
PARTIES/ATTORNEYS

Plaintiff	Tiffany Melius on behalf of The Percy Nerd LLC	Knight Law Group, LLP Roger Kirnos Armando Lopez
Defendant	FCA US LLC	ONGARO PC Scott S. Shepardson Ziyi (Yolanda) Li

RECOMMENDATION

Defendant's motion for a protective order is entirely without evidentiary support, and even assuming the statements in the motion qualified as evidence, they fail to persuade the court. The motion is denied without prejudice.

The parties are advised of California Rules of Court, rule 3.1304(b), which provides: “The moving party must immediately notify the court if a matter will not be heard on the scheduled date.” The moving party is prohibited from taking it off calendar at this point and is ordered 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.](#))

Plaintiff Tiffany Melius filed this action on behalf of the Perky Nerd LLC alleging violations of under the Song-Beverly Consumer Warranty Act, relating to plaintiff's 2021 Jeep Wrangler Unlimited. Plaintiff alleges three causes of action under the Song-Beverly Act against defendant FCA US LLC.

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 bill implemented Chapter 12 of the Code of Civil Procedure,¹ section 871.20 et seq.,² which requires (among other things) both parties to make initial written disclosures of information and documents. (§ 871.26, subd. (b).) As is relevant here, section 871.26 subdivision

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 FCA US LLC 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 September 16, 2025.)

(h)(12) requires defendant to disclose its “[w]arranty policies and procedures manuals,” and subdivision (h)(13) requires disclosure of “[s]ervice manuals reasonably related to the nonconformities pertaining to the motor vehicle

Defendant moves the court for a protective order before producing its Warranty Administration Manual, Dealer Policy Manual, CAC Policies and Procedures, and Service Manual. Attorney Li reports that on July 8, 2025, she sent plaintiff’s counsel a copy of a protective order that is based on the Los Angeles Superior Court Model Stipulation and Protective Order. Plaintiff did not stipulate and on July 30, 2025, filed a motion for sanctions for defendant’s failure to produce the documents. On August 25, 2025, defendant filed its motion for a protective order. On August 28, 2025, plaintiff took her motion for sanctions off calendar. No opposition has been filed.

The issue whether the trial court has authority to issue a protective order for documents required to be disclosed pursuant to section 871.26 is currently before the appellate court. (*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 Second District ordered the Los Angeles Superior Court to either vacate its order denying the protective order or show cause why an alternative writ of mandate 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. (See *Chavez v. Superior Court* (2024) 99 Cal.App.5th 165, 180 [gaps in statutes due to legislative silence “may be filled by courts through the exercise of their inherent authority in the absence of a clear legislative intent to the contrary that goes beyond the silence itself”]; Code Civ. Proc., §871.26, subd. (b) [suspending “discovery request” provisions for certain initial automatic disclosures “to all other parties” without expressly precluding issuance of protective orders]; Evid. Code, §1061, subd. (b)(1)&(4)[requiring owner of trade secret to move for protective order and permitting issuance of order “limiting the use and dissemination of the trade secret”].)” (*Id.*) The Los Angeles Superior Court did not vacate its order, and the matter is now a cause, with oral argument set on November 10, 2025.

The court accepts for purposes of this hearing that it may enter a protective order under the statutory scheme, as outlined above. However, that does not end the inquiry. Code of Civil Procedure, section 2031.060 provides that “[t]he court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense,” including “[t]hat a trade secret or other confidential research, development, or commercial information not be disclosed, or be disclosed only to specified persons or only in a specified way.” (Code Civ. Proc., § 2031.060(b)(5).) Generally, the burden of proof is on the party seeking the protective

order to show good cause for whatever order is sought. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.) Good cause requires a showing of specific facts demonstrating undue burden or other grounds, and justifying the relief sought. (*Goodman v. Citizens Life & Casualty Ins. Co.* (1967) 253 Cal.App.2d 807, 819.) Courts have considerable discretion in granting and crafting protective orders. (*Raymond Handling Concepts Corp. v. Superior Court* (1995) 39 Cal.App.4th 584, 588.)

