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

**Department 10**
**Honorable Frederick S. Chung**

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

**DATE: December 14, 2023 TIME: 9:00 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 courthouse is open:** Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

***New information* (please read)**: To set future motion hearings, you no longer need to file your motion before receiving a hearing date. Phone lines are now open for you to call and reserve a hearing date *before filing and serving* your motion. Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve your date. This will obviate the need to file and serve a separate amended notice at a later time. Please note: if your motion papers are not filed within five business days of reserving the hearing date, the date will be released to other cases.

**CourtCall is no longer available**: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

**Recording is prohibited**: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

**Court reporters**: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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| LINE # | CASE # | CASE TITLE | RULING |
|---|---|---|---|
| LINE 1 | 22CV395989 | Sisi Xu et al. v. Bethany Liou et al. | Continued order of examination: parties to appear ***in person*** in Department 10. |
| LINE 2 | 22CV395989 | Sisi Xu et al. v. Bethany Liou et al. | Continued order of examination: parties to appear ***in person*** in Department 10. |
| LINE 3 | 22CV395989 | Sisi Xu et al. v. Bethany Liou et al. | Continued order of examination: parties to appear ***in person*** in Department 10. |
| LINE 4 | 2015-1-CV-285674 | Angie Elconin v. Thanh Ha Bui | Order of examination: parties to appear. |
| LINE 5 | 20CV374661 | Ioan Pop v. Ronald Howard Kelley | Click on LINE 5 or scroll down for ruling. |
| LINE 6 | 20CV369914 | Comaper Corporation v. Antec, Inc. | Motion to compel answers to post-judgment interrogatories: notice appears to be proper, and the motion is unopposed. The court GRANTS the motion and directs the moving party to prepare the proposed order. |
| LINE 7 | 22CV403992 | Alwyn Martin v. Steves Chevrolet-Buick, Inc. et al. | Click on LINE 7 or scroll down for ruling. |
| LINE 8 | 23CV413760 | Wells Fargo Bank, N.A. v. Viet D. Troung | Motion to deem unanswered RFAs admitted: notice is apparently proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. Moving party to prepare the proposed order. |
| LINE 9 | 19CV342695 | Justin Pewsey v. FCA US, LLC, et al. | Click on LINE 9 or scroll down for ruling. |
| LINE 10 | 22CV402309 | Christopher James Castillo v. Carlos Gonzales | Motion for entry of default judgment: notice is not proper. Parties to appear in Department 10 to address the notice and service issues in this case. |

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|---|---|---|---|
| LINE 11 | 23CV415989 | Feit Electric Co., Inc. v. Lumileds, LLC | OFF CALENDAR, per the court's December 7, 2023 order on the parties' stipulation. |
| LINE 12 | 23CV415989 | Feit Electric Co., Inc. v. Lumileds, LLC | OFF CALENDAR, per the court's December 7, 2023 order on the parties' stipulation. |

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**Calendar Line 5**
**Case Name:** *Ioan Pop v. Ronald Kelley*
**Case No.:** 20CV374661

This is an action arising from an automobile collision brought by plaintiff Ioan Pop against defendant Ronald Kelley. Pop filed the complaint on December 14, 2020, alleging a single cause of action for negligence. Both Pop and Kelley have since past away, in March 2023 and April 2023, respectively.

Kelley's counsel has now filed a motion for judgment on the pleadings ("JOP motion"), arguing that because the named parties in this action are now deceased and no representative action has commenced, the complaint cannot state a cause of action. (Code Civ. Proc., § 438 subd. (c)(1)(B)(2).) Although Pop passed away on March 7, 2023, counsel moved slowly to amend the complaint with the proper parties, waiting until September 29, 2023 to file a motion for leave to amend. That motion is now on file and awaiting a February 20, 2024 hearing.

Kelley is correct that the complaint must be amended. Pop has now filed a proposed amendment. Accordingly, the court GRANTS the JOP motion with 30 days' leave to amend. (Code Civ. Proc., § 438, subd. (d).) In light of this ruling, the court also takes the February 20, 2024 hearing on the motion for leave to amend OFF CALENDAR, as it is now MOOT.

