SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

(Dept 16 is now hearing cases that were formerly in Dept 2)

Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 02-15-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

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 16.
https://www.scscourt.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

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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV408993 Motion: Quash	JOSEPH DOE 7DC et al vs DOE 1 et al	Off calendar
LINE 2	23CV416455 Hearing: Demurrer	N. Charles Podaras vs Valerie Weirauch et al	FAC filed 1/10/24 rendering motion moot. This is off calendar
LINE 3	21CV388722 Motion: Summary Judgment/Adjudication	CHRIS MORITZ vs PACIFIC BELL TELEPHONE COMPANY et al	See Tentative Ruling. Court will issue the final order.
LINE 4	21CV392181 Motion: Compel	GERONIMO RAMIREZ vs DGDG 10, LLC dba CAPITOL BUICK GMC et al	See Tentative Ruling. Plaintiff shall file the final order.

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LINE 5	20CV368213 Hearing for Terminating or Alternatively issues	Katherine Gilson vs GS Almaden, LLC. et al	Plaintiff's motion is GRANTED in part and DENIED in part. Plaintiff filed a motion for sanctions claiming that Defendant has abused the discovery process. Plaintiff makes conclusory assertions, attaches hundreds of pages without reference to which documents relate to which claims, and brings up issues already dealt with by the court's orders of June 2022 and April 2023. It is true, however, that Defendants failed to comply with the parties' stipulation regarding providing access to 91 boxes of documents held in storage. According to plaintiff, and not specifically rebutted by Defendants, Defendants provided fewer than 91 boxes. It also appears that Defendants have not provided key records relating specifically to Plaintiff's apartment, claiming they are no longer available. As such the court orders that any document not produced or only partially produced due to objections or redactions beyond the objections and redactions allowed by the Court's orders of June 2022 and April 2023 shall be precluded from being introduced into evidence or referred to by Defendants. No monetary sanctions are granted, as many of Defendants' objections were substantially justified. Plaintiff shall file the final order.

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LINE 6	21CV384863 Hearing for Relief from Probate Rule	Jane Wyatt vs Rick Gomez, Jr.	The Court is inclined to grant the motion, but the notice of the motion does not appear proper. If moving party appears, the motion may be continued to allow for proper notice, or if moving party can show that notice is proper, the motion will be granted. If moving party fails to appear, the matter will go off calendar.

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

LINE 7	21CV389049 Motion: Vacate Order	Marianthi Gikkas vs Kaiser Santa Clara et al	Plaintiff stipulated to arbitration, lost on a motion for summary judgment before the arbitrator, and now seeks to vacate the order, claiming (1) the arbitration clause was unconscionable and illegal; (2) that Kaiser failed to disclose that its form was not in legal compliance; 3) the arbitrator exceeded his authority; and (4) by claiming in reply for the first time that there is no evidence that Plaintiff agreed to binding arbitration while covered by her original COBRA. As Defendant points out, a party cannot agree to arbitration, argue before that tribunal, lose and then claim that the case should not have been subject to arbitration. See *Kemper v. Schardt* (1983) 143 Cal.App.3d 557, 561 (where party never objected to the arbitrator's jurisdiction until after he lost, the court held that that party could not retry his case in another forum with the hope of a different result). As explained in *Lovret v. Seyfarth* (1972) 22 Cal.App.3d 841, 862, "[a] claimant may not voluntarily submit his claim to arbitration, await the outcome, and, if the decision is unfavorable, then challenge the authority of the arbitrators to act." (*Id*. at 860, quot. omitted.) Notably, Plaintiff does not even address this argument in reply. The motion is DENIED.
LINE 8			

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LINE 9			
LINE 10			
LINE 11			
LINE 12			

- oo0oo -

Calendar Line 3
Case Name: *Moritz v. Pacific Bell Telephone Company, et al.*
Case No.: 21CV388722

According to the allegations of the complaint, on November 11, 2020, plaintiff Chris Mortiz ("Plaintiff") stepped onto and fell through a utility cover and into a catch basin that had been improperly designed, constructed, maintained and placed by defendants Pacific Bell Telephone Company ("Pac Bell"), AT&T Services, Inc. ("AT&T"), Chang Ching Kin, June Kin and City of San Jose ("City") (collectively, "Defendants"), causing him to sustain injuries. (See complaint, ¶ 9.) Defendants knew or should have known about the dangerous condition created by the utility cover and catch basin being used on the subject premises as a latent dangerous condition in an area open and known and foreseeably to be used by the public. (See complaint, ¶ 10.)

