

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 24, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa**

**TO JOIN “ZOOM” ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359**

<https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09>

**TO JOIN “ZOOM” BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)**

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. SCV-272535, Banuelos v American Honda Motor Co, Inc.

Plaintiff Luis Banuelos (“Plaintiff”) moves pursuant to Code of Civil Procedure section 2025.450(a) for an order compelling Defendant American Honda Motor Co., Inc. (“Defendant”) to produce a Person(s) Most Qualified and Custodian of Records to be deposed in accordance with Code of Civil Procedure section 2025.230. Plaintiff requests sanctions in the amount of \$2,610. **Plaintiff’s motion is GRANTED. The parties are directed to meet and confer to determine a date for the deposition. Trial is scheduled for August 23, 2024. Therefore, the deposition should take place within the 20 days of this order. Defendant is directed to pay \$1,560 in sanctions within 30 days of this order.**

During the course of discovery, Plaintiff sought to take the deposition of Defendant’s Person(s) Most Qualified and Custodian of Records (“PMQ”). On February 8, 2024, Plaintiff noticed the deposition of Defendant’s PMQ. (Tran Decl. ¶ 4; Ex. A) Plaintiff’s Notice of Deposition identified fifty-three (53) matters for examination and fifty-three (53) requests for document production. (Tran Decl., ¶ 4, Ex. A.) The deposition was noticed for March 11, 2024. On March 6, 2024, Defendant served a Response to Plaintiff’s Notice of Deposition. Defendant stated that it would not produce a witness for the deposition noticed for March 11, 2024, but provided no alternative dates. (Tran Decl., ¶ 7, Ex. C.) Plaintiff requested Defendant’s counsel to provide alternative dates by February 15, 2024. (Tran Decl., ¶ 6, Ex. B.) Over the course of the next several weeks, Plaintiff sent three emails requesting alternative dates but Defendant’s counsel failed to respond with alternative dates. (Tran Decl. ¶ 6; Ex. B)

1. Legal Standards

“If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.” (Code Civ. Proc., § 2025.450(a).)

A motion to compel a deponent's attendance and testimony must “set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.” (CCP § 2025.450(b)(1).)

2. Plaintiff's arguments

Plaintiff states that the matters for examination and the request for production of documents fall into eight categories as it relates to Plaintiff's Song-Beverly Act and fraudulent concealment - inducement claims: (1) reports, surveys, summaries identifying defects with the Honda Sensing System, including design and internal testing of the Honda Sensing system (matters nos. 1, 4, 5, 6, 7, 12, 19, 22; request for production nos. 6, 8-10, 15, 18-31); (2) advertisements, marketing, and communications from Defendant to its customers regarding the Honda Sensing System (matters nos. 8-10, 13, 18, 26; request for production nos. 11-13, 16, 17); (3) corrective action to address defects with the Honda Sensing System (matters nos. 14, 16, 20, 21; request for production nos. 7, 10, 14); (4) estimated costs to remove the Honda Sensing System from the United States market (matters nos. 23-24; request for production nos. 32-33); (5) discovery regarding Defendant's production, electronically stored information, evidence preservation efforts (matter nos. 27, 28, 29, 38, 50, 51, 52, 53; request for production nos. 35, 36) (6) Plaintiff's request for a repurchase or replacement of the vehicle (matter nos. 34, 35, 36, 37; request for production nos. 38, 39, 40, 42) (7) repairs and warranty coverage for Plaintiff's vehicle (matter nos. 30, 32, 33; request for production nos. 4, 5, 37, 43, 44, 45, 52, 53); and (8) Defendant's policies and procedures regarding evaluation and handling of consumers' request for repurchase or replacement of their vehicles (matter nos. 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49; request for production nos. 41, 46, 47, 48, 49, 50) . (Tran Decl., ¶ 5, Ex. A.)

Plaintiff argues that testimony and evidence regarding the reports, surveys, and summaries identifying defects with the Honda Sensing System and design and internal pre-release and post-release testing is relevant to Plaintiff's fraudulent concealment – inducement claim because it seeks evidence and testimony of Defendant's knowledge that the Honda Sensing System had a defect prior to Plaintiff's purchase of the vehicle that was not disclosed to Plaintiff. This evidence is also relevant to show that Defendant had a duty to disclose to Plaintiff.

