and would not "shed light on whether plaintiffs' vehicle was made to conform to GM's warranty."

As written, the request casts an extremely wide net. That does not mean that the information sought is not subject to discovery. It is defendant's burden as the responding party to justify its objections based on burden and oppression by pointing to evidence showing specifically how much work it would take to respond to the requests. Simply claiming that it would be burdensome and oppressive to respond is not enough. (*West Pico Furniture Co. v. Superior Court (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 419.) The responding party must show that the burden of responding would be so great, and the benefit of the information sought would be so minimal, that it would defeat the ends of justice to require the party to answer. (*Columbia Broadcasting System, Inc. v. Superior Court (Rolfe)* (1968) 263 Cal.App.2d 12, 19.) Here, defendant has not presented any evidence regarding the amount of work it would take to respond to the document requests, so it has failed to show that it would be excessively burdensome and oppressive to answer.

With regard to the question of whether the document requests are overbroad and seek irrelevant information, the Court of Appeal has held in a similar "lemon law" case that evidence of non-warranty repairs to the plaintiff's vehicle was relevant and admissible, as it had a tendency to establish that the transmission problems were not repaired in conformity with the warranty. (*Donlen v. Ford Motor Co*. (2013) 217 Cal.App.4th 128, 148-149.) The Court of Appeal also found that the trial court had not erred when it admitted evidence of other customers' vehicles of the same make and model with similar transmission problems. Therefore, the motion is granted as to request no. 14.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 6/13/2022.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Khela v. First American Specialty Insurance Company, et al.***
Superior Court Case No. 20CECG00238

Hearing Date: June 14, 2022 (Dept. 501)

Motion: by Defendants CCIS and Cala Carter for Order Determining Good Faith Settlement

Tentative Ruling:

To continue the hearing to Tuesday, June 28, 2022, to allow the parties time to submit supplemental briefing addressing the issues herein. All paperwork must be filed no later than 5:00 p.m. on June 22, 2022.

Explanation:

Under Code of Civil Procedure section 877.6, "[a]ny party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc. § 877.6, subd. (a)(1).)

"The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing." (Code Civ. Proc. § 877.6, subd. (b).)

"A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc. § 877.6, subd. (c).)

"The party asserting the lack of good faith shall have the burden of proof on that issue." (Code Civ. Proc. § 877.6, subd. (d).)

"[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of

settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be.' The party asserting the lack of good faith, who has the burden of proof on that issue (§ 877.6, subd. (d)), should be permitted to demonstrate, if he can, that the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a 'settlement made in good faith' within the terms of section 877.6." (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500, citations omitted.)

The settling defendants, CCIS Insurance Group, Inc. ("CCIS") and Cala Carter, have settled plaintiffs' claims against them for $125,000. They contend this is well within the ballpark of their responsibility for the breach of contract claim plaintiffs allege against First American Specialty Insurance Company ("First American"). The settlement was reached following arm's length negotiations and is presumed to be in good faith. The other cause of action against First American is based upon its handling of the claim for which settling defendants, as disclosed agents of First American, bear no responsibility. (*Filippo Industries, Inc. v. Sun Ins. Co.* (1999) 74 Cal.App.4th 1429, 1442-1445.) The settling defendants, however, are not parties to the insurance contract at issue and cannot be held liable for the alleged breach of contract. (*Id*. at 1443.) This alters the analysis of this settlement as the value to settling defendants is not only limiting their exposure to the three causes of action brought against them by plaintiffs but also immunizing them against the potential indemnity claim from First American based on alleged misrepresentations in the insurance application and breached duties to First American.

Allowing CCIS and Carter to settle as proposed effectively gives the potential indemnity claim a value of zero dollars. Defendant First American contends the settling defendants have a duty to indemnify it for any damages awarded against First American in favor of plaintiffs' causes of action for breach of contract and bad faith, as well as attorney's fees in defending the causes of action. First American has not filed a cross-complaint against settling defendants for indemnity.

The evidence put forward in support of the viability of the potential cross-complaint for indemnity is based primarily on conflicting testimony of Defendant Carter during several depositions. Carter testified that prior to January 2017 she was aware that plaintiffs owned at least 20 properties. (Downes Decl. ¶ 3, Exh. A, Carter I Depo., 75:16-25, 76:1-2, 78:1-23.) The application prepared by CCIS agent and submitted to First American indicated plaintiffs owned one other property in addition to the property for which they were seeking coverage. (Id. at Exh. B, Carter II Depo., 249:14-19.) It was not until her later deposition as PMK on behalf of CCIS that Defendant Carter corrects her recollection and testifies that she was relying on plaintiffs' representation that they were putting their investment properties into a limited liability company and believed the only home owned personally by plaintiffs personally at that time was their personal residence. (Id. at Exh. C, PMK Depo., 39:16-41:8.) These three depositions were taken March 25, 2022, April 6, 2022 and May 23, 2022, respectively.

Settling defendants contend there is no evidence to support this non-existent cross-complaint and put forth Defendant Carter's declaration reiterating her testimony as PMK on behalf of the agency that she believed the plaintiffs only owned one other

residence personally as they had told her they were going to be placing all investment properties in a limited liability company. (Carter Decl. ¶ 2.) Further, the language in the First American guidelines is ambiguous, stating that the program was "not designed for" persons owning more than eight investment properties and not that those persons are an unacceptable risk.

As the party opposing the settlement, the burden on is on First American to demonstrate that the settlement was reached in bad faith. (Code Civ. Proc. § 877.6, subd. (d).) First American contends that the value in this settlement is immunity from the potential indemnity claim, as was found in *Long Beach Memorial Medical Center v. Superior Court* (2009) 172 Cal.App.4th 865. The non-settling defendants were able to demonstrate in *Long Beach Memorial* that "by the time the physicians' counsel contacted plaintiffs' attorney to make an offer in settlement, *the physicians' liability exposure to the hospital for indemnity was far greater than their potential exposure to plaintiffs for negligence*. The true value in the settlement to the physicians, then, was not the dismissal of claims as to them, but rather the dismissal of the indemnity claims of the [non-settling defendants]." (*Id*. at 876, italics original.)

In the case at bench, First American has not put forward evidence of the value of the liability exposure for the potential indemnity claim. The amount of $800,000 submitted on the ADR report arguably represents the amount sought by plaintiff for all causes of action against all parties and not only those pursued against First American for which it would seek indemnity from CCIS and Carter. The court requests further briefing from the parties on the value of the potential indemnity claim, including whether settling defendants would also owe a duty to indemnify First American for damages awarded on the cause of action for bad faith.

Thus, the court continues the hearing to Tuesday, June 28, 2022, to allow the parties to file supplemental briefing on the issues addressed herein.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 6/13/2022.
(Judge's initials) (Date)