

Notice to All Counsel re: Song-Beverly Cases

In cases involving the Song-Beverly Act, the Court will entertain entry of a Case Management Order pursuant to California Rule of Court 3.727 and CCP § 2019.020(b) at the initial Case Management Conference. Parties in these cases are ordered to review and be prepared to discuss whether the court should enter the proposed Case Management Order at the Case Management Conference.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

<Case Title>

CASE NUMBER <Case Number>

Case Management Order (Song-Beverly Litigation)

Discovery

1. General Orders:

- a. The Court finds that under California Rule of Court 3.727 and CCP § 2019.020(b) that the sequence and timing of discovery in this matter should be the subject of management by the Court in the interests of justice, given the nature of the allegations in the Complaint and the defenses raised in the Answer.
- b. Absent written agreement of the parties to the contrary, other than initial disclosures made pursuant to CCP § 2016.090, any formal discovery propounded and currently pending or outstanding by a party in this matter prior to the date of this Case Management Order is stayed pending further order of the Court.
- c. A party may also seek to modify and/or delete any of these orders, via noticed motion, upon showing of good cause.
- d. Items 2-6 below shall be considered the initial or Phase I discovery. Any additional discovery or Phase II shall be permitted, if necessary, as set for in section 7.
- e. This order shall not affect the parties' obligations under CCP § 2016.090.

2. Production of Documents: If not otherwise provided sooner, within 45 days of entry of this order both Plaintiff and Defendant shall provide copies of the following documents, which are in their respective possession, custody and/or control, to the opposing side(s):

- a. All purchase or lease contracts concerning the subject vehicle, including any associated documents reflecting Original Equipment Manufacturer

- aftermarket equipment installed at the dealership, Extended Limited Warranties or service contracts, and any other writings signed by the plaintiff at the point of sale.
- b. All work orders, repair orders, and invoices (including accounting and warranty versions) for any maintenance, service and repair activity concerning the subject vehicle.
 - c. All rental car or loaner agreements regarding alternate transportation provided during service or repair visits concerning the subject vehicle.
 - d. All records of communications with dealer personnel, factory representatives, and Defendant's call center or customer assistance personnel concerning the subject vehicle.
 - e. All warranty claims submitted to and/or approved by Defendant concerning the subject vehicle.
 - f. All Warranty Policy and Procedure Manual or similar policies or claim-handling procedures published by Defendant from the date the subject vehicle was purchased or leased to the date the lawsuit was filed.
 - g. All of Defendant's written statements of policy and/or procedures used to evaluate customer requests for repurchase or replacement pursuant to "Lemon Law" claims, including those brought under the Song-Beverly Consumer Warranty Act, from the date the subject vehicle was purchased or leased to the date the lawsuit was filed.
 - h. All documents concerning any internal analysis or investigation regarding the alleged defects claimed by plaintiff in vehicles purchased in California for the same year, make and model of the subject vehicle.
 - i. A list or compilation of customer complaints in Defendant's electronically stored information database that are substantially similar to the alleged defects claimed by Plaintiff in vehicles purchased in California for the same year, make, and model of the subject vehicle. A substantially similar customer complaint would be the same nature of reported symptom, malfunction, dashboard indicator light, or other manifestation of a repair problem as the description listed in any work order or repair order for the subject vehicle, other than routine or scheduled maintenance items. The list provided by Defendant may be in a chart or spreadsheet format and shall include the VIN, date of repair visit, dealership or other reporting location, and text of the other customers' reported complaint, but shall not include the other customers'

names, addresses, phone numbers, e-mail addresses, or other personal identifying information.

- j. All Technical Service Bulletins and Recall Notices for vehicles purchased or leased in California for the same year, make and model of the subject vehicle.
- k. Any repair instruction, bulletin, or other diagnostic/repair procedure identified in any of the repair order/invoice records for the subject vehicle.
- l. All receipts or other written evidence supporting any incidental or consequential damages claimed by Plaintiff.

The information identified above may be provided to the opposing party in electronic form at the option of the producing party.

Any additional requests for documents may only be propounded by written stipulation and/or court order (via motion upon showing of good cause).

