
PARTIES/ATTORNEYS

Plaintiff	Sergio Flores	Joseph Kaufman, Esq.
Defendant	General Motors, Inc.	Lewis Brisbois Bisgaard & Smith LLP H. Paul Efstratis Brian C. Vanderhoof, Adam R. Arnold Dykema Gossett LLP Todd Gale, Esq.

RECOMMENDATION

For all the reasons discussed below, the court continues this motion to September 10, 2025, at 8:30 a.m. Defendant is ordered 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, as it is available.

The court also finds that defendant has not shown good cause for noncompliance with Code of Civil Procedure section 871.26, subd. (c)(2) relating to deposition of defendant's PMQ. Thus, a sanction of \$2,500 is ordered against the defense attorney, Lewis Brisbois Bisgaard & Smith LLP, to be paid within 15 business days.

The court orders the parties to be prepared to discuss dates for the deposition of defendant's PMQ. The court will alleviate the PMQ from having to produce its warranty policies and procedures manuals or answer any questions about same at the deposition, consistent with the above ruling (pending conclusion of the appellate proceeding).

On or about September 3, 2019, plaintiff Sergio Flores purchased a new 2019 Chevrolet Silverado. The subject vehicle has suffered from defects related to the brake system, premature brake wear, alternator cable, seatbelt pretensioner, check engine light, BSCM, engine, transmission, valve body, and other defects. As a result of these issues, Plaintiff delivered the subject vehicle to an authorized GM service and repair facility on numerous occasions. Frustrated with the vehicle's problems, Plaintiff asked GM for a repurchase. GM refused. Plaintiff filed his complaint on January 21, 2025 alleging a violation of the Song-Beverly Consumer Warranty Act.

Plaintiff moves for an order enforcing Code of Civil Procedure section 871.26 and compelling the deposition of defendant's person most qualified within 15 days and to produce, (1) its warranty policies and procedure manuals; and (2) its written statement of policies and procedures used to evaluate customer requests for restitution or replacement pursuant to Lemon Law claims.

Effective January 1, 2025, the Legislature enacted Assembly Bill 1755 to expedite the resolution of lemon law cases. (Assem. Floor Analysis, Analysis of Assem. Bill No. 1755 dated August 30, 2024.) The author described the problem faced by litigants as follows: "In recent years a flurry of civil actions have been filed under the lemon law statutes and now discovery disputes and protracted settlement processes are serving to delay the court's processing of these cases. As a result California consumers are being denied justice and automobile manufacturers are facing significant legal uncertainty. [¶] AB 1755 is a compromise measure between consumer advocates and automobile manufacturers that seeks to break the civil litigation log jam currently plaguing lemon law disputes." (Sen. Floor Analyses Analysis of Assem. Bill No. 1755 dated August 26, 2024.) According to the Assembly Judiciary, "this bill adopts a set of streamlined discovery processes to ensure that the information most relevant to a lemon law case is disclosed early in the litigation process and without the need to argue costly discovery disputes before the court. Seeking to ensure that attorneys faithfully adhere to these new discovery rules, the bill proposes sanctions on attorneys who violate the provisions of this bill." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1755 dated August 30, 2024.) The bill implemented Chapter 12 of the Code of Civil Procedure,¹ section 871.20 et seq.²

The timeline for those actions seeking restitution or replacement of a motor vehicle pursuant to Section 871.20 is as follows:

- Within 60 days after filing the answer or responsive pleading, initial disclosures and documents must be provided;
- Within 120 days after filing the answer or responsive pleading, initial depositions of the plaintiff and defendant (or the defendant's person most qualified) conducted;
- Within 150 days after filing the answer or responsive pleading, mediation occurs.

If the case is not resolved at the conclusion of mediation, standard discovery procedures apply, including an additional deposition of the plaintiff and the defendant and, if the defendant is not a natural person, the person who is most

¹ All future references are to the Code of Civil Procedure unless indicated otherwise.

²The statutory scheme only applies to those manufacturers who have "opted in." Defendant General Motors has done so. A list of those manufacturers who have opted in is maintained by the California Department of Consumer Affairs. (https://www.dca.ca.gov/acp/accepted_manufacturers.shtml, last accessed on August 7, 2025.)

qualified to testify on the defendant's behalf. (§ 871.26, subd. (e).) Here, the answer was filed February 21, 2025. The deadline for mediation was July 21, 2025. It has been reported that an unsuccessful mediation has already occurred. (See Plaintiff's Motion to Enforce Deposition of Person Most Qualified, p. 1, ll. 11, and fn. 1—acknowledging an unsuccessful mediation has already occurred and the case is now being prepared for trial.)

