

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**ZACHARY LESTER, et al.,**

**Plaintiffs,**

**v.**

**CASE NO.: 2:11-cv-850  
JUDGE EDMUND A. SARGUS, JR.  
MAGISTRATE JUDGE TERENCE P. KEMP**

**WOW CAR COMPANY, LTD., et al.,**

**Defendants.**

**OPINION AND ORDER**

This matter is before the Court for consideration of Plaintiffs' March 21, 2014, Rule 56(d) Motion. (ECF No. 113.) For the reasons that follow, the Court **GRANTS** Plaintiffs' motion to the extent indicated below.

**I.**

The Court has described this case in numerous prior orders. Briefly, it involves a dispute over the purchase of a used car by plaintiffs Zachary and Brandi Lester. Plaintiffs returned the vehicle to the seller twice within the first week they owned it, and the engine allegedly blew six days after the purchase. Plaintiffs then sued the seller in the Court of Common Pleas for Knox County, Ohio, and the case was removed here. Several amended pleadings, adding new parties and new claims, have since been filed. The most recent amended complaint names as defendants Amy Hartzler dba Wow Car Company, Wow Car Company, Ltd., Max R. Erwin, Marmax Enterprises LLC, Mid-Ohio Motor Funding Group, Ltd. and The Hartzler-Erwin Group and asserts claims for breach of an express warranty, breach of the implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, deceptive

trade practices, violations of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, violations of the Ohio Consumer Sales Practices Act, Ohio Revised Code § 1345.01 *et seq.*, and alter ego.

Pursuant to the current scheduling order in this action, Defendants filed their Motion for Summary Judgment on February 28, 2014. (ECF No. 111.) Instead of filing their memorandum in opposition, Plaintiff waited three weeks, until March 21, 2014, and filed their Rule 56(d) Motion. (ECF No. 113.) The Court expedited briefing on Plaintiffs' motion (ECF No. 115), which is now ripe for review (ECF No. 117).

## II.

Plaintiffs move under Rule 56(d) of the Federal Rules of Civil Procedure, which provides:

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

“Rule 56(f) [present Rule 56(d)] has been interpreted as requiring that a party making such a filing indicate to the district court its need for discovery, what material facts it hopes to uncover, and why it has not previously discovered the information.” *Cavevic v. City of Hazel Park*, 226 F.3d 483, 488 (6th Cir. 2000) (citing *Radich v. Goode*, 886 F.2d 1391, 1394 (3rd Cir. 1989)). “Bare allegations or vague assertions of the need for discovery are not enough” to justify granting a Rule 56(d) motion. *Summers v. Leis*, 368 F.3d 881, 887 (6th Cir. 2004) (citing *United States v. Cantrell*, 92 F.Supp.2d 704, 717 (S.D. Ohio 2000)). Instead, the party moving under Rule 56(d) must state with “some precision the materials he hopes to obtain with further

discovery, and exactly how he expects those materials would help him in opposing summary judgment.” *Id.* at 887 (citing *Simmons Oil Corp. v. Tesoro Petroleum Corp.*, 86 F.3d 1138, 1144 (Fed. Cir. 1996)).

In the instant action, the affidavit filed by Plaintiffs to support their motion is sufficient to meet the requirements of Rule 56(d). (Pl.’s Mot., Ex. A; ECF No. 13-1.)

### III.

In Plaintiffs’ Rule 56(d) Motion, they contend that they do not have the necessary evidence to adequately respond to Defendants’ Motion for Summary Judgment. Plaintiffs maintain that their need for the evidence “has been fully briefed before the Court via Plaintiff’s Motion to Compel Discovery filed February 21, 2014, Defendant Wow’s Memorandum in Opposition filed February 28, 2014, and Plaintiff’s Reply filed March 5, 2014.” (Pl.’s Motion at 6; ECF No. 113.) Additionally, Defendants explain that some of the evidence Plaintiffs seek to discover has not been produced by them because there was no protective order in place.

Since Plaintiffs filed their Rule 56(d) Motion, a Stipulated Protective Order has been filed in this action (ECF No. 116), and Magistrate Judge Kemp issued his order granting Plaintiff’s Motion to Compel Discovery (ECF No. 114). Consequently, Plaintiffs should now have received the evidence they sought to discover. The remaining issue is the date upon which Plaintiff must file their response to Defendants’ Motion for Summary Judgment.

The Court notes at this juncture that it has granted numerous requests for extensions of time in this action, has repeatedly amended its scheduling orders, and has amended its trial schedule, moving the trial from January 27, 2014 to August 4, 2014. The Court will not amend that scheduling order again. The Court will, however, provide Plaintiffs with some time to review the additional discovery. Accordingly, Plaintiffs are permitted until April 28, 2014 to file

their memorandum in opposition to Defendants' Motion for Summary Judgment. Defendants shall file their reply brief, if any, within rule.

**IV.**

Based on the foregoing, the Court **GRANTS** Plaintiffs' Rule 56(d) Motion as outlined in this Opinion and Order.

**IT IS SO ORDERED.**

**April 7, 2014**  
**DATE**

**/s/ Edmund A. Sargus, Jr.**  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**