

Not Reported in F.Supp.2d, 2012 WL 473931 (C.D.Cal.)  
(Cite as: 2012 WL 473931 (C.D.Cal.))

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United States District Court,  
C.D. California.  
Nadia KAS  
v.  
MERCEDES–BENZ USA, LLC.  
  
No. CV 11–1032–GHK (PJWx).  
Feb. 1, 2012.

Gene Williams, Payan Shahian, for Plaintiff.

Eric Knapp, Troy Yoshino, for Defendants.

**Proceedings: (1) Plaintiff's Motion to Compel Further Responses Re Plaintiff's Request for Production of Documents, Set One (Docket No. 105)**

**(2) Defendant's Motion for Protective Order Covering Its Proprietary and Confidential Warranty Policies and Procedures Manual (Docket No. 104)**

PATRICK J. WALSH, Judge.

\*1 Celia Anglon–Reed, Deputy Clerk.

C/S 02/01/2012, Court Reporter / Recorder.

Before the Court are Plaintiff's motion to compel further responses to her first request for production of documents and Defendant's motion for a protective order covering its proprietary and confidential warranty policies and procedures manual. (Docket Nos. 104, 105.) For the following reasons, the motions are granted in part and denied in part.

1. *Plaintiff's Motion to Compel*

Plaintiff seeks to compel Defendant to produce “all documents, including but not limited to all ESI, in concerning or relating in any [way] to any measurement, report, internal investigation, testing, analysis or complaint regarding the Vehicles and their Radiator Defect, including but not limited to safety

issue concerning or relating in any way to the Radiator Defect in the Vehicles.” (Joint Stip. at 6–7 (RFP No. 10.) Defendant contends that this request is outside the limited scope of issues Plaintiff may raise in this motion. The Court agrees. The Court denied Plaintiff's previous motion to compel without prejudice to give the parties an opportunity to further meet and confer on the issues raised in Plaintiff's motion. (Docket No. 85, at 3–4.) The parties were unable to reach agreement. As a result, Plaintiff was given an opportunity to re-file her motion. (Docket No. 85, at 3.) In the previous motion, Plaintiff did not seek to compel further responses to RFP No. 10 (Docket No. 66, at 106–07), so she may not do so now. The request, however, is not, as Defendant contends, untimely since the discovery cutoff date is July 13, 2012. Plaintiff may, however, raise this issue again after the parties have met and conferred about it. Plaintiff's motion to compel further responses to RFP No. 19 is denied as moot because Defendant has represented that the parties have resolved this issue through the meet and confer process. (Joint Stip. at 16; Knapp Decl. ¶ 9.) (Plaintiff does not dispute this in her supplemental memorandum, so the Court assumes that the information Defendant agreed to provide her suffices.)

Plaintiff's request for Defendant to produce documents responsive to RFP No. 25 is granted. Plaintiff seeks documents pertaining to similar incidences of failure, durability, or performance of the Valeo radiators in other non-class vehicles designed and manufactured by Defendant. Defendant argues that this information is irrelevant because it involves non-class vehicles and that, as such, Plaintiff is engaging in an impermissible fishing expedition to potentially expand the class. The Court rejects this argument. Plaintiff is merely seeking information about how the same radiator that she alleges was defective in the class vehicles performed in non-class vehicles. That information is obviously relevant to whether the radiator itself was defective

and Plaintiff has shown “good cause” for seeking it. Thus, Plaintiff’s motion to compel Defendant to produce documents responsive to RFP No. 25 is granted. Defendant is ordered to produce the documents by no later than Wednesday February 8, 2012.

\*2 Plaintiff’s motion to compel further responses to RFP No. 37 is granted in part and denied in part. RFP No. 37 calls for Defendant to:

Identify and produce documents, including all ESI, sufficient to show Mercedes–Benz’s corporate structure and form of business organization including local, state, regional, national and international operations for all of Mercedes–Benz’s departments, unites, subsidiaries, divisions, affiliates, and authorized dealers and service centers, including documents showing those therein which are responsible in whole or in part, for Mercedes–Benz’s (1) sales, (2) leasing, (3) creation of Mercedes–Benz’s Warranty Program, (4) implementation of Mercedes–Benz’s Warranty Program, (5) supervision of Mercedes–Benz’s Warranty Program, (6) creation of Mercedes–Benz’s maintenance schedule, (8) supervision of Mercedes–Benz’s maintenance schedule for the Vehicles, during the Class Period. Include in your response any organizational charts and personnel organization charts and other documents sufficient to show the organization and identity of personnel that provide the information sought above, including but not limited to any reporting or superior/subordinate relationship, or any policies and procedures regarding communications between employees, subsidiaries, departments, and/or divisions.

