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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TERRY HAMM, et al.,
Plaintiffs,
v.
MERCEDES-BENZ USA, LLC,
Defendant.

Case No. [5:16-cv-03370-EJD](#)

**ORDER DENYING DEFENDANT’S
MOTION FOR SANCTIONS;
DENYING PLAINTIFF’S REQUEST
FOR SANCTIONS**

Re: Dkt. No. 112

Pending before the Court is Defendant Mercedes-Benz USA, LLC’s (“MBUSA”) motion for sanctions under Fed. R. Civ. P. 11(b) and Civil Local Rule 7-8. MBUSA contends that Plaintiff’s counsel misleadingly characterized an e-mail attachment prepared by an unrelated third-party as a MBUSA “internal document” that purportedly showed that the existence of the alleged defective car transmission is “not in dispute.” MBUSA’s Mot. for Sanctions at 6, Dkt. No. 112. As a sanction, MBUSA seeks an award of reasonable attorney’s fees and costs incurred as a result of Plaintiff’s counsel’s conduct. *Id.* Plaintiff filed an opposition, which includes a request for sanctions against MBUSA (Dkt. No. 116), and MBUSA filed a reply (Dkt. No. 119). The Court finds it appropriate to take the motion under submission for decision pursuant to Civil Local Rule 7-1(b). For the reasons stated below, MBUSA’s motion is DENIED and Plaintiff’s request for sanctions is DENIED.

I. BACKGROUND

Plaintiff’s counsel submitted a document referred to by MBUSA as the “Beckmann

1 Document” in opposition to MBUSA’s motion to strike Plaintiff’s experts D.C. Sharp and Murat
2 Okcuoglu. *See* Ex. 1 to Decl. of Pl.’s Counsel re Okcuoglu, Dkt. No. 106-2; Ex. 3 to Decl. of Pl.’s
3 Counsel re Sharp, Dkt. No. 105-5. The portion of the Beckmann Document that Plaintiff relied
4 upon is attached to a June 7, 2011 cover email from Robert Beckmann (“Beckmann”) of
5 Beckmann Technologies, a third-party independent servicer, to paul.nitsche@mbusa.com. Dkt.
6 No. 106-2 at 2. At the time, Paul Nitsche (“Nitsche”) was MBUSA’s Department Manager. Opp’n
7 at 3. Beckmann states in the body of the cover email that the attachment outlines “the issues
8 regarding the 722.9 electronics assembly as I see them,” and expresses his opinion that this
9 component “is a big problem” for his customers. Dkt. No. 106-2 at 2.

10 MBUSA contends that Plaintiff’s counsel misleadingly characterized and quoted from a
11 page of Beckmann Document that is Bates-stamped HAMM_MBUSA_02331. That page of the
12 Beckmann Document states:

13 **Mercedes 722.9XX Transmissions**

14 Starting around 2002 Mercedes has integrated the transmission
15 control electronics into the valve body assembly inside the
16 transmission. . . .

17 Fast forward to 2010. *Due to a metallurgy issue inside the*
18 *transmissions all the electronic assemblies have started to fail. I*
19 *mean ALL of them.* Many still under warranty. Not good for the
20 manufacturer. In order to save costs MB has reevaluated the repair
21 process last year and began to sell just the electronics assembly
22 alone at a fire sale price. It gets better! The software to properly
23 program the electronics was not working correctly and the cars didn’t
24 get fixed. Dealers started throwing the electronics in the trash and
25 ordering the complete valve bodies again which were pre-
26 programmed and worked fine. MB didn’t like this since new valve
27 body =\$1200, electronics = \$150 WARRANTY.

28 Dkt. No. 106-2, at Bates-stamp HAMM_MBUSA_002331 (emphasis added).

MBUSA contends that Plaintiff’s counsel falsely claimed that the Beckmann Document is
MBUSA “acknowledg[ing] that all 722.9 transmissions are defective” and that “[t]he existence of
a defect is not in dispute.” MBUSA’s Mot. for Sanctions at 2 (quoting Pl. Opp. to Mot. to Strike
Okcuoglu at 7:1-5, Dkt. 106). MBUSA also faults Plaintiff’s counsel for making the following

1 allegedly misleading statements:

- 2 • “MBUSA, however, overlooks Hamm’s actual claim that all
3 722.9 transmissions . . . were defective. And, Hamm’s claim
4 is borne out by **MBUSA’s own documents** produced in this
5 litigation. [citing and quoting the Beckmann Document].
6 While MBUSA may now attempt to argue against **its own
7 internal documents**” Dkt. 105 (Plaintiff’s Opposition
8 to MBUSA’s Motion to Strike the Report of D.C. Sharp) at 18
9 (emphasis added);
- 7 • “Indeed, that such a defect exists across the 722.9
8 transmission equipping the Class Vehicles is **not even subject
9 to reasonable dispute. MBUSA’s own internal documents**
10 produced in this litigation **confirm** as much.” Dkt. 106
11 (Plaintiff’s Opposition to MBUSA’s Motion to Strike the
12 Expert Report of Murat Okcuoglu) at 1 (citing and quoting the
13 Beckmann Document, as opposed to anything written by
14 MBUSA);
- 11 • “Here, Hamm has pled and **MBUSA’s documents**
12 **acknowledge** that all 722.9 transmissions are defective [citing
13 and quoting the Beckmann Document, as opposed to anything
14 written by MBUSA]. The existence of a defect is **not in
15 dispute.**” *Id.* at 7 (emphasis added).

