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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DON LAU,

No. C-11-01940 DMR

Plaintiff(s),

FINAL PRETRIAL ORDER

v.

MERCEDES-BENZ USA LLC,

Defendant(s).

Following a pretrial conference held on January 22, 2014, IT IS HEREBY ORDERED

THAT:

A. Trial will commence on **February 10, 2014 at 9:00 a.m.** at the U.S. District Court, 1301 Clay Street, Oakland, California 94612. For courtroom number and floor information, please check the Court’s on-line calendar at <http://www.cand.uscourts.gov> (click “Calendars - Judges’ Weekly Calendars” link, then select Judge Ryu’s calendar). Attorneys shall appear at 8:30 a.m. on each day of the trial. Trial days will be from 9:00 a.m. to 3:00 p.m., with a 15-minute break at 10:30 a.m., a 45-minute lunch break at noon, and a 10-minute break at 2:00 p.m. On February 10, 2014, trial will run until 4:00 p.m. On February 12, 2014, the parties shall be prepared to stay after trial in order to go over final jury instructions and verdict form. Each side shall have eight hours in which to present an opening statement, the direct examination of its witnesses, the cross-examination of the opposing party’s witnesses, including all objections, and a closing argument.

1 B. All witnesses, other than party representative-witnesses Don Lau and Mario Haro are
2 excluded from the trial until after the conclusion of their testimony.

3 C. If a party then presenting its case does not have its next witness present at any time, it
4 will be deemed to have rested that portion of its case (e.g. case in chief, rebuttal).

5 D. In order to avoid prejudice to either side, the court will follow the normal rule
6 regarding objections to evidence and other legal points which the court must decide: no lengthy
7 arguments in front of the jury. No sidebars. Unless it is unavoidable, any such argument should
8 occur at 8:30 a.m. (with notice given at end of prior day) or after 3:00 p.m. Objections should
9 consist of a citation to the Federal Rule of Evidence at issue and the applicable generic description
10 (e.g., “relevance”).

11 E. Notices of witnesses and documents: At the close of each trial day, you must disclose
12 to the other parties the witnesses to be called the following two trial days, and the exhibit numbers of
13 the documents that you plan to use on direct (other than for impeachment). With 24 hours of such
14 disclosure, the opposing party shall provide the exhibit numbers to be used in cross of the witnesses
15 (other than for impeachment). Plaintiff to disclose first two days of witnesses 48 hours before the
16 beginning of the trial, with cross disclosures 24 hours later. No party will be allowed to call
17 witnesses or use documents other than those that have been previously disclosed in the Pretrial
18 Conference Statement *and* in the daily witness lists. On or before February 7, 2014, both parties
19 shall disclose all documents and demonstratives that they intend to use in opening statements.

20 F. The court will read the following Ninth Circuit model instructions before opening
21 statements: 1.1B, 1.2, 1.3, 1.6, 1.7, 1.8-1.14, 1.18, 1.19, 2.2 (using the parties’ stipulation of facts),
22 2.4 (if applicable), and 2.11-2.13. Parties must notify each other of intended use of deposition
23 testimony in lieu of live testimony by no later than 5:00 p.m. on February 3, 2014.

24 G. Plaintiff’s sole claim is breach of express warranty under the Song-Beverly
25 Consumer
26 Warranty Act. As Judge James previously ruled, Plaintiff is limited to the theory that the vehicle
27 was purchased and used primarily for personal purposes. Plaintiff is precluded from arguing in the
28 alternative that the vehicle was primarily for business use. Defendant may present evidence to

1 refute Plaintiff's position and argue that the vehicle was, in fact, purchased and used primarily for
2 business purposes.

3 H. Motions in Limine:

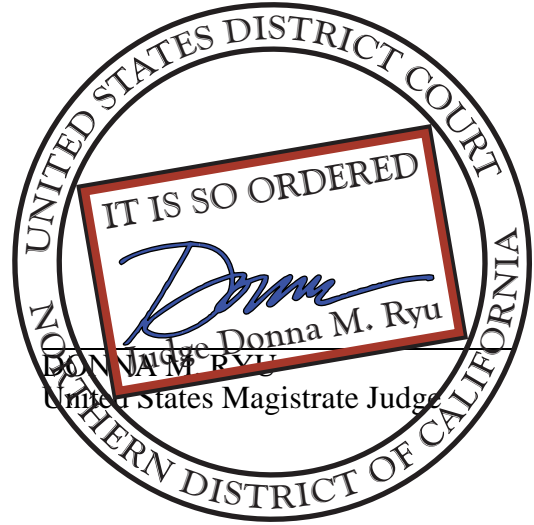
- 4 a. Plaintiff's Motion in Limine No. 1, reference to, and testimony and
5 documents regarding Plaintiff's prior Lemon Law claims: Judge James
6 already ruled that Defendant is precluded from introducing evidence that
7 Plaintiff has made prior claims pursuant to the Song-Beverly Consumer
8 Warranty Act and has had other cars repurchased. Defendant may proffer
9 such evidence for impeachment purposes only, subject to any other valid
10 objections. Defendant is instructed to ensure that this information is not
11 inadvertently raised by its witnesses.
- 12 b. Plaintiff's Motion in Limine No. 2, reference to, and testimony and
13 documents regarding Plaintiff's tax returns to the extent that they indicate
14 Plaintiff's treatment of the vehicle for tax purposes: Plaintiff's tax returns are
15 relevant to the question of whether the vehicle was purchased for personal or
16 business purposes and to Plaintiff's credibility on this issue. The court will
17 address Plaintiff's privacy concerns regarding the tax returns if the parties are
18 unable to agree upon redactions.
- 19 c. Plaintiff's Motion in Limine No. 3, testimony by Defendant's expert witness,
20 James Becker, regarding the value of the vehicle: the court ordered further
21 briefing on this issue. By no later than January 27, 2014, Plaintiff shall file a
22 brief addressing 1) the basis for restricting Becker's testimony; 2) whether
23 valuation of the vehicle is a subject appropriate for expert opinion; and 3)
24 whether Plaintiff's expert, Dan Calef, may offer an opinion regarding the
25 valuation of the vehicle. Defendant shall file a response by no later than
26 January 29, 2014. The court will issue an order or set a hearing if necessary.

27 I. Exhibits: The parties have stipulated to the admissibility of Exhibits 1 through 57, as
28 set forth in the Parties' Amended Joint Pretrial Statement (Docket No. 88), as well as the curriculum

1 vitae of their experts [Dan Calef – Plaintiff’s Exhibit 59 and James Becker – Defendant’s Exhibit
2 A]. The court does not admit the exhibits into evidence at this time; parties must move for their
3 admission.

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5 IT IS SO ORDERED.

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7 Dated: January 23, 2014



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