

PROPOSED TENTATIVE

Before the court rules on all aspects of the discovery dispute at issue, it requires the parties to engage in further meet and confer efforts to resolve or narrow the issues in dispute. The following are the categories of documents the Court intends to compel the responding party to produce. It is modeled after the practices of the Los Angeles County Superior Court. The terms here should be defined in the same way as the terms are defined in plaintiff's Request for Production of Documents, Set One.

1. Purchase and/or lease contract concerning the subject vehicle.
2. Repair orders and invoices concerning the subject vehicle.
3. Communications with the dealer, factory representative and/or call center concerning the subject vehicle.
4. Warranty claims submitted to and/or approved by Defendant concerning the subject vehicle.
5. Any Warranty Policy and Procedure Manual published by defendant and provided to its authorized repair facilities, within the State of California, for the date the subject vehicle was purchased to the present.
6. Any internal analysis and/or investigation regarding the defects claimed by plaintiff in vehicles for the same year, make and model of the subject vehicle.
7. Documents that evidence any policy and/or procedure used to evaluate customer requests for repurchase pursuant to the Song-Beverly Consumer Warranty Act, from the date of the purchase to the present.
8. Other customers' complaints similar to the alleged defects claimed by plaintiff, limited to vehicles purchased in California for the same year, make and model of the subject vehicle. The court acknowledges that evidence of other customers making similar complaints to plaintiff's may be reasonably calculated to lead to discovery of a defective condition, but will take an incremental approach to the discovery issue. The court finds *Jensen v. BMW of North America, LLC* (S.D. Cal. 2019) 328 F.R.D. 557 ultimately useful in how this court should interpret the scope of discovery in the present context. The *Jensen* court ordered a defendant to search specific databases for other customers' complaints, but limited the scope to "vehicles of the same year, make, and model as Plaintiff's subject vehicle and limited to only those records preparing problems with the same defects codes listed in any repair records pertaining Plaintiff's vehicle and part numbers under warrant in Plaintiff's vehicle, and to product those documents." (*Id.* at p. 564.) This limitation seems reasonable in the present context at this time. If evidence suggests a broader production is required, the court can revisit the issue in the future.

9. Technical Service Bulletins and/or Recall Notices for vehicles purchased in California for the same year, make and model of the subject vehicle, whether mentioned in the repair history of the subject vehicle or not.
10. Any documents supporting plaintiff's claim for incidental and/or consequential damages.

These categories provide meaningful guidance to the parties as to what the court will (and will not) require to be produced with regard to Requests Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31. The court expects each party to meet and confer in good faith, apply the court's directives to each of these requests, and to come to a mutually acceptable resolution as to what should and should not be disclosed, including whether a protective order is appropriate to any individual category or document.

Three of plaintiff's requests require separate treatment – Request Nos. 2, 16, and 19. With regard to Request No. 2, plaintiff asks for “all documents which evidence, support, refer, or relate to each of the affirmative defenses as set forth in YOUR Answer to plaintiff's complaint.” The answer advances 14 different affirmative defenses, each with a separate factual bases. The court sustains defendant's objections, as the request violates Code of Civil Procedure section 2031.030, subdivision (c)(2), by failing to either designate the documents to be inspected by “specifically identifying each individual item or by reasonably particularizing each category of item.” This request amounts to nothing more than this: produce everything in your possession that amounts to a defense, without resort to categories of evidence or defendant's record keeping. The request is the functional equivalent of a generic demand, condemned as impermissible. (See, e.g., *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 222.)

The court also sustains defendant's objections to Request Nos. 16 and No. 19. In the former, plaintiff asks for all documents that “evidence, describe, refer or relate to Your Call Center Policies and Procedures for escalating customer complaints relating to any defects present in their vehicle.” In the later, plaintiff asks defendant to produce all documents that “evidence, describe, refer, or relate to any flow charts used by You for purpose of escalating customer complaints.” The term “escalating customer complaints” is not defined, and the court has no idea what it means or is intended to reference.

The parties are directed not to appear at the January 18, 2024 hearing. This matter will be continued to March 21, 2024, in Department 4 and 8:30 a.m.. If (and only if) there remains a genuine dispute between the parties after a meaningful meet and confer effort, plaintiff can file a supplemental motion by

Friday, February 23, 2024, at 5 p.m., with a new separate statement if warranted. Plaintiff should focus exclusively on any new dispute(s) between the parties. Opposition is to be filed no later than Friday, March 8, 2024, at 5:00 p.m. No reply is authorized.