

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAJEED SEIFI, et al.,
Plaintiffs,
v.
MERCEDES-BENZ U.S.A., LLC,
Defendant.

Case No. [12-cv-05493-TEH](#) (JSC)

**ORDER RE: PLAINTIFF’S MOTION
TO COMPEL DOCUMENTS**

Dkt. Nos. 92-4, 104 & 122

Plaintiffs Marjeed Seifi and Tracy Deakin bring this putative class action against Defendant Mercedes-Benz USA, LLC, alleging certain defects in vehicles equipped with two particular engines. In the discovery dispute currently pending before the Court Plaintiffs contend that Defendant should be required to produce documents of Daimler AG, Defendant’s parent company. (Dkt. No. 92-4.) Having had the benefit of oral argument on November 6, 2014, and having considered the parties’ initial joint letter brief and their supplemental briefs regarding Defendant’s legal right to documents in its parent corporation’s possession, the Court DENIES Plaintiffs’ motion to compel.

BACKGROUND

Plaintiffs filed this putative class action under the Class Action Fairness Act seeking to represent a class of similarly situated individuals who purchased or leased certain Mercedes-Benz vehicles equipped with M272 and M273 engines for (1) breach of express warranty; (2) violations of the Unfair Competition Law (“UCL”); and (3) violations of the Consumer Legal Remedies Act

1 (“CLRA”). Plaintiffs contend that Defendant sold vehicles containing a defect which causes the
2 balance shift gear of the M272 engine and the idle gear of M273 engine to wear prematurely,
3 repair of which is very expensive. Plaintiffs allege that Defendant was aware of the defect at the
4 time the vehicles were sold, but concealed it from consumers. The district court granted a motion
5 to dismiss the breach of warranty claim and any damages claims under the CLRA as to vehicles
6 containing the M273 engine and referred the case to this Magistrate Judge for discovery.

7 **DISCUSSION**

8 Plaintiffs seek to compel Defendant to produce documents of Daimler AG, “the German
9 parent company and manufacturer of Mercedes-Benz vehicles at issue in this action.” (Dkt. No.
10 92-4.) In particular, Plaintiffs take issue with Defendant’s general objection to its Interrogatories
11 and Document Requests which states that

12 MBUSA objects to each and every Request to the extent it seeks to
13 require MBUSA to respond on behalf of any entity other than
14 MBUSA or to the extent it seeks information not in MBUSA’s
15 possession, custody, or control. MBUSA specifically objects to
16 plaintiff’s definitions of “YOU” and “YOUR” to the extent those
17 terms include any entity other than MBUSA because inclusion of
18 other entities besides MBUSA renders such definitions overbroad,
19 unduly burdensome, harassing, and oppressive, and Requests using
20 those definitions would impermissibly seek information not within
21 MBUSA’s possession, custody, and control. Accordingly, all
22 responses herein are made by and on behalf of MBUSA alone and
23 no other entity or person.

18 (Dkt. No. 97-1 at 4 (Defendant’s Document Request Responses, Objection 5) & Dkt. No. 97-2
19 (Defendant’s Interrogatory Responses, Objection 5).) Although Plaintiffs did not initially move to
20 compel with respect to any particular document request, and instead, challenged Defendant’s
21 general objection, Plaintiffs’ supplemental brief identifies nine document requests that they
22 contend demand documents that are within Defendant’s control.

23 **A. The Legal Control Test in the Ninth Circuit**

24 Under Federal Rule of Civil Procedure 34, a party must produce any documents under its
25 “possession, custody, or control.” The party seeking the documents bears the burden of
26 demonstrating that the responding party exercises such control. *United States v. Int’l Union of*
27 *Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989). In the Ninth Circuit, a
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1 “practical ability to obtain the requested documents” from a related organization is not enough to
2 constitute control because the related organization “could legally—and without breaching any
3 contract—[] refuse to turn over such documents.” *In re Citric Acid Litig.*, 191 F.3d 1090, 1107-
4 08 (9th Cir. 1999). Instead, “control” is defined as “the legal right to obtain documents upon
5 demand.” *Id.* at 1107-08.

6 Plaintiffs’ reliance on a decision in a related class action brought in the United States
7 District Court for the Western District of Louisiana to show Defendant’s “control” of its parent
8 corporation’s documents is unavailing.¹ See *Dugas et al v. Mercedes-Benz USA, LLC*, No. 12-
9 2885 (W.D. La. Aug. 5, 2014) (Dkt. No. 123). In considering whether Mercedes-Benz was
10 obligated to produce Daimler AG documents, the Dugas court held that “a sufficiently intimate
11 relationship between subsidiary and parent [exists] to justify disregarding the formal corporate
12 separation for the limited purpose of civil discovery.” (Dkt. No. 97-3 at 9.) The court concluded
13 that Mercedes-Benz had such control because (1) it was undisputed that there was a commonality
14 of ownership;² (2) the two corporations exchanged documents during the ordinary course of
15 business; and (3) Daimler was involved in the transaction from which the lawsuit arose
16 (manufacture of the vehicles at issue). *Dugas*’ holding, however, is contrary to the Ninth Circuit’s
17 legal control test as it is, in effect, a holding that Defendant has the practical ability to obtain from
18 its parent the sought-after documents. Under binding Ninth Circuit law, such a showing is not
19 enough. *In re Citric Acid Litig.*, 191 F.3d. at 1107-08.