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**Calendar Line 7**
**Case Name:** *Alwyn Martin v. Steves Chevrolet-Buick, Inc. et al.*
**Case No.:** 22CV403992

This is a "lemon law" case under the Song-Beverly Consumer Warranty Act. Plaintiff Alwyn Martin ("Martin") moves to compel further responses to document requests against defendant General Motors LLC ("GM"). The court DENIES the motion, and it also DENIES Martin's request for monetary sanctions.

First, the motion seeks further responses to Requests Nos. 37-41, which call for documents sufficient to identify the "OBDII codes," vehicle symptom codes," "vehicle component repair codes," "customer complaint codes," and "labor operation codes" for the 2017 GMC Sierra 1500. Martin points out that "Plaintiff's counsel has several hundred cases pending against Defendant and Defendant's counsel, and has litigated hundreds of others" involving these issues. (Memorandum of Points and Authorities at p. 3:2-3.) This court has quite a few of those cases. In two of them, this same issue was raised, and the court posted the following tentative ruling in both cases (on April 24, 2023 and on August 16, 2023):

> The court is not persuaded that the production of these documents would be unduly burdensome for GM. Nevertheless, the court is inclined to deny the motion as to these RFPs, as the court does not see how these codes are relevant or reasonably calculated to lead to the discovery of admissible evidence . . . . Plaintiff says that these codes "are essential to understanding many" of the documents produced (or to be produced) by Defendant GM, but there is no further explanation as to how these codes are actually needed to decipher GM's documents, especially in connection with the issues in *this* case (as opposed to other cases against GM). The court has reviewed the briefs and separate statements submitted by both sides for the motion, but none of these papers provide any elaboration as to why these codes are "essential" (or not).
>
> The court invites the parties to appear to address this issue. A specific example or illustration would be helpful. In the absence of a better explanation as to the essential nature of these codes, the court will deny the motion, as well as the request for monetary sanctions.

(See Santa Clara County Superior Court Case No. 21CV391989 and Santa Clara County Superior Court Case No. 22CV396285.) In both of these cases, the court invited the plaintiff and plaintiff's counsel (the same counsel in this case) to provide a more specific explanation as to how these codes are needed to decipher GM's documents in the case at bar, and the court specifically suggested supplemental briefing to provide that explanation. In both cases, plaintiff's counsel failed to submit any supplemental briefing, and the court ultimately denied the motions.

Because the same sequence is playing out here with the same boilerplate motions filed by plaintiff's counsel, the court DENIES the motion to compel as to Requests Nos. 37-41.

As for Requests Nos. 16, 19-32, and 45-46, Martin argues that even though GM has now produced responsive documents, it needs to "serve verified supplemental responses to Plaintiff's RFPs that identify which documents are provided in response to each of Plaintiff's

requests, as required by § 2031.280(a)." The court disagrees with Martin's interpretation of section 2031.280, subdivision (a). Under that statute: "Any documents or category of documents produced in response to a demand for inspection . . . shall be identified with the specific request number to which the documents respond." The court reads this as requiring a producing party to identify, *with the document production*, how the production is organized in accordance with the document requests. The court does not read this as requiring a producing party to serve a "verified supplemental response" to the document requests. Thus, as long as the producing party provides enough information to the receiving party to allow the receiving party to understand how the production responds to the document requests, that is sufficient. It can be in the form of a list or table, or even a notation on the documents themselves (e.g., on the Bates numbers). Martin cites no authority for the proposition that a separate "verified" response is required.

In other words, this issue goes to the adequacy of GM's production; it does not go to the adequacy of GM's written responses, and so a *motion to compel further responses* under Code of Civil Procedure section **2031.310** is not the proper vehicle with which to raise this issue. Rather, the proper vehicle is a *motion to compel compliance* under Code of Civil Procedure section **2031.320**. Because the present motion has been brought under section 2031.310 (see Notice of Motion and Motion), it must be DENIED.

The court orders the parties to meet and confer about a proper index, table, or other identification of GM's production "with the specific request number to which the documents respond," in accordance with section 2031.280, subdivision (a). If the parties are unable to resolve this issue on their own, then Martin may file a motion to compel compliance under section 2031.320.

As the motion is denied, the court also denies Martin's request for monetary sanctions.

