

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 20

**Judge Sunil Kulkarni is hearing today's matters for
Judge Socrates Manoukian**

CALENDARS WILL BE HEARD IN DEPARTMENT 16

**(Because of an unexpected judge shortage, Judge Kulkarni will be hearing both
D16's and D20's matters on 11/14. So please be patient!)**

Thuy Otwell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2200

DATE: 11-14-23 TIME: 9 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in
accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court
3.1312.)**

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you
must appear virtually, please use video. To access the link, click on the below link or copy and paste into
your internet browser and scroll down to **Department 20**.

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to
obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your
motion. If moving papers are not filed within 5 business days of reserving the date, the date will be
released for use in other cases. Where to call for your hearing date: **408-882-2430** When you can call:
Monday to Friday, 8:30 am to 12:30 pm

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FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV423575	Michael Fagan vs Antony Frasersmith	Order of examination: parties to appear.
LINE 2	22CV399141	Norma Santoyo et al vs Trinity Financial Services, LLC	Defendants' demurrer was filed on 7/19/2023. Notice is proper. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The demurrer is sustained with 20 days leave to amend. Moving party to prepare formal order.

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LINE 3	23CV416446	Michael Carpenter vs General Motors, LLC	Defendant's Motion to Strike was filed on 7/28/2023. Notice is proper. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The motion to strike is granted with 20 days leave to amend. Moving party to prepare formal order.
LINE 4	23CV416446	Michael Carpenter vs General Motors, LLC	Defendants' demurrer was filed on 7/28/2023. Notice is proper. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The demurrer is sustained with 20 days leave to amend. Moving party to prepare formal order.
LINE 5	22CV405355	Renee Gardner VS David Arthur Walb, As Trustee Of The 2014 David Arthur Walb Trust, U/D/T December 16, 2014 ET AL	NOTICE OF SETTLEMENT OF ENTIRE CASE FILED Matter is Off Calendar
LINE 6	22CV405355	Renee Gardner VS David Arthur Walb, As Trustee Of The 2014 David Arthur Walb Trust, U/D/T December 16, 2014 ET AL	NOTICE OF SETTLEMENT OF ENTIRE CASE FILED Matter is Off Calendar

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LINE 7	22CV405355	Renee Gardner VS David Arthur Walb, As Trustee Of The 2014 David Arthur Walb Trust, U/D/T December 16, 2014 ET AL	NOTICE OF SETTLEMENT OF ENTIRE CASE FILED Matter is Off Calendar
LINE 8	23CV414045	Yesenia Zavaleta Vs Volkswagen Group Of America, Inc. Et Al	Motion to Compel. Scroll down for opinion. The Court will prepare the final order.
LINE 9	23CV417237	Pasha Seyed Kharazi vs Guadalupe Manriquez	Motion to Withdraw as Counsel. Plaintiff's counsel ordered to appear.
LINE 10	23CV418535	V2solutions, Inc. Vs TaxRise, Inc.	Motion for Change of Venue is GRANTED. Scroll down for opinion. The Court will prepare the final order.
LINE 11	23CV414864	Christina Vilchez et al vs Eisenhower Dansby et al	Petition for approval of compromise of minor's claim is GRANTED. The Court will sign the proposed orders.

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Calendar line 7

Case Name:

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23CV414045

Yesenia Zavaleta Vs Volkswagen Group Of America, Inc. Et Al

I. Background

This is a lemon law case. Plaintiff Yesenia Marlen Zavaleta (“Plaintiff”) alleges she purchased a 2018 Audi A5 (“Vehicle”) on April, 2, 2017 and that the vehicle was delivered to Plaintiff with serious defects and nonconformities to warranty and developed other serious defects and nonconformities to warranty. On or about May 11, 2023, Plaintiff propounded Requests for Production of Documents, Set One, on Defendant. On or about June 13, 2023, Defendant responded to Plaintiff’s RFPs. Defendant indicates that it has produced more than 790 pages of documents related to Plaintiff’s allegations and her vehicle, including its policy/procedures and training materials pertinent to the pre-litigation handling of Plaintiff’s repurchase/replacement request. Plaintiff seeks an order striking Defendant’s objections and compelling Defendant to provide further responses and documents.

II. Legal Standard

Discovery is generally permitted “regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that “the court shall limit the scope of discovery” if it determines that the burden, expense, or intrusiveness of that discovery “clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.” (Code Civ. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to “set forth specific facts showing good cause justifying the discovery sought by the demand.” (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.)