20 Plaintiffs’ citation to *AFL Telecommunications LLC v. SurplusEQ.com Inc.*, No. 11-1086,
21 2012 WL 2590557, at *2 (D. Ariz. July 5, 2012), is likewise unpersuasive. (Dkt. No. 92-4 at 3:6-
22 4:3.) Although the AFL court noted the Ninth Circuit’s *Citric Acid* legal control test, it applied a
23 “more expansive” definition of legal control, relying on the Third Circuit’s decision in *Gerling*
24 *International Insurance Co. v. Commissioner*, 839 F.2d 131, 140–41 (3rd Cir. 1988). AFL

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26 ¹ An appeal of this decision is currently pending with the district court. It was fully briefed on
27 October 9, 2014.

28 ² In so concluding, the court noted that the United States Supreme Court recently held that
Mercedes-Benz USA is Daimler’s exclusive importer and distributor in the United States. See
Daimler AG v. Bauman, 134 S. Ct. 746, 752 (2014).

1 Telecommunications LLC, 2012 WL 2590557, at *2. In particular, the AFL court adopted
2 language from Gerling observing that “[w]here the relationship is thus such that the agent-
3 subsidiary can secure documents of the principal-agent to meet its own business needs and
4 documents helpful for use in the litigation, the courts will not permit the agent-subsubsidiary to deny
5 control for purposes of discovery by an opposing party.” Id. (citing Gerling, 839 F.2d at 140).
6 The court suggested that under Gerling the legal control test would capture a subsidiary that was
7 the exclusive seller of its parent’s products in the United States. AFL Telecommunications LLC,
8 2012 WL 2590557, at *2. Based on evidence that the plaintiff was a wholly-owned subsidiary of
9 the parent corporation whose documents were sought, as well as the exclusive authorized United
10 States distributor, and that the exclusive licensee relationship between the parent corporation and
11 plaintiff-subsubsidiary corporation was formed just so plaintiff could bring the lawsuit, the court
12 found that plaintiff had sufficient legal control over the source code sought and ordered it
13 produced.

14 AFL’s interpretation of the legal control test is contrary to that of other district courts
15 within the Ninth Circuit, including several within this district which have “required parties to
16 establish that a subsidiary has a legal right to obtain documents from its parent on demand before
17 compelling those parties to produce documents.” Dugan v. Lloyds TSB Bank, PLC, No. 12-02549,
18 2013 WL 4758055, at *2 (N.D. Cal. Sept. 4, 2013) (collecting cases regarding the same). Further,
19 even if the Court were to find *AFL’s* rationale persuasive—which it is not—Plaintiff has not made
20 the same showing here. Plaintiffs have simply alleged that Mercedes-Benz is a United States
21 distributor and subsidiary of Daimler AG. Plaintiff also suggests that because Defendant has
22 produced some Daimler AG documents it must have access to all such documents and databases.
23 This falls well below the showing necessary to establish legal control: Plaintiffs must show that
24 Defendant has the legal right to compel production of the documents from Daimler. Further,
25 Plaintiffs provide no response to Defendant’s contention that it is a “sales and servicing
26 subsidiary, so it has some items on, e.g., replacing parts...[b]ut [it] does not design or manufacture
27 the parts at issue... and [t]his type of information is very sensitive,... and cannot be demanded by
28 [Defendant] as [Defendant] has no reason to know how a part is designed or made (as opposed to

1 replaced).” (Dkt. No. 92-4 at 6:13-18 (internal quotes and emphasis omitted).)

2 **B. The Interplay Between the Legal Control Test and NHTSA Regulations**

3 At oral argument, Plaintiffs raised a new argument suggesting that regulations enacted by
4 the National Highway Transportation and Safety Administration (NHTSA) give Defendant the
5 requisite legal control.³ Specifically, Plaintiffs contend that NHTSA regulations give Defendant a
6 legal right to obtain the documents sought here because the regulations mandate that Defendant
7 provide such documents to NHTSA in connection with any inquiry or investigation conducted by
8 that federal agency. (Dkt. No. 104 at 3:19-23.) In particular, Plaintiffs point to the Notice of
9 Proposed Rulemaking (“NPRM”) entitled “Reporting of Information and Documents About
10 Potential Defects Retention of Records That Could Indicate Defects,” which is codified at 49
11 C.F.R. Parts 573, 574, 576, and 579. (Dkt. No. 104-2 (the NPRM).) The Court is not persuaded
12 that these regulations provide Defendant with the necessary legal control over the documents at
13 issue here.

