

The court denies plaintiff's motion to compel the deposition of defendant's Person Most Qualified (PMQ), because 1) plaintiff has failed to demonstrate good cause with specific facts as to the nineteen (19) categories or documents to be produced; and 2) plaintiff has failed to submit a separate statement, as required by California Rules of Court, rule 3.1345(b)(5). The court's determination is bolstered by fact that a predicate for a motion to compel pursuant to Code of Civil Procedure section 2025.250, subdivision (a) is the absence of a valid objection by the responding party; plaintiff has written the motion to compel as if no objections were made, which is simply not the case. This determination impacts the six (6) topics that plaintiff asks to be explored with the PMQ deponent, even though good cause and a separate statement is not required for those requests, given the interconnection between the two in the Second Amended Notice of Deposition. All requests for monetary sanctions are therefore denied. In making this ruling, the court wishes to make it abundantly clear that defendant's evidentiary objections, as advanced in the First Amended Notice of Deposition, which are used as the basis for the present motion, are perfunctory, rote, unnuanced and repetitive, amounting to a paradigm example of blunderbuss, all underscored by the fact that defendant has failed to file opposition or attempted to justify the objections in any way.

As no trial date has been set, the court will deny the motion without prejudice, but direct the parties to engage in further meet and confer efforts in the hope of resolving and/or narrowing the discovery disputes with regard to any future *third amended notice of deposition*. The court will give guidance to the parties for this purpose, identifying the customary scope of permissible document production to be disclosed (and thus the standard topics to be explored and/or examined at a deposition), modelled after the practices of the Los Angeles County Superior Court. The "subject vehicle" should be defined in the same way as the term is defined in the notices of deposition, meaning the 2016 BMW X5, VIN: 5UXKT90C54G0S77007.

The following categories of documents (along with topics to be examined) that are customary in this context are as follows:

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 produce 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.

The parties as part of the meet and confer should discuss how to address disclosure of any electronically stored information that falls within these categories, including costs, and any potential protective order. That being said, there are certain rules of thumb to consider: 1) the search terms should be specifically tailored to the repair complaint(s) relevant to the plaintiff's, and should be limited in quantity to meet the balancing factors per Code of Civil Procedure section 1017 and 2019.030, subdivision (a); 2) the burden of creating and reviewing the results of the search should be fairly allocated; and 3) the output from the searches should be distilled in a manageable format such as an excel spreadsheet with columnar coded information, and produced on jump drive or DVD/CD.

These categories are customarily what the court will (and will not) require to be produced. The parties should apply these guidelines to the six (6) topics to be asked of the deponent, and to the nineteen (19) categories of documents requested to be produced, all outlined in the Second Amended Notice of Deposition, and act appropriately. The court expects each party to meet and confer *in good faith*, apply the court's directives to each request, 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. The disproportionate use of judicial resources used to resolve discovery disputes in the Song Beverly Consumer Warranty Act context is well-documented, and the court determines that a nontraditional solution is appropriate given the deficiencies in the present motion to compel. If the parties are unable to resolve their disputes following the court's guidance herein, and after a good faith efforts have stalled, defendant can file new objections to contents of a properly served *third* amended notice of deposition; and plaintiff thereafter can file a new motion to compel, but only with an adequate showing of good cause and the attendant (and accompanying) separate statement. There should be no illusion here – if the court determines that plaintiffs' request are overinclusive and/or defendant's objections are patent blunderbuss, without thought and nuance, and/or the parties are not engaging in good faith discussions to resolve the disputes, significant monetary sanctions will be imposed. The parties should heed the court's directives.

To facilitate the meet and confer efforts, three of plaintiff's requests require separate treatment – Item 7, Item 13, and Item 18, all associated with its request for production of documents. In Item 7, plaintiff asks defendant to provide any “and all documents relied upon by you in formulating your Answer and affirmative defenses.” This request is inappropriate. Defendant's “Answer” advances at least 18 different affirmative defenses (with a 19th catch all category), each with a separate factual bases. The request as formulated 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.” Plaintiff's 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 for documents, and thus is impermissible. (See, e.g., *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 222.)

In Item 13, plaintiff asks defendant for any and all “contracts between You and Your authorized dealerships that performed repairs to the Subject Vehicle, including your franchise contract and warrant policies and procedure manual.” This request is overinclusive, as there is no reason why defendant should disclose its franchise contract, as opposed to its warranty policies and procedure manual, limited to the subject vehicle in question. Defendant is not required to disclose its franchise agreement (at least at this time).

In Item 18, plaintiff asks defendant to produce “all documents, including but not limited to electronic data and emails, concerning or relating in any way to an decision to modify the [nonconformities] and/or any of Your related parts used in Your vehicles which are the same year, make, and model as the Subject Vehicle.” This request is also overinclusive. Plaintiff should receive documentation about nonconformities associated with the defects in the subject at vehicle, not all parts (i.e., even those unrelated to the defect claimed) The request should be limited in this fashion in the future.

The court offers these three requests as examples to follow in the parties' good faith efforts in the future.

The parties are directed to appear either by Zoom or in person at the May 22, 2024 hearing in Department 1, Santa Maria, at 8:30 in the morning. The parties should come prepared to discuss the court's directives outlined in this order.