Plaintiff argues evidence regarding design, internal testing, reports, surveys and summaries for the Honda Sensing system is relevant to establish that Defendant acted willfully in order to support Plaintiff's claims for civil penalties under the Song-Beverly Act. It shows that Honda was aware of the problems that plagues its Honda Sensing System and that it knew that the defects with

the Honda Sensing System in Plaintiff's vehicle was not repaired within a reasonable number of repair attempts when it denied Plaintiff's repurchase request.

Plaintiff argues that evidence and testimony regarding advertisements, marketing, and communications directly and indirectly (via its authorized dealerships) are relevant to establish Honda's duty to disclose the defect to Plaintiff because it made representations regarding its Honda Sensing System in its advertisements, marketing, and communications to Plaintiff, but did not disclose the defects with the Honda Sensing System, which renders its representations likely to mislead. Further, its communications strategy with its customers and dealerships is also relevant to establish a duty to disclose if Honda sought to actively conceal discovery of the Honda Sensing defect in its communication strategies directly and indirectly via its dealerships in order to prevent the public and Plaintiff from becoming aware of the Honda Sensing defect by either denying the existence of the defect or its severity.

Plaintiff argues that testimony and evidence regarding corrective action to address defects with the Honda Sensing System, including technical service bulletins, recalls, evaluation of the effectiveness of the technical service bulletins and recalls for the Honda Sensing System, and Honda's handling and its responses to customer complaints with the system is relevant to Plaintiff's fraudulent concealment – inducement claim because it seeks evidence and testimony of Defendant's knowledge that the system had a defect prior to Plaintiff's purchase of the vehicle that was not disclosed to Plaintiff. This evidence is also relevant to show that Defendant had a duty to disclose to Plaintiff due to Defendant's superior or exclusive knowledge. Who prepared and received these documents is relevant to show that Honda executives and managers were aware of the defects, but took no corrective action, which support Plaintiff's claim for punitive damages.

Plaintiff argues that evidence regarding internal research, development, evaluation of the effectiveness of technical service bulletins and recalls, and customer complaints for the Honda Sensing System is also relevant to establish that Defendant acted willfully in order to support Plaintiff's claims for civil penalties under the Song-Beverly Act.

Plaintiff argues evidence regarding internal research, development, evaluation of the effectiveness of technical service bulletins and recalls, and customer complaints for the Honda Sensing System is relevant to the issue of willfulness because it shows that Honda was aware of the problems, and knew that the defects could not be repaired within a reasonable number of repair attempts when it denied Plaintiff's repurchase request. Its further relevant as to whether any of Honda's repair strategies to the Honda Sensing system (such as technical service bulletins and/or recalls) were effective in addressing customer complaints with the Honda Sensing system.

Plaintiff argues that testimony and evidence regarding warranty repair costs for the Honda Sensing System and estimated costs to remove for the system from the market is relevant to Plaintiff's fraud claim because it seeks evidence and testimony that pertains to Honda's financial motivation to intentionally conceal or suppress material facts to mislead consumers, and to establish the materiality of fact that the system is a significant factor in the total cost of the vehicle that consumers must consider at the time of purchase.

Plaintiff argues testimony and evidence regarding Defendant's production, electronically stored information (ESI), and evidence preservation efforts are relevant to ascertain whether

Defendant employed reasonable and appropriate efforts to locate responsive information to minimize the risk of an inadequate search.

Plaintiff argues testimony and evidence regarding how Defendant handled and evaluated Plaintiff's request for repurchase, whether Defendant conducted any investigation into Plaintiff's complaints with the vehicle, and its decision on Plaintiff's repurchase request are relevant because it is related to the very basis for Plaintiff's claims under the Song-Beverly Act.

Plaintiff argues that testimony and evidence regarding repairs performed on Plaintiff's vehicle, warranty claims and warranty coverage are relevant because it is forms the very basis for Plaintiff's claims under the Song-Beverly Act as to whether there was a defect(s) covered by warranty; whether the defect(s) substantially impaired its use, value or safety; and, whether the defect(s) were repaired within a reasonable number of attempts.