1. Defendant's Initial Document Disclosures

As noted above, pursuant to section 871.26, within 60 days after the filing of the answer or other responsive pleading, all parties must, without awaiting a discovery request, provide to all other parties an initial written disclosure and documents. (§ 871.26, subd. (b).) As is relevant here, section 871.26 subdivision (h)(12) requires defendant to disclose its “warranty policies and procedures manuals” and subdivision (h)(15) requires disclosure of “the manufacturer's written statement of policies and procedures used to evaluate customer requests for restitution or replacement pursuant to “Lemon Law” claims” if “a pre-suit restitution or replacement request is made.”

This court previously denied defendant's motion for a protective order limiting dissemination and use of these documents. (See May 28, 2025 Minute Order.) Defendant reports that it has filed a petition for writ of mandate with the Second District Court of Appeal from the Los Angeles Superior Court in which the same relief was requested under the same statutory scheme and denied. (*General Motors, LLC v. Superior Court*, Court of Appeal, 2nd District, Case No. B347010, filed June 17, 2025 [consolidated appeals].) On August 6, 2025, the appellate court issued an alternative writ and order, and issued a temporary stay. The order requires:

- the Los Angeles Superior Court to vacate its order denying petitioner's motions for a protective order and schedule further proceedings to consider the merits of those motions to the extent they seek a protective order to prevent dissemination of trade secrets outside the litigation; or
- in the alternative orders it to show cause why the writ of mandate ordering the Los Angeles Superior Court to do so should not issue on the ground that petitioner has demonstrated entitlement to relief on the ground that the court clearly erred in ruling that it had no authority to issue a protective order with regard to the initial automatic disclosures required under Code of Civil Procedure section 871.26.

The deadline for the Los Angeles Superior Court to vacate and reconsider is set for September 3, 2025. If the Los Angeles Superior Court does not act, briefing is

scheduled and a hearing set before the appellate court on November 10, 2025 at 9 a.m., making it a cause. The appellate court also ordered a temporary stay of General Motor's disclosure obligations under Code of Civil Procedure section 871.26, subdivision (b) until further order. (Gale Decl. filed August 6, 2025, Exh. A; see also https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=2&doc_id=3134051&doc_no=B347010&request_token=NiIwLSEnTkw3WzBRSCNdXE1II FA6USxXJyMuRztTMCAGCg%3D%3D, last accessed August 7, 2025.)

Defendant requests the court at a minimum delay its ruling until the resolution of these appeals. The court will do so. While the automatic stay pursuant to section 916, subdivision (a) does not apply here since defendant did not appeal or file a petition for writ from this court's ruling, the court nevertheless recognizes the utility of an appellate court opinion on whether defendant's asserted trade secrets and confidential business information must be protected by a protective order, and what evidence is required to support a finding of trade secrets.

While the delay is contrary to the accelerated scheme adopted in Assembly Bill 1755, such challenges to a new legislative enactment are important to the proper interpretation of its provisions. In any event, the mediation, which is the object of the statutory enactment, has already occurred and was unsuccessful. Since mediation has been completed, the case is now preparing for trial, and the accelerated timeline is no longer serves its statutory purpose. (See §871.26, subd. (e).)

The court will thus continue this motion to September 10, 2025, at 8:30 a.m. Defendant is ordered to advise this court of the status of the pending appeal, such as, whether the Los Angeles Superior Court has vacated its order or any other procedural change in the action, as it is available.

2. Deposition of Person Most Qualified

Within 120 days after the filing of the answer or other responsive pleading, all parties have the right to conduct initial depositions, each not to exceed 2 hours, of the plaintiff and the defendant, and if the defendant is not a natural person, the person most qualified to testify on the defendant's behalf. (§871.26, subd. (c)(2).) Unless defendant shows good cause, notwithstanding any other law and in addition to any other sanctions imposed pursuant to this chapter, a court shall impose a \$2,500 sanction against the defense attorney for failure to comply with the provisions relating to depositions as prescribed in subdivision (c). The sanction must be paid within 15 business days. (Code Civ. Proc., § 871.26, subd. (j) (2).) If the case is not resolved at the conclusion of mediation, standard discovery procedures prescribed in the Civil Discovery Act apply. (§ 871.26, subd. (e).)

