

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

EMERGING AUTOMOTIVE LLC,

Plaintiff,

v.

TOYOTA MOTOR CORP., ET. AL.,

Defendants

§
§
§
§
§
§
§
§
§
§
§
§

Case No. 2:25-cv-0782-JRG
(Lead Case)

JURY TRIAL DEMANDED

EMERGING AUTOMOTIVE LLC,

Plaintiff,

v.

KIA CORPORATION, ET AL.

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 2:25-cv-00799-JRG
(Member Case)

JURY TRIAL DEMANDED

DISCOVERY ORDER

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court’s docket under Federal Rule of Civil Procedure 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:

1. Initial Disclosures. In lieu of the disclosures required by Federal Rule of Civil Procedure 26(a)(1), each party shall disclose to every other party the following information:

- (a) the correct names of the parties to the lawsuit;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the disclosing party’s claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);

- (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;
- (e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;
- (f) any settlement agreements relevant to the subject matter of this action; and
- (g) any statement of any party to the litigation.

2. Disclosure of Expert Testimony.¹ A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:

- (a) if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B) and Local Rule CV-26; and
- (b) for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).

3. Additional Disclosures. Without awaiting a discovery request,² each party will make the following disclosures to every other party:

¹ All expert reports should be written such that the report is organized with discrete paragraph numbers.

² The Court anticipates that this disclosure requirement will obviate the need for requests for production.

- (a) provide the disclosures required by the Patent Rules for the Eastern District of Texas with the following modifications to P.R. 3-1 and P.R. 3-3:
 - i. If a party claiming patent infringement asserts that a claim element is a software limitation, the party need not comply with P.R. 3-1 for those claim elements until 30 days after source code for each Accused Instrumentality is produced by the opposing party. Thereafter, the party claiming patent infringement shall identify, on an element-by-element basis for each asserted claim, what source code of each Accused Instrumentality allegedly satisfies the software limitations of the asserted claim elements.
 - ii. If a party claiming patent infringement exercises the provisions of Paragraph 3(a)(i) of this Discovery Order, the party opposing a claim of patent infringement may serve, not later than 30 days after receipt of a Paragraph 3(a)(i) disclosure, supplemental “Invalidity Contentions” that amend only those claim elements identified as software limitations by the party claiming patent infringement.
- (b) produce or permit the inspection of all documents, electronically stored information, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action, except to the extent these disclosures are affected by the time limits set forth in the Patent Rules for the Eastern District of Texas; and
- (c) provide a complete computation of any category of damages claimed by any party to the action, and produce or permit the inspection of documents or other evidentiary material on which such computation is based, including materials

bearing on the nature and extent of injuries suffered, except that the disclosure of the computation of damages may be deferred until the time for Expert Disclosures if a party will rely on a damages expert.

4. **Protective Orders.** The Court will enter the parties' Agreed Protective Order.
5. **Discovery Limitations.** The discovery in this cause is limited to the disclosures described in Paragraphs 1-3, together with the following provisions which include limitations to reduce duplication of discovery conducted in the prior related litigations captioned *Emerging Automotive LLC v. Toyota Motor Corp., et al.*, No. 2:23-cv-00434-JRG (E.D. Tex.) and *Emerging Automotive LLC v. Kia Corporation, et al.*, No. 2:23-cv-00437-JRG (E.D. Tex.) (collectively referred to as "*EAI*")³:
 - a) Interrogatories: Each side of defendants⁴ is permitted to serve 15 interrogatories on Plaintiff Emerging Automotive, LLC ("Plaintiff" or "Emerging Auto") and Plaintiff is permitted to serve 15 interrogatories on each side of defendants.⁵ The parties agree to provide supplemental responses to interrogatories served in *EAI* pursuant to Fed. R. Civ. P. 26(e).
 - b) Requests for Admission (other than those seeking admission as to authenticity): Each side of defendants is permitted to serve 20 requests for admission on Plaintiff

³ The parties agree to cross-use of discovery conducted in *EAI* as set forth below in Section 12(g)-(h) below.

⁴ For purposes of this Paragraph 5, "side of defendants" means a group of defendants separately accused of infringement. Defendants Kia Corporation and Kia America, Inc. (the "Kia Defendants") constitute a side and Defendants Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Connected North America, Inc., and Toyota Motor Corporation (the "Toyota Defendants") constitute a side.