On September 20, 2021, Plaintiff filed a complaint against Defendants asserting causes of action for:

1) Negligence;
2) Premises liability; and,
3) Negligence—duty to warn.[1]

Defendants Chang-Ching Kin and June Kin (collectively, "the Kins") move for summary judgment of Plaintiff's complaint on the ground that the causes of action lack merit because they neither had actual nor constructive knowledge of any defect in the subject utility box. On February 1, 2024, Plaintiff filed a non-opposition to the Kins' motion for summary judgment. Defendants Pac Bell and AT&T (collectively, "utility defendants") filed an opposition to the motion.

I. THE KINS' MOTION FOR SUMMARY JUDGMENT

Defendant's burden on summary judgment

"A defendant seeking summary judgment must show that at least one element of the cause of action cannot be established, or that there is a complete defense to the cause of action. … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72 (internal citations omitted; emphasis added); see also Code Civ. Proc. § 437c, subd. (p)(2) (stating that "[a] defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has show that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action… [o]nce the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto").)

[1] Chang-Ching Kin and June Kin (collectively, "the Kins") and Pac Bell and AT&T (collectively, "utility defendants") filed cross-complaints; however, neither cross-complaint is the subject of the instant motion.

"The 'tried and true' way for defendants to meet their burden of proof on summary judgment motions is to present affirmative evidence (declarations, etc.) negating, as a matter of law, an essential element of plaintiff's claim." (Weil et al., Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ¶ 10:241, p.10-91, *citing Guz v. Bechtel National Inc.* (2000) 24 Cal.4th 317, 334; emphasis original.) "The moving party's declarations and evidence will be strictly construed in determining whether they negate (disprove) an essential element of plaintiff's claim 'in order to avoid unjustly depriving the plaintiff of a trial.'" (*Id*. at § 10:241.20, p.10-91, *citing Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107.)

"Another way for a defendant to obtain summary judgment is to 'show' that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff 'does not possess and cannot reasonably obtain, needed evidence' (because plaintiff must be allowed a reasonable opportunity to oppose the motion.) Such evidence usually consists of admissions by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action." (*Id*. at ¶ 10:242, p.10-92, *citing Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)

The Kins meet their initial burden

"The elements of a cause of action for premises liability are the same as those for negligence." (*Jones v. Awad* (2019) 39 Cal.App.5th 1200, 1207.) "Accordingly, the plaintiff must prove, 'a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury.'" (*Id*., quoting *Beacon Residential Community Assn. v. Skidmore, Owings & Merrill LLP* (2014) 59 Cal.4th 568, 573.) "Because the owner is not the insurer of the visitor's personal safety [citation], the owner's actual or constructive knowledge of the dangerous condition is a key to establishing its liability." (*Ortega v. Kmart Corp*. (2001) 26 Cal.4th 1200, 1206; see also *Hall v. Rockcliff Realtors* (2013) 215 Cal.App.4th 1134, 1139-1140.) "[T]o impose liability for injuries suffered by an invitee due to [a] defective condition of the premises, the owner or occupier 'must have either actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discover the condition, which if known to him, he should realize as involving an unreasonable risk to invitees on his premises." (*Id*.) The Kins argue that the complaint lacks merit as to them because they had neither actual nor constructive knowledge of the allegedly dangerous latent condition.

In support of their argument, the Kins present the declaration of their gardener, Mauricio Vega ("Vega"), who states that he has trimmed the bushes near the subject utility box on a monthly basis for the past seven years, and has never noticed that the lid to the utility box was unstable or hazardous despite having to walk across or near the utility box as the bushes that he trims are located a few feet from the utility box. (See Vega decl. in support of Kins' motion for summary judgment, ¶¶ 1-3.) Vega also states that no person has ever complained about, tripped on, or been injured by the utility box before Plaintiff's alleged incident. (*Id*. at ¶ 4.) The Kins also present their own declarations and state that: their next door neighbors have been parking in their driveway since 2016 and have never reported the utility box to be unstable; Vega has performed gardening and yard maintenance for 20 years on a monthly basis, and has never noticed any instability or abnormality with the utility box despite having trimmed the bushes adjacent to the utility box; no pedestrian, causal passer-by,

