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**PARTIES/ATTORNEYS**

Plaintiff	Sergio Flores	Joseph Kaufman, Esq.
Defendant	General Motors, Inc.	Lewis Brisbois Bisgaard & Smith LLP Brian Curtis Vanderhoof Brian S. Whittemore Todd Gale, Esq.  Dykema Gossett LLP

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**TENTATIVE RULING**

The motion is denied for the reasons stated below. The court nevertheless instructs the parties to be prepared at the hearing to present to the court a date for the production of a well prepared PMQ.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))

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The procedural history of this case was recounted in the court's December 3, 2025, tentative ruling and will not be repeated here.

At issue here is GM's refusal to produce its warranty policies and procedures manual pursuant Code of Civil Procedure § 871.26 subdivision (h)(12), as well as its concurrent refusal to produce a PMQ to testify on such topics, without a protective order. On May 28, 2025, this court denied the request for a protective order on the following bases: (1) the statutory scheme which requires disclosure did not include a protective order indicating these categories are to be used in the instant litigation only; (2) defendant has not provided good cause for varying from the statutory scheme; and (3) assuming for the sake of argument a protective order is appropriate, defendant's evidence on the issue of confidentiality is perfunctory at best. (See May 30, 2025 Notice of Ruling.)

No production occurred and on July 1, 2025, plaintiff filed two motions to compel compliance: (1) Motion to Enforce Code of Civil Procedure section 871.26 (h)

[initial production of documents in the disputed categories]<sup>1</sup>; and (2) Motion to Enforce Code of Civil Procedure section 871.26 (c) [deposition of person most qualified on manufacturer's behalf].

On August 13, 2025, the court found defendant had not shown good cause for noncompliance with the statute, ordered a sanction of \$2,500 against defense attorney, Lewis Brisbois Bisgaard & Smith LLP, to be paid within (15) business days, and ordered the deposition be taken within 45 days of the court's order. Because it was advised there was a pending appeal from the Los Angeles Superior Court challenging an order denying a protective order for the disputed categories, this court, in an abundance of caution, ordered that no testimony on or production of documents related to the disputed categories need be given pending a ruling from the appellate court. (See September 4, 2025 Notice of Ruling, ¶ 2.) The court continued the motion to September 10, 2025, at 8:30 a.m. and again to December 3, 2025, and ordered defendant to advise this court of the status of the pending appeal, including whether the Los Angeles Superior Court has vacated its order or any other procedural change in the action.

At the December 3, 2025, hearing, the court directed GM to confidentially file those documents that it believes were entitled to a protective order so the court could review them in-camera. (December 3, 2025 Minute Order.) No documents have been filed. According to plaintiff, GM has agreed to produce responsive documents without a protective order and plaintiff has agreed that GM may redact Part 5 of GM's Service Manual, which is a section of its manual dealing specifically with dealer reimbursement rates and which plaintiff has agreed he does not need in this or any other case. (Reply to Motion for Evidentiary Sanctions filed 1/28/26, p. 5, ll. 5-8.) The court directs the parties to reduce this agreement to writing and file it with the court. This resolves the Motion to Enforce Code of Civil Procedure section 871.26 (h) [initial production of documents in the disputed categories] and the Motion to Enforce Code of Civil Procedure section 871.26 (c) [deposition of person most qualified on manufacturer's behalf].

Despite being ordered to set the deposition of the PMQ within 45 days of the August 13, 2025, hearing, that did not occur. On October 3, 2025, plaintiff filed a motion for evidentiary sanctions against GM for its refusal to schedule the deposition for its PMQ. The hearing was initially set for December 24, 2025, and reset by the court to February 3, 2026.

“For a manufacturer's or defendant's repeated noncompliance with subdivision (b) [initial disclosures and documents], (c) [initial depositions within 120 days of answer], or (d) [mediation with 150 days of responsive pleading], a court

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<sup>1</sup> The disputed categories include section 871.26 subdivisions (h) (12) [warranty policies and procedure manuals; and (h)(15) [if a pre-suit restitution or replacement request is made, the manufacturer's written statement of policies and procedures used to evaluate customer requests for restitution or replacement pursuant to “Lemon Law” claims].

shall order that evidentiary sanctions attach precluding the manufacturer or defendant from introducing evidence at trial regarding whether the motor vehicle had a nonconformity that substantially impaired the use, value, or safety of the motor vehicle, or whether the motor vehicle was repaired to match the written warranty after a reasonable number of opportunities to do so.” (Code Civ. Proc., § 871.26, subd. (j)(4).) The court “shall impose” this sanction “[u]nless the party failing to comply with this section shows good cause.” (*Ibid.*)

On August 13, 2025, the court found defendant had not shown good cause for noncompliance with the statute and ordered the deposition be taken within 45 days of the court’s order [which fell on Saturday, September 27, 2025, and was thus extended to Monday, September 29, 2025]. According to the record, plaintiff attempted to secure a date for deposition, but defendant failed to respond with any actual dates. On October 3, 2025, plaintiff filed its motion.

