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8 **UNITED STATES DISTRICT COURT FOR THE**
9 **EASTERN DISTRICT OF WASHINGTON**

10
11 GARRETT PAESCHKE,
12
13 Plaintiff,
14
15 v.
16 GENERAL MOTORS, LLC, a
foreign corporation,
17
18 Defendant.

No. 4:16-cv-5050-LRS

**PLAINTIFF’S MOTION TO
COMPEL AND FOR SANCTIONS**

Without Oral Argument
November 8, 2017 at 6:30 pm

19
20 **I. INTRODUCTION**

21 Pursuant to FED. R. CIV. P. 37, plaintiff moves the Court for an order
22 compelling defendant General Motors, LLC, (“GM”) to produce all materials
23 responsive to the following plaintiff’s Requests for Production (“RFPs”) for all
24 2002 to 2013 GM motor vehicles:
25
26

1 **REQUEST FOR PRODUCTION NO. 9:** All documents related
2 to incidents of GM vehicles' seat heaters overheating, including, but
not limited to:

- 3 a. Consumer complaints, letters, memos, and emails (including
4 those from fleet operators);
5 b. Field reports, including dealer field reports;
6 c. Third-party arbitration proceedings;
7 d. Complaints filed with a Court of law;
8 e. Reports by any governmental agencies;
9 f. Internal memoranda, reports or summaries of any kind
involving property damage or bum injuries from car seat heaters;
and
10 g. Photographs of burn injuries or property damage.

11 **REQUEST FOR PRODUCTION NO. 15:** All documents,
12 including correspondence, memoranda, reports, summaries and
13 compilations related to seat heater burns or the prevention of seat
14 heater burns, submitted to any federal or state agency, including the
National Highway Transportation Safety Administration.

15 On November 1, 2016, Plaintiff served his First Set of Interrogatories and
16 Requests for Production on Defendant, which included the above Requests. *See*
17 Declaration of Richard C. Eymann filed in support hereof ("Eymann Decl.") and
18 Ex. A. The Defendant provided Responses on December 7, 2016. Eymann
19 Decl., Ex. B. On December 13, 2016, February 1, 2017, and February 16, 2017,
20 Defendant provided responsive documents to these RFPs, but these were in an
21 encrypted electronic format that Plaintiff was not able to access. *See* Eymann
22 Decl. ¶ 4 and ECF No. 39 (Declaration of Kristy L. Bergland previously filed
23 herein). On March 30, 2017, the above documents were provided in an
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1 accessible format at Plaintiff's request; however, on June 12 and again on June
2 23, additional documents were provided with TrueCrypt encryption and were not
3 immediately accessible. Eymann Decl. ¶ 5. After consulting with a second IT
4 expert, Plaintiff was able to begin accessing all of GM's files on July 24, 2017.
5
6 *Id.* See also ECF No. 39 (Bergland Decl.).

7 Plaintiff had requested that GM produce all documents related to incidents
8 of GM vehicles' seat heaters overheating, including consumer complaints,
9 internal memoranda, Complaints filed with a court of law, and documents
10 submitted to state and federal agencies, including the National Highway
11 Transportation Safety Administration ("NHTSA") for all GM vehicles for the
12 time period 2002 – 2013. Eymann Decl. **Ex. A.**

13
14 In response, GM provided a lengthy Preliminary Statement providing a
15 very self-serving "scope" of what they deemed to be relevant and produced:
16 2002-2006 GMT-800 vehicles. Eymann Decl. ¶ 3 and **Ex. B.**

17 As reported in a January 21, 2013 *USA Today* article, there have been,
18 since 1984, "1,260 complaints to NHTSA regarding defective seat heaters, nearly
19 all of them about overheating." Those cases involve 287 people and at least 512
20 report fires. See Eymann Decl. **Ex. C.**

21
22 An analysis of the documents produced by GM reveal only ten (10)
23 Complaints filed in courts of law other than the present action, and 81 other
24 similar incident reports (some of which are for the individuals for whom
25 complaints were filed). Eymann Decl. Plaintiff has independently located
26

1 numerous other state and federal court complaints and many more service detail
2 reports and/or reports to the NHTSA that relate to incidents of GM seat heaters
3 overheating, causing burns, causing property damage, and/or causing fires within
4 the 2002-2013 time frame requested by Plaintiff. Many of these involve
5 paraplegics and/or individuals with sensory loss. Eymann Decl. ¶ 8.
6

7 Plaintiff's counsel raised this matter with GM's attorney Andrew
8 Richardson at the time of the hearing on Defendant's Motion for Summary
9 Judgment on October 3 when the Court inquired as to whether there were any
10 other matters the parties wished to discuss. Before the matter is heard by the
11 Court, Plaintiff will comply with LR 37.1(b).
12

13 **II. RELEVANT BACKGROUND**

14 Plaintiff's claim is that the defendant was in violation of the Washington
15 Products Liability Act in their manufacture of a seat heater that overheated in a
16 2002 Chevrolet Tahoe, causing burns to plaintiff, who is a paraplegic and was
17 unable to detect that the seat heater was causing him serious injury. Likewise,
18 Plaintiff contends the seat heater buttons were positioned in the vehicle in a
19 location making it difficult, if not impossible, to see, and were easily
20 inadvertently activated.
21

22 All of the requested materials are relevant to plaintiff's claims and are
23 reasonably calculated to lead to the discovery of admissible evidence, including:
24 the endemic problem with GM's heated seat systems in their vehicles; GM's
25 knowledge of such problems; the frequency of complaints concerning GM's seat
26

1 heaters, including but not limited to the seat heaters turning on by themselves, or
2 inadvertently being activated, and failing to turn off when reaching a temperature
3 that can cause burns. Eymann Decl. ¶ 10.