14 MBUSA’s Mot. for Sanctions at 5-6. MBUSA contends the allegedly misleading characterizations
15 of the Beckmann Document are egregious not only because Plaintiff’s counsel knew that the
16 Beckmann Document was an external document emailed to MBUSA by Beckmann and that
17 Beckmann did not speak on behalf of MBUSA, but because Plaintiff’s counsel knew that MBUSA
18 disputed the assertions made by Beckmann.

19 **II. STANDARDS**

20 Federal Rule of Civil Procedure 11 provides in pertinent part that “[b]y presenting to the
21 court a pleading, written motion, or other paper. . . an attorney. . . certifies that to the best of the
22 person’s knowledge, information, and belief, formed after an inquiry reasonable under the
23 circumstances . . . the factual contentions have evidentiary support.” Fed. R. Civ. P. 11(b)(3). Rule
24 11 authorizes a court to sanction a party and the party’s counsel for filing a pleading, written
25 motion, or other paper lacking evidentiary support. Fed. R. Civ. P. 11(c). The sanction may take
26 many forms, including reasonable attorney’s fees and expenses, but must “must be limited to what

1 suffices to deter repetition of the conduct or comparable conduct by others similarly situated.”
2 Fed. R. Civ. P. 11(c)(4).

3 **III. DISCUSSION**

4 **A. MBUSA’s Motion**

5 MBUSA contends that Plaintiff and his counsel violated Rule 11 by falsely representing to
6 the Court that (1) the document prepared by third-party Beckmann of Beckmann Technologies is a
7 MBUSA “internal document,” and (2) the document shows that the existence of the alleged defect
8 “is not in dispute.” Mot. at 6. Plaintiff’s counsel denies engaging in any sanctionable conduct, and
9 moreover, accuses MBUSA of filing a “scurrilous motion” that warrants sanctions against
10 MBUSA. Opp’n at 1.

11 The Court finds that Plaintiff’s repeated characterization of the Beckmann Document as a
12 MBUSA “internal document” is misleading because it suggests that the Beckmann Document was
13 prepared or authorized by MBUSA and/or reflects MBUSA’s opinions, when it does not.
14 Plaintiff’s explanation—that the Beckmann Document is properly characterized as an MBUSA
15 “internal document” because it was produced by MBUSA from its own files during discovery—is
16 also misleading and dubious. Just because a third-party document was received by an MBUSA
17 employee, kept in MBUSA’s files, and subsequently produced by MBUSA does not make it a
18 MBUSA “internal document,” which suggest it was prepared by the company itself.

19 Nevertheless, the Court finds that Plaintiff’s mischaracterization of the Beckmann
20 Document does not rise to the level of a Rule 11 violation because Plaintiff submitted Beckmann’s
21 cover email with the Beckmann Document as one exhibit, and the cover email makes clear that the
22 Beckmann Document originated with Beckmann, not MBUSA. Moreover, Plaintiff accurately
23 described the Beckmann Document in his reply brief in support of the class certification motion.
24 Plaintiff makes clear in his reply brief that the Beckmann Document was sent via email to
25 MBUSA from one of MBUSA’s “independent servicer[s]” and that MBUSA produced the
26 Beckmann Document to Plaintiff during this case. *See* Pl.’s Reply In Support of His Mot. for Class

1 Certification at 1:1-19, Dkt. No. 110. Were it not for Plaintiff’s submission of Beckmann’s cover
2 email and the accurate description of the Beckmann Document in Plaintiff’s reply brief, however,
3 the Court would be inclined to impose sanctions.

4 The second allegedly misleading statement—that the Beckmann Document shows the
5 alleged defect “is not in dispute”—is not misleading. In the context of the lawsuit, the Court
6 understood Plaintiff’s “is not in dispute” comment as nothing more than aggressive advocacy: that
7 Plaintiff believed the Beckmann Document was indisputable evidence that the 722.9 transmission
8 is defective. Although MBUSA may dispute the meaning or import of the Beckmann Document,
9 the Document supports Plaintiff’s theory of the case.

10 **B. Plaintiff’s Request for Sanctions**

11 Plaintiff seeks sanctions against MBUSA given “the utter baselessness of MBUSA’s
12 sanctions filing and the indefensible reputational attacks it levies against Hamm’s counsel.” Opp’n
13 at 9. The Court does not share Plaintiff’s view of the motion for reasons stated above. The
14 personal invectives against Plaintiff’s counsel, however, were inappropriate. Nevertheless, the
15 Court declines to impose sanctions for the personal invectives with the expectation that MBUSA
16 will refrain from such conduct in the future.

17 **IV. CONCLUSION**

18 MBUSA’s motion for sanctions is DENIED. Plaintiff’s request for sanctions is also
19 DENIED.

20 **IT IS SO ORDERED.**

21 Dated: April 8, 2021

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23 _____
24 EDWARD J. DAVILA
25 United States District Judge
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