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**Calendar Line 9**
**Case Name:** *Justin Pewsey v. FCA US, LLC, et al.*
**Case No.:** 19CV342695

This is a "lemon law" case under the Song-Beverly Consumer Warranty Act. Plaintiff Justin Pewsey ("Pewsey") brings this motion for attorney's fees and costs against defendants FCA US, LLC ("FCA") and Mathew Enterprise, Inc. (the latter of which does business as "Stoneridge Chrysler Jeep Dodge") (collectively, "Defendants"). After litigation and extensive back-and-forth negotiations over the course of two and a half years, the parties reached a settlement whereby FCA would pay Pewsey $38,000 *and* allow Pewsey to retain possession of his 2014 Dodge Ram 5500 truck. Pewsey now seeks attorney's fees in the amount of $102,220.50 plus $9,980.90 in costs.

The court GRANTS the motion in large part and DENIES it in small part. There is no dispute that Pewsey is entitled to attorney's fees under the Song-Beverly Act; the only dispute between the parties is over the amount of those fees. The court finds that Pewsey's counsel's billing rates are reasonable for this type of case ($300-$625 per hour), particulary when compared with other counsel who work on similar cases. In addition, although the total number of hours expended on this case is substantial (over 200 hours), it is still within the range of reasonableness for a case that took two and a half years to resolve. The court finds that Pewsey's motion sets forth a proper application of the lodestar method for determining attorney's fees here.

Defendants raise a number of arguments in opposition to the motion, most of which are unavailing.

First, Defendants argue that Pewsey's counsel spent an "excessive" amount of time billing for discovery. The court is not persuaded by these vague and generalized attempts to split hairs. 1.5 hours to draft 137 requests for admissions, 1.7 hours to draft 138 requests for production of documents, and 0.8 hours to draft 65 special interrogatories are not excessive amounts of time on their face. While they may be on the high side for a lemon-law case in which discovery requests are frequently recycled, the court cannot find them to be unreasonable. Similarly, the amounts spent responding to Defendants' discovery requests are not objectively unreasonable; there is some repetition in the billing, but that is to be expected in any case.

Similarly, Defendants complain about the fact that Pewsey's lead counsel, David Barry, spent 3.9 hours to prepare 13 third-party subpoenas at his high billing rate. They suggest that he should have delegated this work "to associate attorneys or secretarial staff." (Opposition at p. 4:19-22.) At the same time, they argue that Barry delegated the work in this case to too many different attorneys from his firm (each of whom had lower billing rates than him), creating inefficiencies, but they fail to identify any duplication of effort or obvious inefficiencies in the work that was performed. Defendants cannot complain on one side of their mouths about Barry doing tasks himself and then complain on the other side of their mouths about Barry delegating tasks to more junior timekeepers. These dissonant arguments are unconvincing.

Defendants also complain about the time plaintiff's counsel spent consulting with their client. Although 70 separate time entries sounds like a lot, over the course of more than two

and a half years, that averages out to once every two weeks. The court does not find that to be unreasonable.

Defendants raise other random arguments: that a downward multiplier should apply here because: 91) this case is not novel or difficult, (2) this case did not preclude counsel from taking other matters (the court does not see how Defendants could possibly know that), and the Song-Beverly provision for attorney's fees mitigates any contingency risk. The court does not find these broad and generalized arguments to be compelling—the difficulty of the nature of the work (or lack thereof) is already reflected in counsel's relatively low billing rates. The court declines to apply a negative lodestar multiplier.

The one item that Defendants specifically identify as excessive—and as to which the court agrees—is an unsuccessful motion to compel for which counsel billed $3,527.50 in 2019. (Defendants' opposition refers repeatedly to "unwarranted Motions to Compel" (see pp. 4:7 & 4:8)—*plural*—but it only identifies one motion.) The court (Judge Pierce) denied the motion in a tentative ruling on October 8, 2019 and also denied Pewsey's request for monetary sanctions in the form of fees and costs related to the motion. Having already been denied these amounts by the court, the court will not now award them on a post-settlement motion for fees.

The court reduces the requested amount of attorney's fees ($102,220.50) by $3,527.50, for a total of $98,693.00. Added to the $9,980.90 in costs, the total amount awarded on this motion is **$108,673.90**.

IT IS SO ORDERED.

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