guest, family member or other person has ever complained about, tripped on or been otherwise injured by the subject utility box prior to the subject incident. (See Chang-Ching Kin decl. in support of motion for summary judgment, ¶¶ 1-6; see also June Kin decl. in support of motion for summary judgment, ¶¶ 1-6.) The Kins also present a photo of the utility box and the subject area taken shortly after the subject incident indicating the placement and appearance of the utility box and its surrounding area and that the utility box is labeled with the words "AT&T USE 301035861 COVER HOOK ONLY" and the manufacturer "newbasis." (See Dahm decl. in support of motion for summary judgment ("Dahm decl."), exh. A.) The Kins also present portions of Plaintiff's deposition in which he testifies that he walked in the same area "every other day… from October 15, 2020 to November 11, 2020… typically… [with a] large German shepherd" and acknowledged the subject incident area as being represented in the photos of the utility box and its surrounding area. (See Dahm decl., exh. C, pp.40:16-25, 41:1-25, 42:1 and 25, 43:1-2 and 24-25, 44:1-25, 45:1-20.) The Kins also presents portions of the deposition of June Kin in which she acknowledges the photos of the utility box and its surrounding area and states that she does not know if the utility box is on her property. (See Dahm decl., exh. D, pp.31:9-24.) The Kins meet their initial burden and the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (See Code Civ. Proc. § 437c, subd. (p)(2).)

The utility defendants' objection number 1 to the Kins' "Fact Numbers 4, 9 and 14" is OVERRULED. This objection is neither an objection to evidence nor in the proper format required by Rule of Court 3.1354.

Plaintiff does not oppose the motion. Thus, the Kins' motion for summary judgment of Plaintiff's complaint against them is GRANTED.

The utility defendants filed an opposition and objections to the Kins' motion; however, they are neither the moving party nor the plaintiff and thus lack standing to oppose the motion pursuant to section 437c, subdivision (p)(2). Even if the utility defendants had standing to oppose the motion, they fail to demonstrate the existence of a triable issue of material fact.

The utility defendants present the declaration of Scott E. Buske, a professional engineer who testifies that "[m]ost likely plant debris and dirt from homeowner's property forced the lid nearest to the sidewalk to the right side of its enclosure, which allowed the lid to drop into the enclosure." (Buske decl. in opposition to motion for summary judgment, ¶ 6.) This conclusion is entirely speculative and lacking in foundation. The objection to this statement is SUSTAINED. (See *Sanchez v. Kern Emergency Medical Transportation Corp*. (2017) 8 Cal.App.5th 146, 155 (stating that "even when the witness qualifies as an expert, he or she does not possess a carte blanche to express any opinion within the area of expertise… an expert's opinion based on assumptions of fact without evidentiary support… or on speculative or conjectural factors… has no evidentiary value… and may be excluded from evidence… when an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an 'expert opinion is worth no more than the reasons upon which it rests'"); see also *Dee v. PCS Property Management, Inc*. (2009) 174 Cal.App.4th 390, 404 (stating same; also stating that "an expert's opinion that something could be true if certain assumed facts are true, without any foundation for concluding those assumed facts exist in the case before the jury, does not provide assistance to the jury because the jury is charged with

determining what occurred in the case before it, not hypothetical possibilities"); see also *Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1262–1263 (stating that "[a]n expert's opinion cannot be based on facts which find no support in the evidence or upon irrelevant and speculative matters"); see also *Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510 (stating that "the expert opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact… an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based"); see also *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117 (stating that "an expert's opinion that something could be true if certain assumed facts are true, without any foundation for concluding those assumed facts exist in the case before the jury, does not provide assistance to the jury because the jury is charged with determining what occurred in the case before it, not hypothetical possibilities…an expert's opinion based on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors [citation], has no evidentiary value [citation] and may be excluded from evidence"); see also *Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 524 (stating that "an expert opinion is worth no more than the reasons upon which it rests"); see also *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135 (stating that "[w]here an expert bases his conclusion upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon other experts, or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value… [and] the expert's opinion cannot rise to the dignity of substantial evidence").)

The utility defendant also present the declaration of Steven D. Epcar, an "expert in real estate and property issues," having "served in national and regional estate management, development, and investment firms for nearly thirty years." (Epcar decl. in opposition to motion for summary judgment ("Epcar decl."), ¶ 2.) Epcar's declaration gives his opinions as to the location of the utility box, that the Kins have constructive notice that the box is on their property, their obligation to maintain the area around the utility box, that landscaping activities of the gardener and a drain that is close to the box would require inspection and maintenance of the area around and on top of the utility box, and the photograph shows build-up of foreign landscaping materials which likely happened over many years and could have been prevented by reasonable routine inspection, maintenance and cleaning of the area around the utility box lid. (See Epcar decl., ¶ 4(a)-(b).) Like the Buske declaration, Epcar's statements are without proper foundation and are speculative. The Kins' objection to paragraph 4 of the Epcar declaration is SUSTAINED.