Plaintiff asserts that defendant failed to produce a PMQ and therefore the court must impose a \$2,500 sanction. Defendant opposes the request. Between the parties, over 100 pages of email exhibits have been submitted to determine whether good cause exists to excuse defendant's noncompliance. While this is surely not the result the Legislature contemplated when it enacted the expedited procedure, the court must nevertheless scrutinize the documents to determine whether good cause exists for the noncompliance.

Plaintiff outlines his efforts to take the deposition of defendant's PMQ, including serving deposition notices on February 11, 2025, March 4, 2025, and March 24, 2025, all the while trying to obtain a mutually agreeable date for the deposition from defendant's counsel. After the March 24, 2025 deposition notice was served, plaintiff was advised that defendant was being represented by new counsel. On May 7, 2025, plaintiff's counsel began making efforts to obtain deposition dates from defendant's current counsel. Attorney Joseph Kaufman states "On May 19, 2025, GM wrote back, stating that it would provide Plaintiff with a date for GM's deposition that is prior to June 21, 2025. GM, however, never provided any deposition dates." (Kaufman Decl., ¶ 20.)

Attorney Brian Vanderhoof, however, produces evidence that on June 5, 2025, it emailed plaintiff's counsel four potential dates for taking the PMQ depositions, and that on June 6, 2025, plaintiff's counsel indicated that two of those dates could work, although he needed to check with his client. (Vanderhoof Decl., ¶ 4, Exh. B.) On June 9, 2025, plaintiff's counsel emailed asking "Can I take GM's deposition on June 16 or 18? Let me know please." (Vanderhoof Decl., ¶ 5.) June 16 was one of the dates GM had already offered on June 6, 2025. GM didn't provide any evidence that it confirmed that date after plaintiff's June 9 email and instead suggests that its earlier provision of the date should have been sufficient confirmation.

What is not disputed is that GM has not produced its PMQ for deposition. Thus, the \$2,500 sanction "shall" be imposed against the defense attorney unless it can show "good cause" why it should not be imposed. Good cause is not defined by the statute; however, case law has developed a standard. Pursuant to Section 177.5, A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. Section 177.5 requires only that the sanctioned party violate lawful court order 'without good cause or substantial justification.'" (*Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1080.) In doing so, "section 177.5 does not even require a willful violation, but merely one committed ... without a valid excuse." (*Id.* at p. 1081; accord *People v. Tabb*, *supra*, 228 Cal.App.3d at p. 1311.)

For example, in *In re Woodham* (2001) 95 Cal.App.4th 438, the court ordered the Board of Prison Terms at Donovan Correctional Facility to respond in a timely manner to administrative appeals filed by Donovan life-term inmates, setting a 120-day limit. Inmate Woodham thereafter filed an administrative appeal and the Board failed to timely respond. The court issued an OSC why sanctions should not be imposed under section 177.5. The warden contended that the Board failed to hear Woodham's administrative appeal within the time limit set because during the relevant time period there was a four-fold increase in the number of appeals causing a significant backlog, and that the delay resulted from an inadvertent administrative error by new staff member in mistakenly categorizing inmate's appeal as a parole revocation. The court held that the warden failed to demonstrate a valid excuse for not complying with the underlying order, and thus an imposition of monetary sanctions was warranted.

Here, there is no valid excuse for not complying with the statute. Plaintiff's counsel attempted time and again to schedule the deposition, to no avail. Although the current firm was more cooperative in identifying dates on which to set the deposition, it critically did not confirm plaintiff's counsel's final attempt to secure the date. Even if this were a mere oversight, it is not a valid excuse pursuant to *Woodham*.³ Finally, defense counsel knew when it substituted into the case that General Motors had opted in to the provisions of Assembly Bill 1755, and its acceptance of the case should be viewed as its agreement to comply with the relevant deadlines. Thus, any argument that it is not responsible for noncompliance with the statute due to former counsel's actions is unavailing.

The court thus finds that defendant has not shown good cause. Thus, a sanction of \$2,500 is ordered against the defense attorney, to be paid within 15 business days for failure to comply with the provisions relating to depositions as prescribed in subdivision (c).

Plaintiff also requests the court order defendant's PMQ be produced for deposition. The court orders the parties to be prepared to discuss at the hearing dates for the deposition to occur. The court will alleviate the PMQ from having to produce its warranty policies and procedures manuals or answer any questions about same at the deposition, consistent with the above stay pending conclusion of the appellate proceeding.

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](#).)

³ Although defense counsel has not raised this argument, it should not be divorced from prior's counsel's role in this