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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GEORGE ADAMS,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

Case No.: 17cv68-MMA (KSC)

**NOTICE AND ORDER PROVIDING
TENTATIVE RULINGS RE:
MOTIONS IN LIMINE**

[Doc. Nos. 48, 49]

On August 6, 2018 at 2:30 p.m., the parties in this action will appear before the Court for a final pretrial conference and hearing on the parties’ pending motions in limine. *See* Doc. Nos. 48, 49. In anticipation of the hearing, the Court issues the following tentative rulings on the pending motions:

PLAINTIFF’S MOTIONS

1. The Court tentatively **DEFERS** ruling on Plaintiff’s motion to exclude testimony that Plaintiff did not avail himself or participate in a third-party dispute program pending clarification on whether Plaintiff seeks a civil penalty pursuant to California Civil Code § 1794(c) or California Civil Code § 1794(e). *See Jernigan v. Ford Motor Co.*, 24 Cal. App. 4th 488, 491-92 (Ct. App. 1994); *see also* Cal. Civ. Code § 1794(e)(5) (“If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation.”).

1 2. The Court tentatively **GRANTS** Defendant’s motion to exclude evidence of
2 emotional distress. The Court tentatively finds that Plaintiff’s subjective emotional
3 distress is irrelevant and likely to be unduly confusing and consumptive of time. *See*
4 *Lundy v. Ford Motor Co.*, 87 Cal. App. 4th 472, 478 (Ct. App. 2001) (stating that an
5 objective test determines whether a vehicle’s nonconformity is substantial).

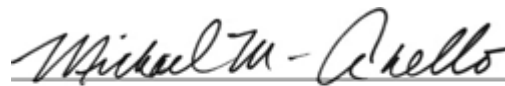
6 3. The Court tentatively **DEFERS** ruling on Defendant’s motion to exclude
7 statements offered by Plaintiff of the dealership or its personnel pending Plaintiff’s
8 showing of the requisite agency element or that the statement was otherwise authorized
9 by Defendant. *See* Fed. R. Evid. 801(d)(2)(C)-(D); *see also Gray v. Mazda Motor of*
10 *Am., Inc.*, No. SACV 08-279-JVS (ANx), 2009 U.S. Dist. LEXIS 138461, at *10 n.5
11 (C.D. Cal. Feb. 6, 2009) (stating that “the Song-Beverly Act does not have the
12 evidentiary force of making the statement of a dealer an admission of the manufacturer as
13 a matter of law”).

14 4. The Court tentatively **DENIES** Defendant’s motion to exclude Plaintiff’s
15 expert Dan Calef from testifying because the motion is untimely. *See* Civ. Chambers R.
16 IX at n.3. Alternatively, the Court tentatively finds that Mr. Calef is qualified to testify as
17 an expert in this case and that his expert report meets the minimum requirements of
18 Federal Rule of Civil Procedure 26(a)(2)(B).

19 As these rulings are tentative, the Court looks forward to the oral arguments of
20 counsel at the hearing.

21 **IT IS SO ORDERED.**

22 Dated: August 3, 2018



Hon. Michael M. Anello
United States District Judge