3. **Interrogatories:** Within the time limits allowed by law, both Plaintiff and Defendant may initially propound one set of Judicial Council Form Interrogatories and one set of a maximum of 35 special interrogatories. Any additional special interrogatories may only be propounded by written stipulation and/or court order.
4. **Depositions:** Within the time limits allowed by law:
 - a. Defendant may depose Plaintiff.
 - b. Plaintiff may depose Defendant's person(s) most qualified (PMQ). The Court initially limits matters for examination to 10 categories. No documents beyond those authorized herein shall be requested as part of any non-expert deposition.
 - c. Parties may depose any experts identified in an expert witness list exchanged pursuant to CCP § 2034.210, *et seq.*
 - d. If a deponent resides out of state, the deposition may be taken by video conference or telephone. The deponents are not required to travel to California, and the attorneys are not required to travel out of state.
 - e. Parties shall meet and confer as to whether there is a need to take any additional depositions. Any additional depositions may only be noticed and taken by written stipulation and/or court order.

5. **Requests for Admission:** Within the time limits allowed by law, both plaintiff and defendant may propound one set of a maximum of 35 requests for admission. Any additional requests for admission may only be propounded by stipulation and/or court order.

6. **Vehicle Inspection:** Within the time limits allows by law, the subject vehicle shall be inspected by the parties at a mutual agreeable time and place. Unless otherwise agreed by the parties or modified by the Court upon motion by a party, the vehicle inspection (“VI”) process shall be as follows:
 - a. Defendant shall show Plaintiff’s representative proof of insurance for the person/company who will be road testing the subject vehicle.
 - b. The VI shall commence at 9:00 a.m. at an authorized service and repair facility closest to Plaintiff’s residence and may continue until no later than 5:00 p.m. that same day.
 - c. Plaintiff shall deliver the vehicle to the noticed place of inspection. If the subject vehicle has a dead battery, Plaintiff’s counsel shall notify Defendant’s counsel at least one court day before the VI, and the VI shall proceed with Defendant paying for the tow or jump start to the place of inspection and taking reasonable steps to retrieve stored diagnostic codes and other onboard data before the battery is recharged or replaced.
 - d. Defendant shall provide Plaintiff’s representative with duplicate copies of all paper and electronic documents created during and because of the VI, such as test results, the stored codes in the vehicle’s internal network or in its control units, alignment sheets, etc.
 - e. If the subject vehicle is in then-current use by the Plaintiff and if requested in writing within a reasonable time prior to the VI, Plaintiff shall be provided a loaner or rental vehicle paid for by Defendant for the duration of the VI, conditioned on plaintiff providing standard rental car disclosures such as proof of a current driver’s license and insurance coverage and with plaintiff responsible for the loaner vehicle’s fuel. The loaner vehicle need not be the same model or type as the subject vehicle unless Plaintiff agrees to pay for an upgrade.
 - f. Defendant shall be permitted to run tests of relevant electronic control units (“ECU”) and components, conditioned on Defendant maintaining,

downloading, or printing out stored data on the existing condition or historical information stored in an ECU.

- g. Plaintiff's representative is permitted to conduct video and audio recording of the VI.

7. **Phase II Discovery:** Discovery beyond that enumerated in sections 2-6 above (Phase I) is stayed pursuant to CCP § 2019.020(b) as well as California Rule of Court 3.727 and the Court's inherent authority to actively manage cases. To the extent any party concludes additional discovery is necessary beyond Phase I, that party shall by application or motion request such Phase II discovery. In advance of any such request the parties are ordered to meet and confer regarding the additional discovery needed to prepare this case for trial. Any motion or application seeking to commence Phase II discovery shall specifically identify the contemplated additional discovery and shall include a statement of the parties' respective positions re same. In evaluating that request, the Court may on its own motion entertain the appointment of a discovery referee pursuant to CCP § 639. Parties intending to establish an economic inability to pay a pro rata share of the referee's fee are to submit an evidentiary declaration substantiating their inability to pay with the request for additional discovery. Any party seeking Phase II discovery shall do so promptly so as to ensure completion prior to the discovery cut-off.

8. **Civility:** Counsel are reminded to abide by the California Rules of Professional Conduct, California Attorney Guidelines of Civility and Professionalism, and the Civility Guidelines set forth in the Preface to Local Rules of the Superior Court, County of Orange.

9. **Sanctions:** Failure to comply with this Order, which results in subsequent discovery motions, may result in (a) sanctions as allowed by law, (b) an order for further in person or telephonic meet and confer (fees for which will not be recoverable in fees motion); and/or (c) the appointment of a discovery referee as allowed by law.

IT IS SO ORDERED.

Dated: _____

<Judge's Name>

Judge of the Superior Court