The utility defendants also present the declaration of Laurence Neuman who states that he "initially found the lid with dirt and debris distributed between lid and upper portion of the utility box such that the lid sat centered and would not rotate even if directly stepped on with more than 200 pounds of weight. It was only after this material was removed and the lid placed in an off-centered position to simulate dirt and debris in the corner that rotated. The lid was then rotated when stepped on." (Neuman decl., ¶ 9.) Here, this evidence does not demonstrate a triable issue of material fact as to whether the Kins had constructive or actual notice that the lid was defective. After all, Mr. Neuman admits that when he stepped on the lid as he found it, it did not rotate even with more than 200 pounds of weight. Thus, it appears that there were no indication that an inspection of the area would give rise to actual notice to

any person that the lid was defective unless the debris and other material was removed and then placed in an off-centered position.

The utility defendants also argue that the Kins "cannot avoid liability by arguing that they did not have notice of the unsafe condition with the utility box's lid because, more likely than not, they created the unsafe condition with the utility box's lid through their negligent failure to inspect and maintain the surrounding area… [and] created the unsafe condition with the utility box's lid by causing dirt, gravel, and other debris to accumulate around and on top of the box." (Utility defs.' opposition to motion for summary judgment ("Opposition"), p.7:4-15.) For reasons stated above, the utility defendants failed to present admissible evidence to support these assertions so as to demonstrate the existence of a triable issue of material fact.

Finally, the utility defendants argue that San Jose Municipal Ordinance section 14.16.2200(b) requires property owners to repair and maintain sidewalk areas. Here, the utility defendants' expert essentially admits that there was no notice that the utility box was defective at the time Plaintiff stepped on the lid, as the expert could directly step on the lid and there was no rotation of the lid with more than 200 pounds of weight. The requirement on property owners pursuant to the San Jose Municipal Ordinance does not demonstrate the existence of a triable issue of material fact.

The Court did not rely on the Kins' objections numbers 3 and 4. However, these objections are to additional material facts, which are not evidence. The Kins' objections numbers 3 and 4 are OVERRULED.

Accordingly, even if the utility defendants had standing to oppose the Kins' motion for summary judgment, the utility defendants nevertheless fail to demonstrate the existence of a triable issue of material fact, and the Kins' motion for summary judgment of Plaintiff's complaint against them is GRANTED.

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Calendar line 4
Case Name: *Ramirez v. DGDG 10, LLC, et al.*
Case No.: 21CV392181

Factual and Procedural Background

This is an action for violations of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.) ("Song-Beverly Act") brought by Plaintiff Geronimo Ramirez aka Riley Geronimo Ramirez ("Plaintiff") against defendants DGDG 10, LLC, dba Capitol Buick GMC ("DGDG"), General Motors, LLC ("Defendant" or "General Motors"), and Does 1 through 10, inclusive.

Plaintiff alleges that on March 31, 2019, he entered into a warranty contract with Defendant and purchased a defective 2019 GMC Sierra 1500 ("Subject Vehicle") that was manufactured and warranted by Defendant. (Complaint, ¶¶ 16-18, 29, 31.) In connection with this purchase, Plaintiff received an express written warranty providing that Defendants would repair the Vehicle in the event it developed a defect during the warranty period. Plaintiff also received an implied warranty of fitness. (*Id.,* ¶¶ 16, 39, Ex. 1.) When the warranty period was in effect, the Subject Vehicle had nonconformities including, but not limited to, electrical, transmission, engine, brakes, and suspension issues which substantially impaired the use, value, and/or safety of the Subject Vehicle. (*Id.,* ¶ 18.) Defendant failed to cure these defects after a reasonable number of attempts. (*Id.,* ¶¶ 19-20.) Additionally, Defendant failed to replace the Subject Vehicle or make restitution to Plaintiff as required by the Song-Beverly Act. (*Id.,* ¶¶ 21-25.)

On December 6, 2021, Plaintiff filed the operative Complaint, asserting the following three causes of action:

1) Violation of Song-Beverly Act – Breach of Express Warranty [against General Motors and Does 1 through 10];
2) Violation of Song-Beverly Act – Breach of Implied Warranty [against General Motors and Does 1 through 10]; and
3) Negligent Repair [against Capitol Buick GMC and Does 1 through 10]

On September 19, 2023, Plaintiff served written discovery and a Person Most Qualified ("PMQ") and Custodian of Records deposition notice on Defendant. (Motion, p. 2, ln. 5.) The PMQ deposition notice sought information about various categories, including four matters for examination and six requests for document production. (Motion, p. 3, lns. 14-21.) Plaintiff's matters for examination included: 1) Defendant's "pre-litigation analysis" on "whether the Subject Vehicle should be repurchased," 2) "all repairs and service performed on the Subject Vehicle," 3) Defendant's policies, procedures for determining whether a vehicle qualifies for a repurchase or replacement per the Song-Beverly Act, and 4) Defendant's training for evaluating a pre-litigation repurchase request. (*Ibid*.) Plaintiff also requested production of related documents.