Plaintiff argues the Song-Beverly Consumer Warranty Act (“SBA”) renders documents pertaining to a plaintiff’s specific repair issues relevant, as well as those pertaining to similar, prior repair issues of other similarly situated vehicle owners. Plaintiff seeks evidence of similar, prior vehicle defects. In addition, Plaintiff argues that such evidence may be relevant to a finding of willfulness. With respect to willfulness, one court has opined that

“[a] decision made without the use of reasonably available information germane to that decision is not a reasonable, good faith decision.” (*Kwan v. Mercedes-Benz of North America, Inc.* (1996) 23 Cal.App.4th 174, 186.) Some factors the court (or jury) may consider when making a willfulness determination include:

1. Whether the manufacturer knew the vehicle was a lemon (*Lukather v. General Motors, LLC* (2010) 181 Cal. App. 4th 1041, 1051-52);
2. Whether the manufacturer or its representative was provided with a reasonable period of time or reasonable number of attempts to repair the vehicle (*Jensen v. BMW of N. Am., Inc.* (1995) 35 Cal.App.4th 112, 136);
3. Whether the manufacturer knew the vehicle had not been repaired within a reasonable time or after a reasonable number of attempts (*Jensen v. BMW of N. Am., Inc.* (1995) 35 Cal.App.4th 112, 136);
4. The lengths the manufacturer or its representative went through to and diagnose and repair the vehicle’s problems (*Ramos v. FCA US LLC* (2019) 385 F. Supp. 3d 1056, 1072);
5. Whether the vehicle usually operated normally while in the shop for diagnosis and repair (*Ramos v. FCA US LLC* (2019) 385 F. Supp. 3d 1056, 1072);
6. Whether the manufacturer had reasonable suspicions that the purchaser had tampered with the vehicle (*Ramos v. FCA US LLC* (2019) 385 F. Supp. 3d 1056, 1072);
7. Whether the manufacturer had a written policy on the statutory requirement to repair or replace the vehicle (*Jensen v. BMW of N. Am., Inc.* (1995) 35 Cal.App.4th 112, 136);
8. Whether the manufacturer knew the purchaser had requested replacement or restitution (*Lukather v. General Motors, LLC* (2010) 181 Cal. App. 4th 1041, 1051-52);
9. Whether the manufacturer actively discouraged the purchaser from requesting replacement or restitution (*Lukather v. General Motors, LLC* (2010) 181 Cal. App. 4th 1041, 1051-52);

10. Whether the manufacture relied on reasonably available and germane information when deciding whether to offer to replace or pay restitution (*Kwan v. Mercedes-Benz of North America, Inc.* (1996) 23 Cal.App.4th 174, 186);
11. Whether the purchaser made multiple unsuccessful requests for replacement or restitution (*Ramos v. FCA US LLC* (2019) 385 F. Supp. 3d 1056, 1072);
12. Whether the manufacturer's offer to pay restitution was a lowball offer or for an incorrect amount (*Ramos v. FCA US LLC* (2019) 385 F. Supp. 3d 1056, 1072).

A close study of the above categories reveals that the primary focus, even as it relates to wilfulness, is on the vehicle at issue in a particular case—not sweeping discovery regarding other customers' complaints. Plaintiff's citation to *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138 and *Doppes v. Bently Motors, Inc.* (2009) 174 Cal.App.4th 967 does not change this analysis. Neither of those cases directly addressed a trial court's discovery orders in a lemon law case. *Donlen* finds the trial court did not commit error when it denied the manufacturer's motion in limine to exclude evidence of other customer complaints about the same transmission model in plaintiff's vehicle at issue in that case. *Doppes* examined the trial court's granting of terminating sanctions against the manufacturer for its repeated failure to comply with the trial court's discovery orders. Neither opinion examines a trial court's need to weigh the amount at issue in any given case against the cost of expansive discovery sought, which this Court is called to do on a motion to compel. (Code Civ Proc § 2019.030(a)(2) ("The court shall restrict the frequency or extent of use of a discovery method. . . if it determines. . . The selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.").)