14 As an initial matter, the regulations give NHTSA the right to demand the documents—not
15 Defendant. Thus, while the regulations indisputably cover Daimler AG—“we propose to define
16 the covered entity – the manufacturer – inclusively to include corporate parents, subsidiaries, and
17 affiliates”—they do not alter the legal relationship between Daimler AG and Defendant in
18 connection with this lawsuit. (Dkt. No. 104-2 at 10.) Rather, they require Daimler AG to ensure
19 that the necessary documents are provided to NHTSA in the event of an investigation. To put it
20 another way, notwithstanding the regulations, Daimler AG could legally—and without breaching
21 any contract or violating any law—refuse to provide the documents to Defendant for use in this
22 case. See *In re Citric Acid Litig.*, 191 F.3d 1090, 1107-08 (9th Cir. 1999).

23 Second, the regulations set up a reporting framework whereby multinational corporations
24 which manufacture vehicles sold in the United States are required to report certain information to
25 the NHTSA either directly or through “that corporation’s designated reporting entity, so that the
26 designated entity timely provides the information to NHTSA.” (Dkt. No. 104-2 at 9.) Notably, “a
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28 ³ The Court granted the parties leave to submit supplemental briefing regarding this matter.

1 multinational corporation would be violating the law if it designated its U.S. importer as its
2 reporting entity but failed to assure that the importer was provided with the information required
3 to be reported.” (Id.; see also 66 Fed. Reg. 66190-01 (“A multinational corporation must ensure
4 that all relevant information on matters for which reports are required throughout the world are
5 made available to whatever entity makes those reports so that its designated entity timely provides
6 the information to NHTSA.”).) However, Plaintiffs have not established that Daimler AG
7 designated Defendant as the reporting entity.

8 Further, even if Defendant was the reporting entity for Daimler AG, the regulations
9 themselves do not establish a legal mechanism for Defendants to demand the documents from
10 Daimler AG. Courts interpreting the legal control test require a specific means by which the
11 information can be obtained; that is, “proof of theoretical control is insufficient; a showing of
12 actual control is required.” *In re Citric Acid Litig.*, 191 F.3d at 1107. Thus, the court in *In re*
13 *NCAA Student-Athlete Name & Likeness Litig.*, No. 09-CV-01967, 2012 WL 161240, at *3 (N.D.
14 Cal. Jan. 17, 2012), found that the NCAA lacked sufficient legal control over documents
15 possessed by its member institutions because “[n]either the NCAA Constitution nor the Bylaws
16 grants the NCAA the right to take possession of its members’ documents.” See also *Doe v. AT &*
17 *T W. Disability Benefits Program*, No. C-11-4603, 2012 WL 1669882, at *3 (N.D. Cal. May 14,
18 2012) (finding that legal control was established in light of a contract between defendant and the
19 third-party which granted “defendant extensive ownership rights over information and documents
20 created during the claims administration process”); *Micron Tech., Inc. v. Tessera, Inc.*, No. 06-
21 80096, 2006 WL 1646133, at *2 (N.D. Cal. June 14, 2006) (finding no legal control where there
22 was no “mechanism [] to compel [the third-party] to produce those documents”). The regulations
23 here specify that the manufacturer, whether foreign or domestic, must provide certain information
24 to NHTSA. They do not create “a legally enforceable arrangement” by which Defendant can
25 compel this same information from Daimler AG. *Micron Tech.*, 2006 WL 1646133 at *1.

26 Finally, by Plaintiffs’ own admission, NHTSA could only require the production of the
27 requested documents under circumstances not present here; namely, if an NHTSA investigation is
28 pending—which Plaintiffs concede is not.

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Thus, Plaintiffs have failed to provide “factual support for [their] conclusion that the requested documents are within Defendants’ custody or control” and the motion to compel must be denied. *Lopez v. Flores*, No. 08-CV-01975, 2013 WL 2385240, at *6 (E.D. Cal. May 30, 2013).⁴ The result might be different if Defendant had already produced the documents to NHTSA in connection with an investigation and thus Defendant had the documents in its actual possession, but that is not the case here.

CONCLUSION

For the reasons set forth above, the Court DENIES Plaintiffs’ motion to compel. (Dkt. No. 93.)

The Administrative Motions to Seal filed in connection with this discovery dispute (Dkt. Nos. 92, 94, and 95) are GRANTED.

This Order disposes of Docket Nos. 92, 93, 94, 95, and 104.

IT IS SO ORDERED.

Dated: December 16, 2014



JACQUELINE SCOTT CORLEY
United States Magistrate Judge

⁴ Because the Court finds that Plaintiffs have not demonstrated Defendant’s legal control, it need not and does not consider Defendant’s argument that the documents Plaintiffs seek are not in any event covered by the NHTSA regulations.