Motion to Compel PMQ Deposition Testimony and Document Production

Currently before the Court is Plaintiff's motion to compel Defendant to produce its PMQ and "Custodian of Records" concerning four matters for examination and six requests for

document production outlined below. Plaintiff's motion was filed on October 24, 2023. Defendant filed an opposition on February 1, 2024. Plaintiff filed reply papers on February 7, 2024. Trial is set for March 4, 2024.

Legal Standard

"If, after service of a deposition notice, a party to the action, without having served a valid objection under Code of Civil Procedure section 2025.410, fails to appear for the examination or to produce documents for inspection, 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 described in the deposition notice." (See Code Civ. Proc., § 2025.450, subd. (a).)

Meet and Confer

As a preliminary matter, Plaintiff claims that before he filed his motion, Defendant had failed to properly meet and confer. Specifically, Plaintiff "made numerous attempts to meet and confer via email and telephone regarding possible deposition dates," yet, Defendant failed to respond with "alternative dates of availability." (Motion, p. 2: Declaration of Phil A. Thomas in Support of Motion to Compel Deposition ("Thomas Decl.").)

A motion to compel compliance with a deposition notice "shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, electronically stored information, or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code Civ. Proc., §2025.450, subd. (b)(2).)

"A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." (Code Civ. Proc., §2016.040.) A reasonable and good faith attempt at informal resolution requires that the parties present the merits of their respective positions with candor, specificity, and support. (*Townsend v. Super. Ct.* (1998) 61 Cal.App.4th 1431, 1435, 1439.) The level of effort at informal resolution which satisfies the "reasonable and good faith attempt" standard depends upon the circumstances of the case. (*Obregon v. Super. Ct.* (1998) 67 Cal.App.4th 424, 431.)

In Opposition, Defendant alleges Plaintiff "has not satisfied his burden to meet and confer with GM in good faith to attempt to resolve" the instant discovery dispute. (Opp., p. 4.) Specifically, Defendant claims Plaintiff "never attempted to address the objections or contested categories informally before filing the present motion." (Opp., p. 1.) It further alleges that despite Defendant serving Plaintiff with "full and complete responses and objections," and being willing to produce a PMQ deposition for *some* categories listed by Plaintiff, Plaintiff "refused" to engage with GM. Defendant further asserts Plaintiff's letter dated, October 3, 2023, "simply demanded" Defendant withdraw its objections and provide a witness as to *all* categories. (*Id.* at p. 2.) Defendant contends Plaintiff's emails and letters concerning a single potential date to hold the PMQ deposition, without acknowledging Defendant's objections and responses regarding the deposition date, demonstrates Plaintiff's lack of "substantive" meet and confer efforts. (*Id.* at 2-4.)

In his Reply, Plaintiff alleges his October 3, 2023 letter addressed the substance of Defendant's meritless objections. Plaintiff had sent additional emails addressing the substance of Defendant's allegations, and offered to meet and confer by phone, to no avail. Plaintiff further contends Defendant failed to respond despite Plaintiff's numerous attempts to contact opposing counsel. (Reply, p. 3; Thomas Decl., Ex. D.)

In this case, Plaintiff states Defendant failed to meet and confer despite Plaintiff's attempts to do so on multiple occasions, namely, by sending letters to Defendant and making multiple phone calls. Plaintiff has attached a declaration, and accompanying exhibits, demonstrating letters and emails were sent on the dates specified in her motion and reply. (Thomas Decl, pp. 1-2.) Although Defendant provides a declaration describing its attempts to meet and confer with Plaintiff, it does not provide the Court with exhibits of its alleged replies to Plaintiffs' letters and emails. (Declaration of Arash Yaraghchian in Support of Defendant's Opposition to Plaintiff's Motion to Compel Deposition, pp. 1-3.) Defendant concedes that Plaintiff did attempt to meet and confer. However, Defendant asserts the meetings were unsuccessful and lacking in substance because Plaintiff "simply demanded" a specific deposition date. Given the documented emails, letters, and phone calls Plaintiff has made, the court finds that Plaintiff sufficiently met and conferred with Defendant before filing his motion to compel. Any further meet and confer efforts would be fruitless.

Good Cause Requirement & Relevancy/Overbreadth/Burdensome

Code of Civil Procedure section 2025.010 provides that a party may obtain discovery by taking a deposition "of any person" which includes "a natural person, an organization such as public or private corporation, a partnership, an association, or a governmental agency." Where a party seeks to depose a corporation, Code of Civil Procedure section 2025.230 directs that "the deposition notice shall describe with reasonable particularity the matters on which examination is requested" and "the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent."