According to the declaration of defendant’s attorney, Brian Whittemore, a deposition was scheduled for September 2, 2025; however, the PMQ received a jury summons, which was communicated to plaintiff’s attorney, Joseph Kaufman, on August 28, 2025. The deposition was canceled without being rescheduled. The prior attorney handling this matter for defendant’s firm “abruptly departed” his employment with the firm on September 12, 2025. On September 18, 2025, plaintiff’s counsel served standard written discovery on GM.<sup>2</sup> Current counsel, Brian Whittemore, began his affiliation with defendant’s firm on September 29, 2025. He began regular case handling on behalf of GM in mid-October. Attorney Whittemore obtained an extension of time to serve written responses to November 3, 2025, from Attorney Kaufman. Those responses were served. After the hearing on December 3, 2025, during which the deposition for the PMQ was discussed, attorney Whittemore contacted attorney Kaufman and offered to produce GM’s PMQ on December 17, 2025. Mr. Kaufman’s office noticed the deposition. On December 16, 2025, the parties discussed the case and continued the deposition. The deposition eventually occurred on January 15, 2026.

Thus, at the point the motion and opposition were filed, the court was presented with a record that showed that defendant GM failed to produce its PMQ pursuant to the court’s order. It attempted to produce the PMQ for a deposition set for September 2, 2025, which was canceled due to the deponent’s jury service. In canceling that deposition, defendant attorney Adam Arnold stated: “I am adding Tyler Mahy from our office to help confirm a new date as soon as possible and within the timeline ordered by the court.” That did not occur. The deposition did, however, occur on January 15, 2026.

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<sup>2</sup> Pursuant to Code of Civil Procedure section 871.26, subdivision (e), “[e]xcept as provided in subdivisions (b) and (c), all other discovery shall be stayed until mediation is concluded.”

While the court is not prepared to determine “good cause” has been shown for GM’s noncompliance, it does find that this is not a case of “repeated noncompliance” with the initial discovery obligations, as is required by section 871.26, subdivision (j). There is no statutory guidance that describes what “repeated noncompliance” means. Here, the defendant had failed to produce the defendant’s PMQ, which, while a failure to comply, is but one instance of noncompliance. Given this singularity, the court is unwilling to find it constituted “repeated noncompliance” under the statute.

That should conclude the matter, but for the declaration of plaintiff’s attorney Joseph Kaufman, submitted in reply, to the effect that GM produced Ricardo Elias for deposition on January 15, 2026; that Mr. Elias testified that he is not an employee of GM, he is employed by MSX International, and he has never been employed by GM; that he did not contact anyone involved in GM’s decision to reject plaintiff’s pre-litigation repurchase request, even though testimony regarding this category is encompassed in the Court’s order and the required categories under C.C.P. § 871.26(c) and (i); that he did not speak to anyone (including any GM employees) to prepare for the deposition; and that if he wanted to contact GM’s employees, then he would have to go through his attorney or supervisor to obtain the information. Clearly, this is presented as another instance of noncompliance.

“The general rule of motion practice . . . is that new evidence is not permitted with reply papers.” (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537; *Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 227.) This is true given the unfairness to the opponent of not being able to address the new matter raised in a reply. (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316.) The court will thus disregard this claim and its associated evidence.

Attorney Kaufman also reports specifically that Elias was unprepared to testify on GM’s decision to reject plaintiff’s pre-litigation repurchase request, presumably as another example of noncompliance. However, even though this was one of the disputed categories that Mr. Kaufman reports has now been resolved, it is unclear when it was resolved—e.g., whether it was resolved prior to the January 15, 2026 deposition. The court notes that the described agreement was not reported by GM in its opposition, which was filed after the deposition had occurred. If the resolution occurred after deposition, the PMQ would not have been required to respond to the questions pursuant to the court’s August 13, 2025 order and the failure to do so is not a point of noncompliance.

Nevertheless, the court is not impressed with GM’s efforts (or lack thereof), both before its production of PMQ and based on this report of the selection of the PMQ. The court reminds defendant of its obligation to effectuate the discovery provisions as well as “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.” (Code Civ. Proc., § 2025.230) Moreover, the testimony of a corporate representative or designated PMQ is inadmissible under Evidence Code section 702, subdivision (a), if the individual lacks personal knowledge. (*LAOSD Asbestos Cases* (2023) 87 Cal.App.5th 939, 948.) While the court is not making any determination on the latter issue, it is unclear how a non-employee could have personal knowledge of the topics on which he is to testify. Good faith efforts to resolve these disputes is expected – including efforts associated with the PMQ.

Plaintiff also requests imposition of additional sanctions under Code of Civil Procedure section 2023.010, which authorizes evidence, issue or terminating sanctions for “[m]isuses of the discovery process,” which includes ... [d]isobeying a court order to provide discovery.” The court declines to impose such sanctions for the same reasons described above. Plaintiff has not requested additional monetary sanctions be imposed.

The motion is denied. The court nevertheless instructs the parties to be prepared at the hearing to present to the court a date for the production of a well prepared PMQ.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))