4 **III. ARGUMENT**

5 For good cause the Court may order discovery of any matter relevant to the
6 subject matter of the litigation. FED. R. CIV. P. 26(b).

7 “Parties may obtain discovery regarding any matter, not privileged, which
8 is relevant to the subject matter involved in the pending action . . . if the
9 information sought appears reasonably calculated to lead to the discovery of
10 admissible evidence.” FED. R. CIV. P. 26(b)(1); *see also Epstein v. MCA, Inc.*, 54
11 F.3d 1422 (9th Cir. 1995). Relevant evidence is that which has a tendency to
12 make the “existence of any fact that is of consequence to the determination of the
13 action more probable or less probable than it would be without the evidence.”
14 FED. R. EVID. 401. A party resisting discovery, like Defendant here, bears a
15 “heavy burden” in establishing grounds to support its position. *Blankenship v.*
16 *Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

17 Washington courts have been receptive to evidence of similar accidents or
18 injuries in cases brought under Washington’s products liability statutes. “Similar
19 accident or incidents may be relevant in a products liability case to show that the
20 defendant was aware of risks associated with the product or to support other
21 theories under the specific language of the product liability statutes.” 5 Wash.
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1 Prac., Evidence Law and Practice § 402.11 (6th ed.). *See also Higgins v. Intex*
2 *Recreation Corp.*, 123 Wn. App. 821, 99 P.3d 421 (2004).

3 For the following reasons, good cause exists to order Defendant to
4 immediately produce the requested information and documents.

5
6 **A. Evidence Pertaining to Other Similar Incidents of Seat Heaters in**
7 **General Motor Vehicles Overheating and/or Causing Burns is**
8 **Relevant and Discoverable.**

9 Other seat heater burn injuries suffered in GM vehicles are relevant to a
10 host of issues including foreseeability, product defect, and causation. GM should
11 not be permitted to sua sponte limit the scope of discovery of this highly
12 pertinent information to just the four years of vehicles it narrowly defines as
13 GMT800 vehicles. Information regarding injuries suffered, or the absence of
14 injuries suffered, in vehicles with other seat heater systems is related to the
15 development of car seat heater technology and other alternative available designs,
16 and GM's response to seat heater burns being suffered in its vehicles by persons
17 with sensory loss. GM should not be permitted to limit the evidence that Plaintiff
18 may use against it by altering its design specifications and claiming that all
19 injuries suffered in models with other systems is not relevant to its conduct in
20 failing to remedy the defects and warn of the associated risk.

21
22 **B. Evidence Pertaining to Documents Provided to the NHTSA Involving**
23 **GM Vehicles Related to Seat Heater Burns is Relevant and**
24 **Discoverable.**

25 In response to RFP No. 15 requesting all documents submitted to the
26 NHTSA related to heater burns or the prevention of seat heater burns, Defendant

1 provided only three documents: (1) GM's mechanical plans regarding the front
2 seated system; (2) GM's Service Information Bulletins (consisting of 54 pages);
3 and (3) The Seat Subsystem Leadership Team Materials - GM Seat Module
4 Technical Review and Program Management. No consumer complaints were
5 included in GM's response to this RFP. Eymann Decl. ¶ 9. However, it is
6 apparent from the *USA Today* article (Eymann Decl., Ex. C) and a spreadsheet of
7 the NHTSA database that the NHTSA was provided with detailed information
8 concerning burns and incidents of seats overheating. Eymann Decl. ¶ 9. GM
9 should have produced all information that it provided to the NHTSA, including
10 consumer complaints, photographs, internal memoranda, and reports/summaries.
11

12
13 **C. Plaintiff is Entitled to an Award of Attorney Fees.**

14 Plaintiffs request an award of the attorneys' fees they incurred in bringing
15 this Motion to Compel. The Federal Rules of Civil Procedure provide that if a
16 discovery motion is granted, the court must require the party whose conduct
17 necessitated the motion to pay the reasonable expenses incurred in making the
18 motion, including attorneys' fees unless, among other things, the opposing
19 party's position was substantially justified. FED. R. CIV. P. 37(a)(5)(A); *see also*
20 LR 37.1(d). Defendant has consistently resisted in timely producing information
21 in a useable manner, which has resulted in an extreme hardship in preparing this
22 case for trial. Plaintiff believes that GM's discovery abuse was intentional and
23 that a reasonable sanction is \$25,000 for each Complaint not disclosed and
24 \$10,000 for each NHTSA consumer complaint not disclosed.
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1 **IV. CONCLUSION**

2 Plaintiff's discovery requests seek information that is relevant and
3 important to the upcoming trial in this matter. For these reasons, Plaintiff
4 respectfully requests that the Court grant the Motion to Compel Discovery and to
5 award Plaintiff attorneys fees in an amount to be determined by the Court.
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7 RESPECTFULLY SUBMITTED this 9th day of October, 2017.

8 **EYMANN ALLISON HUNTER JONES P.S.**

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11 BY: s/ Richard C. Eymann
12 RICHARD C. EYMANN, WSBA #7470

13 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2017, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following participants:

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