To compel the production of documents requested in a deposition notice, Plaintiff is required to "set forth specific facts showing good cause justifying the production." (See Code Civ. Proc., § 2025.450, subd. (b)(1).) The moving party establishes good cause by showing: (1) relevance to the subject matter of the case; and (2) specific facts justifying discovery. (*Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98 (*Kirkland*) [the party who seeks to compel production has met his burden of showing good cause simply by a fact-specific showing of relevance].) Discovery is allowed for any matters that are not privileged and relevant to the subject matter, and a matter is relevant if it appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010.) Moreover, for discovery purposes, information is "relevant to the subject matter" if it might reasonably assists a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Gonzalez v. Sup. Ct.* (1995) 33 Cal.App.4th 1539, 1546.)

Matters for Examination

Plaintiff requests that Defendant provide its PMQ for deposition on the following topics:

Category No. 1: "General Motors LLC's pre-litigation analysis as to whether the 2019 GMC SIERRA 1500, VIN: 1GTU8DED3KZ135775 should be repurchased."

Category No. 2: "All repairs and service performed on the 2019 GMC SIERRA 1500, VIN: 1GTU8DED3KZ135775."

Category No. 3: "General Motors LLC's policies and procedures for determining whether a vehicle qualifies for a repurchase or replacement under the Song-Beverly Act."

Category No. 4: "General Motors LLC's training for evaluating a pre-litigation repurchase request under the Song-Beverly Act."

Documents to be Produced

Plaintiff also requests that Defendant produce the following categories of documents:

Request No. 1: "YOUR entire pre-litigation file regarding the SUBJECT VEHICLE"

Request No. 2: "YOUR pre-litigation communications with Plaintiff(s) regarding the SUBJECT VEHICLE."

Request No. 3: "YOUR policies and procedures for determining whether a vehicle qualifies for a repurchase under the Song-Beverly Act."

Request No. 4: "All training materials provided to YOUR employees or YOUR call-center agents regarding the handling of pre-litigation consumer requests for a vehicle repurchase in California."

Request No. 5: "All DOCUMENTS evidencing your pre-litigation evaluation of whether the SUBJECT VEHICLE qualified for a repurchase under the Song-Beverly Act."

Request No. 6: "All DOCUMENTS that YOU reviewed in YOUR pre-litigation evaluation of whether the SUBJECT VEHICLE qualified for a repurchase under the Song-Beverly Act."

In his moving papers, Plaintiff argues that he timely served Defendant with a notice of deposition, and notice was proper because the matters for examination were "reasonably particularized." (Motion, p. 5.) Plaintiff asserts, the matters for examination, outlined *supra,* are relevant to his claims because they assist in determining not only whether a violation of the Song-Beverly Act occurred but whether Defendant acted in good faith or whether it willfully refused to comply with its obligations under the Song-Beverely Act when it failed to provide replacement or refund for the Subject Vehicle. (*Id.* at p. 7.) Plaintiff also asserts that Defendant's policies and procedures are relevant to show whether Defendant's conduct lacked good faith. (*Id.* at 8.)

Defendant indicates a willingness to provide PMQ testimony and documents related to the Subject Vehicle itself. Specifically, Defendant agreed to produce its PMQ for category one and two testimony. Defendant argues Plaintiff's motion seeks testimony unrelated to any repairs to the Subject Vehicle under warranty, and that his request for deposition regarding internal policies and procedures concerning employee training are irrelevant to Plaintiff's

specific claim on Defendant's failure to repair Subject Vehicle. (*Ibid.*) It further asserts that Breach of Warranty claims are unique to the consumer and his or her vehicle.

In his Reply, Plaintiff argues Defendant fails to provide case law to support its contention Plaintiff's requests are overly broad. Plaintiff reiterates that the listed categories of examination are relevant to understanding the manner in which Defendant determined the Subject Vehicle was qualified for reimbursement. (Reply, p. 2.) Plaintiff reiterates that categories involving repairs to the Subject Vehicle, Defendant's subsequent investigation, and response to Plaintiff's repurchase requests, are relevant in determining whether the sale was conducted in good faith. Plaintiff asserts that Defendant exaggerates its burden in producing the PMQ and requested documents. Plaintiff argues Defendant has not asserted any "actual injustice" created by producing its PMQ. (Reply, pp. 2-3.)