(Joint Stip. at 22–23.) She argues that production of these “corporate structure” documents will enable her to identify custodians and other relevant employees to be deposed. (Docket No. 24.) Defendant argues that this request is an “incredibly overbroad” way to get to that information. Defendant further contends that it has already provided Plaintiff with information about relevant personnel

who she has already noticed for deposition. (Exh D. of Knapp Decl.) Following the example of Magistrate Judge Chooljian in a similar case, the Court orders Defendant to produce, to the extent the information is within its possession, custody, or control and has not already been produced: documents sufficient to reflect the identities of the individuals primarily responsible for and most knowledgeable about Mercedes–Benz’s sales, leasing, warranties, and maintenance schedules for Class Vehicles during the Class Period. The motion to compel further responses to RFP No. 37 is otherwise denied.

Plaintiff further seeks to compel Defendant to produce all documents demonstrating the corporate relationship between and among Mercedes–Benz USA, DNAC, and DAG. Defendant objects on the ground that this information is not relevant. The Court agrees. Plaintiff’s motion to compel further responses to RFP No. 38 is, therefore, denied.

Plaintiff seeks to have Defendant provide further responses to RFP No. 45, which seeks information about putative class members. Defendant contends that it is in the process of complying with this request. Plaintiff responds that, although Defendant agreed to provide Plaintiff with the information months ago, Defendant still has not done so. Defendant contends that its production of information from its Customer Assistance Center database should have been complete and turned over to Plaintiff by January 20, 2012 and that its production of responsive emails should be complete and turned over to Plaintiff by February 1 and 6, 2012. (Defendant’s Suppl. Memo. at 1.) The remaining dispute, it seems, is really about whether a customer pay database exists and, if so, whether Defendant is required to search it for information “showing the number of occasions Class Members paid for out-of-pocket repairs that should have been covered under Defendant’s emission warranty, including the number of radiators repaired or replaced customer paid for out-of-pocket, as well as the total number of transmissions customers paid for out-of-pocket.” (Joint Stip. at 31.) At oral argument on the motion,

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it was established that Defendant can search this database for radiator sales, though it would not show the reason for the replacement of the radiator. This evidence would still, however, be relevant to Plaintiff's claim and, therefore, is discoverable. Defendant is ordered to produce it by no later than Wednesday February 8, 2012.

\*3 Finally, Plaintiff seeks to have Defendant produce exemplars of "radiators and internal or external transmission coolers that were utilized on each Class Vehicle during the Class Period ...." (Joint Stip. at 23.) As Defendant notes, Plaintiff did not address this request in her previous motion and did not engage in the required meet and confer process about this request. The Court, therefore, is inclined to deny it for that reason. The Court notes that Defendant has represented that it does not have any of such parts that were already used in the class vehicles. (Knapp Decl. ¶ 10.) To the extent Plaintiff wants currently available new parts, she can purchase those parts herself from Defendant's suppliers.

Plaintiff's request to have Defendant "produce a verified response under oath detailing the nature of its inquiry to locate responsive documents" is denied. Defendant contends that the verification provided by Mr. Fleming, a product analysis engineer working for Defendant, that the facts stated within the responses were true to the best of his knowledge complies is enough. (Exh. C of Knapp Decl., at 154.) The Court would agree. In fact, it is more than is required under the rules. No employee of Defendant was required to provide such a verification under Rules 26 or 34. The production of documents under Rule 34 does not require verification in the same manner that interrogatory responses do. Compare Fed.R.Civ.P. 33(b)(5) with Rule 34. Documents produced under Rule 34 are subject only to the general signature requirement in Rule 26(g). Rule 26(g) applies to attorneys and parties not represented by attorneys. Fed.R.Civ.P. 26(g)(1). Simply by signing the responsive documents, Defendant's attorney "certifie[d] that to the

best of [his] knowledge, information, and belief formed after a reasonable inquiry" the disclosures made were "complete and correct as of the time [they were] made." Fed.R.Civ.P. 26(g)(1)(A). No separation certification or verification is required. Absent some evidence that Defendant is being deceitful, which is not present here, the Court will not require Defendant to do more.<sup>FN1</sup>

<sup>FN1</sup>. For future discovery disputes, Plaintiff is admonished to not include whole sections of the Joint Stipulation—i.e., the entirety of Defendant's objections to the discovery requests—in footnotes in order to attempt to skirt the Court's previously imposed page limit. If she does this again, the Court will disregard any argument related to objections that were placed in the footnotes.

## 2. Defendant's Motion for a Protective Order

Defendant's motion for a protective order is granted by separate order.

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Kas v. Mercedes-Benz USA, LLC

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