III. Analysis

a. Request to Compel Further Responses as to RFP 1-3 and 15-16 DENIED as Plaintiff Failed to Meet and Confer at All

Code of Civil Procedure ("CCP") section 2031.310(b)(2) states that a prerequisite for bringing a motion to compel further responses is a reasonable and good faith attempt to meet and confer regarding the issues presented by the motion. Plaintiff's June 16, 2023 meet and confer letter does not reference Requests 1-3 and 15-16, therefore Plaintiff's motion as to these requests fails and is DENIED.

b. Request to Compel Further Responses as to 4, 5, 7, 28, 34, and 35 is DENIED as Defendant has produced responsive documents

Defendant has produced pre-litigation communications between Plaintiff and defendant, repair orders for the Vehicle, diagnostic data retrieved from the vehicle, technical service bulletins pertaining to the alleged defects in the vehicle, the warranty/service history printout, the Warranty Booklet and the Purchase Agreement. In addition, Defendant has produced confidential documents regarding its policies/procedures and training materials pertaining to its handling of pre-litigation repurchase requests.

c. Requests to Compel Further Responses as to RFP 6, 29, 30, and 31, is

DENIED as Defendant lacks the ability to comply

Defendant has responded that a diligent search and reasonable inquiry has been made but that Defendant has never been in the possession, custody, or control of the requested documents. Plaintiff has not provided sufficient facts to establish good cause to compel production of documents for these RFPs and the motion related to RFP 6, 29, 30, and 31 is DENIED.

**d. Requests to Compel 32, 33, and 36 is DENIED as RFPs are
OVERBROAD**

Defendant objected to Plaintiff's RFP 32, 33, 36 and 37 as vague, ambiguous and unduly burdensome. Requests 32, 33, and 36 uses language "All DOCUMENTS". Plaintiff definition is overbroad and vague and includes private information of third parties.

Request 32 is not limited to vehicles of the same year, make, model of the Vehicle. As explained above, this is overbroad and burdensome. Furthermore, the RFP requests production of documents pertaining to repurchases/replacement for any of it vehicles and for *any reason*. Again, the Court agrees that this is overbroad and burdensome.

Thus, the Motion to Compel as to 33, 33, and 36 is DENIED.

**e. Request to Compel all remaining documents is DENIED WITHOUT
PREJUDICE without further meet and confer discussion**

Plaintiffs sent a meet and confer letter to Defendant and Defendant responded. However, given the issues raised in the papers, the Court DENIES the motion to compel WITHOUT PREJUDICE and orders a further substantive meet and confer discussion to address the remaining RFPs. This meet and confer must occur within 30 days of date of service. If, after the meet and confer discussion, there are still disputes, Plaintiff can refile a motion to compel relating to those disputes. (The 45-day discovery clock is tolled until 30 days following the final meet and confer discussion.)

The Court accordingly DENIES Plaintiff's motion to compel.

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23CV418535

V2solutions, Inc. Vs TaxRise, Inc.

Respondent Tax Rise, Inc. (“Tax Rise”) is a California Corporation with its principal (and only) place of business in Irvine, California. (Pet. At ¶ 2, Exh. G, Abdullah Decl at ¶ 3). Petitioner entered a contract with MIADVG, LLC in April 2021 (Pet. At ¶ 3). The contract contains an arbitration clause. (Abdullah Decl. at ¶ 2). Petitioner alleges that MIADVG, LLC and Respondent Tax Rise are alter egos of each other. (Pet. at ¶ 6). Respondent denies these allegations and has asserted affirmative defenses in its answer. Arbitration is currently pending between Petitioner and MIADVG in Santa Clara County. Petitioner is seeking to compel TaxRise’s participation in that arbitration. (Petition Exh. A ¶ 14.4).

Under CCP 1292.2, “any petition made after the commencement ... of arbitration shall be filed in ... the county where the arbitration is being or has been held.” However, TaxRise is not yet a party to that arbitration as that is the subject matter of the motion to compel. Therefore, CCP 1292 would apply which states, “any petition made prior to the commencement of arbitration shall be filed in a court having jurisdiction in: (a) The county where the agreement is to be performed or was made...(b) If the agreement does not specify a county where the agreement is to be performed and the agreement was not made in any county in this state, the county where any party to the court proceeding resides or has a

place of business ... (c) In any case not covered by subdivision (a) or (b) of this section, in any county in this state.”

Pursuant to CCP 395.5, proper venue is “in the county where the principal place of business of such corporation is situated.” As stated above, Tax Rise, Inc.’s residence and principal (and only) place of business is in Orange County, California. Defendant’s Motion for Change of Venue to Orange County is GRANTED. Moving party to prepare the formal order.

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