Good cause is established by submitting an affidavit from a qualified person pursuant to Evidence Code section 1060. (*Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1144-1445—“In order to determine whether good cause exists to restrict dissemination of documents which [the defendant] claims contain trade secrets, Evidence Code section 1061 should be followed ... We conclude that the procedures called for in section 1061 have utility in a civil action in protecting the trade secret privilege provided for in section 1060 and should be followed.”) To determine whether information is a trade secret, the court considers: (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. (*Uribe v. Howie* (1971) 19 Cal.App.3d 194, 208.) Good cause will be shown if a declaration establishes that the documents that must be produced contain confidential information or information involving a protectable interest, or that dissemination of the documents to the public would injure the producing party. (*Nativi v. Deutsche Bank Nat'l Trust Co.* (2014) 223 Cal.App.4th 261, 318.)

Here, defendant, in its memorandum of points and authorities, asserts:

- FCA’s internal policies and procedures are the product of years of research and development and are unique to FCA. Public disclosure of these documents would not benefit anyone outside the very competitive automotive industry, but could only harm FCA’s competitive position. Disclosure of these documents could, by way of example, enable competitors to gain access to FCA’s business practices and potentially refine their procedures without incurring the costs normally required for independent development of such procedures.
- FCA has a number of safeguards in place to ensure the confidentiality of these documents. FCA employees are required to protect the confidentiality of commercially confidential information and, except as required in their duties at FCA, are prohibited from discussing such documents or information with anyone. These precautions are necessary

to ensure that FCA maintains a competitive advantage in the automotive industry.

- The documents that are the subject of this motion are closely safeguarded by FCA, which demonstrates the confidential nature of the information. Due to the commercially sensitive nature of this information and corresponding documentation, FCA is entitled to have the documents subject to a protective order to prevent the dissemination of proprietary business information.
- FCA does not, in the ordinary course of business, allow outsiders access to the confidential information contained in the documents at issue except in very limited circumstances—such as permitting litigants to access documents under a protective order. The inappropriate disclosure of this information taken out of context would significantly damage FCA's market position and competitive advantage.

(Motion, p. 3, ll. 18 – p. 4, ll. 8.)

“Matters set forth in points and authorities ***are not evidence.***” (*Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 590, emphasis added; see *Brehm Cmty. v. Superior Court* (2001) 88 Cal.App.4th 730, 735.) Nor would it have been appropriate for the trial court to rely on such statements in order to grant plaintiffs' motion. (*Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 578 [“The only evidence the trial court should [consider] and which we may consider ... is that contained in the declarations filed in support of ... the motion. The matters set forth in ... memoranda of points and authorities are not evidence and cannot provide the basis for the granting of [a] motion.”].) Thus, absent the necessary affidavit from a qualified individual to support the assertion that the documents are trade secrets pursuant to Evidence Code section 1060 or to otherwise establish their confidential proprietary nature, the motion fails. That which can be asserted without evidence can also be dismissed without evidence.

Moreover, even if the assertions made in defendant's points and authorities were made in an affidavit, the motion would still fail. Defendant does not specify if there are policies and procedures for any particular topic which possess independent economic value beyond providing the title of the documents they would like subject to the protective order (e.g., without more, the court is unable to discern what the “CAC Policies and Procedures” might cover). Nor does Defendant actually attempt to show how it maintains these policies, procedures or other “business records” as secrets. For example, there are no facts showing that Defendant requires its employees to sign nondisclosure agreements, or that specific documents are required to be kept onsite or can only be accessed by certain individuals with a certain level of clearance.

Defendant's motion for a protective order is entirely without evidentiary support, and even assuming the statements in the motion qualified as evidence, they fail to persuade the court. The motion is denied without prejudice.