Testimony and documents relating to the Subject Vehicle are relevant to establishing a violation of the Song-Beverly Act. Plaintiff's PMQ deposition and requests for production pertaining to the Subject Vehicle, are neither irrelevant nor overbroad. In the discovery context, information is relevant "if it might reasonably assist a party in *evaluating* its case, *preparing* for trial, or *facilitating* a settlement. . . . The scope of discovery extends to *any information* that reasonably might lead to other evidence that would be admissible at trial." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611 (*Lipton*) [emphasis original].) In its responses to Plaintiff's notice of deposition, Defendant agreed to produce its PMQ to "testify about whether GM received a request from Plaintiff to repurchase the SUBJECT VEHICLE and, if so, how GM responded." (Thomas Decl., p. 5.) Accordingly, the court finds that Plaintiff has met his burden of establishing good cause with respect to categories one and two as well as requests for documents numbers one, two, five, and six, which all relate specifically to the Subject Vehicle.

Plaintiff contends that the information requested in the categories concerning Defendant's policies regarding repair, replacement, and repurchase will provide evidence of willfulness relevant to the issue of civil penalties. Plaintiffs are permitted to pursue penalties for willful violations of the Song-Beverly Act and thus, evidence of Defendant's willful violation of the Act supports a civil penalty. (See *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1104.)

Pursuant to Civil Code section 1794, subdivision (c), if a purchaser of a vehicle establishes that the failure to comply with the provisions of the Song-Beverly Consumer Warranty Act was willful, the judgment may include a civil penalty not to exceed two times the amount of actual damages. A violation is not considered "willful" if "the defendant's failure to replace or refund was the result of a good faith and reasonable belief that facts imposing the statutory obligation were not present." (*Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 185 [e.g. manufacturer reasonably believed that product conformed to warranty].) Among the factors to be considered are: (1) whether the manufacturer knew the vehicle had not been repaired within a reasonable period or after a reasonable number of attempts, and (2) whether the manufacturer has a policy on the requirement to repair or replace. (*Jensen v. BMW of North America* (1995) 35 Cal.App.4th 112, 136, see also *Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 186 [whether Defendant had a policy implementing the provisions of the Song-Beverly Act may be relevant to determining whether Defendant acted in good faith.].)

While testimony concerning the corporate policies for repair, replacement, and repurchase of vehicles does not appear to be relevant to Defendant's liability for any specific defect in the subject vehicle or for failing to repair or repurchase, it may constitute circumstantial evidence of willfulness. As Plaintiffs have stated, information regarding internal policies on how Defendant handles both "repurchase requests" and Song-Beverly complaints are relevant to the issue of willfulness. Plaintiff has established the good cause for category 3 and request 3.

Plaintiff has failed to establish relevance for category 4 and request 4, the training materials. This request is DENIED.

Defendant contends that the discovery requests at issue improperly seek items that qualify as trade secrets. "The Uniform Trade Secret Act (Civ. Code, § 3426 et seq.) defines a 'trade secret' as 'information, including a formula, pattern, compilation, program, device, method, technique, or process, that: [¶] (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.' (Civ. Code, § 3426.1, subd. (d).)" (*Global Protein Products, Inc. v. Le* (2019) 42 Cal.App.5th 352, 367.)

The party claiming a trade secret privilege has the burden of establishing its existence. (*Bridgestone/Firestone, Inc. v. Sup. Ct.* (1992) 7 Cal.App.4th 1384, 1393.) "Either party may propose or oppose less intrusive alternatives to disclosure of the trade secret, but the burden is upon the trade secret claimant to demonstrate that an alternative to disclosure will not be unduly burdensome to the opposing side and that it will maintain the same fair balance in the litigation that would have been achieved by disclosure." (*Bridgestone/Firestone, Inc. v. Sup. Ct., supra,* 7 Cal.App.4th at p. 1393.)

Here, Defendant objects to all four categories for deposition and all six requests on the ground that they seek information covered by the trade secret privilege. In its Separate Statement, through the use of boilerplate objections, Defendant argues that Plaintiff's requests impermissibly lead to the production of trade secrets. (Opp., p. 7.) Specifically, it asserts plaintiff is impermissibly requesting "wholesale disclosure" of Defendant's confidential and internal information, which would put it at a competitive disadvantage in the marketplace. The party claiming a trade secret privilege has the burden of establishing its existence. (*Bridgestone/Firestone, Inc. v. Sup. Ct.* (1992) 7 Cal.App.4th 1384, 1393.) Defendant has failed to meet this burden, and instead asserts broad conclusions. However, Plaintiff is willing to enter into a protective order. Accordingly, Defendant and Plaintiff are ordered to meet and confer regarding the terms of an appropriate protective order, and shall stipulate to a protective order consistent with the terms of the Model Confidentiality Order published by the Complex Division of the Santa Clara County Superior Court, that includes an attorney's eyes only (AEO) provision, if desired by Defendant. The objection based on trade secret privilege is overruled.