⁵ The parties agree to number such additional requests consecutively with the parties' previously-served discovery in *EAI* as set forth in Section 12(i) below.

and Plaintiff is permitted to serve 20 requests for admission on each side of defendants, these limitations are exclusive of those that seek admission as to the authenticity of a document or thing.

c) Depositions by Oral Examination:

- i. The parties agree to work together to ensure that additional depositions, particularly of previously-deposed witnesses, are proportional to the needs of the case and not duplicative of prior deposition testimony taken in *EAI*.
- ii. Limits on Party Fact Depositions: The parties agree that FED. R. CIV. P. 30(d)(1) governs fact depositions and that, for additional depositions of party witnesses taken under Rule 30(b)(1) and/or Rule 30(b)(6) in the pending litigation: (1) Plaintiff may take no more than 30 hours of depositions of the Kia Defendants; (2) Plaintiff may take no more than 30 hours of depositions of the Toyota Defendants; and (3) defendants collectively may take no more than 30 hours of depositions of Plaintiff. In addition, each side of defendants may take no more than 5 additional hours of depositions of Plaintiff.
- iii. Limits on Non-Party Depositions: (1) Plaintiff may take no more than 15 additional hours of non-party depositions related to the case involving the Kia Defendants; (2) Plaintiff may take no more than 15 additional hours of non-party depositions related to the case involving the Toyota Defendants; and (3) each side of defendants may take no more than 15 additional hours of non-party depositions.

- iv. Limits on Expert Depositions: Each side is entitled to depose an expert that has submitted a declaration or report in support of the other side. To the extent an expert submits one or more technical⁶ declarations or reports that addresses multiple issues and/or patents, the parties shall meet and confer in good faith to determine whether more than seven (7) hours of deposition time are needed.
- v. Interpreted Depositions: Any deposition or part of a deposition conducted through an interpreter shall be counted as 2/3 time. For example, an interpreted deposition of six (6) hours on the record shall count as four (4) hours for purposes of the foregoing limits and for those of Fed. R. Civ. P. 30(d)(1).

d) Any party may later move to modify these limitations for good cause.

- 6. Privileged Information.** There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Status Conference. By the deadline set in the Docket Control Order, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. Any party may move the Court for an order compelling the production of any documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall respond to the

⁶ A "technical" declaration or report is one that concerns (1) claim construction, (2) infringement and/or (3) invalidity.

motion within the time period provided by Local Rule CV-7. The party asserting privilege shall then file with the Court within 30 days of the filing of the motion to compel any proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection. However, if the party asserting privilege seeks an *in camera* review by the Court, such party shall first obtain leave from the Court prior to delivery of documents to the Court. Notwithstanding the provisions of this Paragraph 6, the parties agree that privilege logs need not be exchanged for documents created or communicated after the filing of *EAI* on September 20, 2023 against the Toyota Defendants and September 22, 2023 against the Kia Defendants.

7. **Signature.** The disclosures required by this Order shall be made in writing and signed by the party or counsel and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made. If feasible, counsel shall meet to exchange disclosures required by this Order; otherwise, such disclosures shall be served as provided by Federal Rule of Civil Procedure 5. The parties shall promptly file a notice with the Court that the disclosures required under this Order have taken place.
8. **Duty to Supplement.** After disclosure is made pursuant to this Order, each party is under a duty to supplement or correct its disclosures **immediately** if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.
9. **Discovery Disputes.**

- (a) Except in cases involving claims of privilege, any party entitled to receive disclosures (“Requesting Party”) may, after the deadline for making disclosures, serve upon a party required to make disclosures (“Responding Party”) a written statement, in letter form or otherwise, of any reason why the Requesting Party believes that the Responding Party’s disclosures are insufficient. The written statement shall list, by category, the items the Requesting Party contends should be produced. The parties shall promptly meet and confer. If the parties are unable to resolve their dispute, then the Responding Party shall, within 14 days after service of the written statement upon it, serve upon the Requesting Party a written statement, in letter form or otherwise, which identifies (1) the requested items that will be disclosed, if any, and (2) the reasons why any requested items will not be disclosed. The Requesting Party may thereafter file a motion to compel.
- (b) An opposed discovery related motion, or any response thereto, shall not exceed 7 pages. Attachments to a discovery related motion, or a response thereto, shall not exceed 5 pages. No further briefing is allowed absent a request or order from the Court.
- (c) Prior to filing any discovery related motion, the parties must fully comply with the substantive and procedural conference requirements of Local Rule CV-7(h) and (i). Within 72 hours of the Court setting any discovery motion for a hearing, each party’s lead attorney (*see* Local Rule CV-11(a)) and local counsel shall meet and confer in person or by telephone, without the involvement or participation of other attorneys, in an effort to resolve the dispute without Court intervention.

- (d) Counsel shall promptly notify the Court of the results of that meeting by filing a joint report of no more than two pages. Unless excused by the Court, each party's lead attorney shall attend any discovery motion hearing set by the Court (though the lead attorney is not required to argue the motion).
- (e) Any change to a party's lead attorney designation must be accomplished by motion and order.
- (f) Counsel are directed to contact the chambers of the undersigned for any "hot-line" disputes before contacting the Discovery Hotline provided by Local Rule CV-26(e). If the undersigned is not available, the parties shall proceed in accordance with Local Rule CV-26(e).

10. No Excuses. A party is not excused from the requirements of this Discovery Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue.