Plaintiff argues testimony and evidence regarding Defendant's policies and procedures regarding customer complaints, buyback requests, and handling of phone calls are relevant because it is related to how Defendant handled Plaintiff's repurchase request under the Song-Beverly Act. Testimony and evidence pertaining to Defendant's policies and procedures on how it handles customer complaints, repurchase requests, criteria and documents used to evaluate repurchase requests is important to understand the basis for Defendant's decision on Plaintiff's repurchase request. Likewise, Defendant's articulation of any policy or protocol on what constitutes a "defect," "substantial impairment," "use," "value," "safety," and "prompt" under the Song Beverly Act are critical to evaluate Defendant's handling of Plaintiff's repurchase request.

3. Opposition

Defendant first argues that Plaintiff's notice of motion is defective to compel production of documents as it does not specify that the motion includes a request for document production.

Plaintiff's notice of motion is sufficient. It cites CCP section 2025.450 which is the statute to move to compel a deponent's attendance as well as the production of documents, it moves to enforce the deposition of Plaintiff's PMQ, the notice of which sought document production, and it states that the motion is based upon Plaintiff's memorandum of points and authorities which clearly seeks to compel document production.

Defendant does not argue that it should not have to produce its PMQ or that it should produce the requested documents. It complains about Plaintiff's counsel's onslaught of Beverly-Song actions and the combined burden of a significant number of discovery requests. Defendant states that between just this Plaintiff's firm and this defense counsel, there are close to 90 cases on the trial calendar this year and that there are only a minimal number of witnesses available to testify. Defendant argues that Plaintiff's counsel continues to serve unilateral deposition notices for the deposition of Defendant's PMQ in these cases instead of participating in a good faith effort to resolve the availability issues by either grouping similar deposition testimony or offering some other amenable resolution. Defendant also argues that Plaintiff created its own urgency by waiting to serve the deposition notice.

4. Analysis

Plaintiff has established that it properly noticed the deposition of Defendant's PMQ. Plaintiff has also established good cause to compel production of the requested documents.

Plaintiff's counsel states that he received Defendant's objection to the chosen deposition date but that he did not receive a response to three emails sent to Defendant's counsel seeking alternative dates. Defendant's counsel does not state otherwise. His declaration does not state that he made any effort to meet and confer with Plaintiff's counsel regarding an acceptable date. Nor has Defendant justified its objections to Plaintiff's discovery requests.

5. Sanctions

The court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel an answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of sanctions unjust. (Code Civ. Proc. § 2025.450, subd. (g)(1).)

Defendant concedes deposition of its PMQ is warranted, it failed to respond to Plaintiff's meet and confer emails, and it did not attempt to provide a date for the deposition. Therefore, as Defendant has not shown substantial justification for its opposition to this motion, sanctions are warranted.

Plaintiff's counsel requests \$2,610 based upon three hours spent drafting the motion and projected time spent reviewing the opposition, drafting a reply, and attending the hearing. (Tran decl. ¶12.) Plaintiff's counsel's hourly rate is \$425. (*Ibid.*) The motion fee was \$60.

Plaintiff's counsel has not justified his hourly rate. The court will award \$1,560 in sanctions.

6. Conclusion and Order

Plaintiff's motion is GRANTED. The parties are directed to meet and confer to determine a date for the deposition. Trial is scheduled for August 23, 2024. Therefore, the deposition should take place within the 20 days of this order. Defendant is directed to pay \$1,500 in sanctions within 30 days of this order.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. 24CV01483, January v California RT Pizza Group, Inc

Defendant California RT Pizza Group, Inc. ("Defendant") demurs to the complaint and each cause of action therein filed by Plaintiff Donovan January ("Plaintiff"). Subsequent to the filing of the demurrer, Plaintiff filed a First Amended Complaint. Accordingly, the demurrer is DROPPED as MOOT.

3. SCV-272049, Thorpe v Bacha

The application of Jeffrey C. Warren to be admitted pro hac vice as co-counsel for defendant Hyundai Motor Company and Hyundai Motor America is **GRANTED**. The court will sign the proposed order.