Defendant also provides boilerplate objections to Plaintiff's requests for production and categories of testimony, on grounds that they contain work-product and information subject to attorney-client privilege. (Def. Objections., p. 2.) However, Defendant makes no effort to explain or justify these objections in its opposition, objections, or separate statement. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 ["The party claiming the

privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship. [Citations.]".)

All Other Objections

Defendant objects to the entirety of Plaintiff's requests and categories on the grounds that they are ambiguous, vague, expensive, and burdensome Defendant's boilerplate objections do not sufficiently address how Plaintiff's requests for production are vague and ambiguous. In its objections, Defendant simply highlights terms in each request and category, concluding they are "vague and ambiguous," without stating more. (See *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 [burden on responding to party justify any objection].) Unless the categories and requests are totally unintelligible, Defendant must respond in good faith as best as it can. (See *Deyo v. Killbourne* (1978) 84 Cal.App.3d 771, 783.) Additionally, Defendant fails to explain or justify its objection on the grounds that Plaintiff's requests are expensive, in its opposition or separate statement. Thus, these objections are overruled. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 (*Williams*) ["trial court 'shall limit the scope of discovery if it determines that the . . . expense . . . of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.' . . . However, as with other objections . . . the party opposing discovery has an obligation to supply the basis for this determination"].) Furthermore, while Defendant objects to each of Plaintiff's requests on the ground that its burdensome, it fails to provide any detailed information showing the specific categories and requests for documents are burdensome. Consequently, Defendant fails to justify its objections. (See *Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-221 (*Coy*) [if a timely motion to compel has been filed, the burden is on responding party to justify any objection].)

Request for Monetary Sanctions

Plaintiff seeks monetary sanctions pursuant to Code of Civil Procedure section 2025.450, subdivision (g)(1), which provides:

> If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Plaintiff asserts Defendant failed to respond to Plaintiff's meet and confer efforts despite providing a date for the deposition. Furthermore, Defendant failed to produce a PMQ to testify at its properly noticed deposition. (Motion, p. 8.) Plaintiff argues Defendant's failure to both respond to the notice and attend the deposition was willful, and warrants the imposition of monetary sanctions in the amount of $2,310. (See Thomas Decl., pp. 2-3.)

Defendant argues that Plaintiff's request for monetary damages is "groundless," reasserting Plaintiff's lack of substantial meet and confer efforts. (Opp., p. 8.) Defendant concludes that sanctions should only be reserved for "blatant discovery misconduct." (*Ibid.*) Defendant does not cite any authority for this proposition. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [a point asserted without citation to authority may be disregarded].)

It argues that Plaintiff should be sanctioned because Defendant had to oppose a "procedurally defective" and "substantively bereft motion." (*Ibid.*) Defendant has not made a code-compliant request for monetary sanctions. Accordingly, the court will not award sanctions to Defendant.

In his Reply, Plaintiff contends that Defendant "delayed" producing a deponent despite stating a willingness to do so. (Reply, p. 5.) Plaintiff had to "essentially beg" Defendant for dates of availability. (*Ibid.*) Plaintiff asserts Defendant is engaging in "a repeated pattern" of willful disregard to frustrate and delay the critical discovery process. (*Ibid.*)

Plaintiff has made a code-compliant request for monetary sanctions and, as the prevailing party, Plaintiff is entitled to monetary sanctions unless Defendant acted with substantial justification or imposition of sanctions would be unjust. Defendant was only substantially justified in opposing category and request #4. Plaintiff seeks a total of $2,310 in monetary sanctions against Defendant and its counsel of record. The amount is based on two hours preparing the motion, an anticipated two hours reviewing Defendant's opposition, and an anticipated two hours drafting a reply to the opposition. (*Ibid.*) Additionally, the amount includes a $60 fee for filing the instant motion. Plaintiff's counsel bills at $450 per hour. The Court, however, does not award anticipated expenses. (See *Tucker v. Pacific Bell Mobile Services* (2010) 186 Cal.App.4th 1548, 1551 [the court awards sanctions only for expenses actually incurred, not for anticipated expenses].) Thus, the Court will reduce the amount of monetary sanctions for anticipatory time and for the one warranted objection. Defendant shall pay $750 to Plaintiffs.

Defendant shall make its PMQ available for deposition within 10 days of the final order. Defendant shall pay sanctions of $750 to Plaintiff within 10 days of the final order. If desired by Defendant, Defendant and Plaintiff shall stipulate to a protective order consistent with the terms of the Model Confidentiality Order published by the Complex Division of the Santa Clara County Superior Court, that includes an attorney's eyes only provision, within 7 days of the final order.

Plaintiff shall file the final order.

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