11. Filings. Only upon request from chambers shall counsel submit to the court courtesy copies of any filings.

12. Proposed Stipulations by the Parties Regarding Discovery.

- (a) The parties shall meet and confer in good faith, in advance of exchanging privilege logs, to determine whether certain materials withheld from discovery on the ground of attorney-client privilege, the work product doctrine or any other applicable privilege, doctrine or immunity need not be included on a privilege log.

- (b) Except when unpracticable, the parties shall serve all documents electronically, either by email, FTP or ECF, to the email addresses designated for service by each party. Each party shall ensure that any email they designate for service encompasses only counsel of record for a party and persons employed by counsel of record for a party. Outside counsel email distribution lists are presumed to include only counsel of record for a party and persons employed by counsel of record for a party.
- (c) The parties will meet and confer in good faith regarding a proposed Order Governing the Production of Electronically Stored Information (“ESI Order”) and will submit a proposed ESI Order to the Court.
- (d) The parties agree that they will serve each other with copies of any subpoena or deposition notice directed to a third-party. A party that receives documents from a third party pursuant to a subpoena under Fed. R. Civ. P. 45 shall make reasonable effort to serve the same on all other parties within three (3) business days. The parties agree to consult with each other before scheduling any third-party deposition and to mutually agree on the date of the third-party deposition or otherwise provide at least five (5) business days’ notice of the date and selected court reporting agency to allow for the coordination of remote depositions, including the logistics of soft copy exhibits.
- (e) At least five (5) days prior to a deposition noticed under Fed. R. Civ. P. 30(b)(6), the organization to which the notice was directed shall identify by name and title the witness(es) that will provide testimony on its behalf as well as the topics on which each witness will testify. To the extent there is a change in the identity of the

witness(es) or topics after such identification by the organization, the organization shall notify the noticing party as soon as reasonably practicable.

- (f) Pursuant to Federal Rule of Evidence 502(d), inadvertent production of materials covered by the attorney-client privilege or work-product protection is not a waiver in this or any other federal or state proceeding. In case of inadvertent production, at the producing party's request, the receiving party shall immediately return or destroy the inadvertently produced materials.
- (g) Emerging Auto and the Toyota Defendants agree that discovery produced (including, for example, documents produced and written discovery) and depositions taken by either party in the prior related litigation *Emerging Automotive LLC v. Toyota Motor Corp., et al*, No. 2:23-cv-00434-JRG (E.D. Tex.) may be used by the parties in the lead case to the same extent permitted in, and subject to the same protections as in, the prior litigation as if that material was produced during discovery in the lead case. The parties agree that they may request that any third party that provided discovery pursuant to a subpoena in the prior litigation permit use of the material in the lead case to the same extent permitted in, and subject to the same protections as in, the prior litigation as if that material was produced pursuant to subpoena in the lead case.
- (h) Emerging Auto and the Kia Defendants agree that discovery produced (including, for example, documents produced and written discovery) and depositions taken by either party in the prior related litigation *Emerging Automotive LLC v. Kia Corporation, et al*, No. 2:23-cv-00437-JRG (E.D. Tex.) may be used by the parties in the member case to the same extent permitted in, and subject to the same


protections as in, the prior litigation as if that material was produced during discovery in the member case. The parties agree that they may request that any third party that provided discovery pursuant to a subpoena in the prior litigation permit use of the material in the member case to the same extent permitted in, and subject to the same protections as in, the prior litigation as if that material was produced pursuant to subpoena in the member case.

- (i) For additional written discovery served in this pending action, the parties agree to number such requests consecutively with the parties' previously-served discovery. For example, Plaintiff's last-served interrogatory to the Toyota Defendants in *EAI* was Interrogatory No. 27 (Set Three), Plaintiff's next interrogatory in the pending action would begin with Interrogatory No. 28 (Set Four).
- (j) The parties agree that an expert's draft reports, notes, and outlines of draft reports shall not be subject to discovery in this case. No conversations or communications between counsel and any expert will be subject to discovery unless the conversations or communications are relied upon by such experts in formulating opinions that are presented in reports, trial, or deposition testimony in this case. Materials, communications (including email), and other information exempt from discovery under this paragraph shall be treated as attorney-work product for the purposes of this litigation. This provision does not change the existing protections for expert discovery and exceptions thereto set forth in FED. R. CIV. P. 26(b)(4).

- 13. Standing Orders.** The parties and counsel are charged with notice of and are required to fully comply with each of the Standing Orders of this Court. Such are posted on the Court's website at <http://www.txed.uscourts.gov/?q=court-annexed-mediation-plan>. The substance

of some such orders may be included expressly within this Discovery Order, while others (including the Court's Standing Order Regarding Protection of Proprietary and/or Confidential Information to Be Presented to the Court During Motion and Trial Practice) are incorporated herein by reference. All such standing orders shall be binding on the parties and counsel, regardless of whether they are expressly included herein or made a part hereof by reference.

So ORDERED and SIGNED this 16th day of December, 2025.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE