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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United Association National Pension Fund, et
10 al.,

11 Plaintiffs,

12 v.

13 Carvana Company, et al.,

14 Defendants.

No. CV-22-02126-PHX-MTL

ORDER

15 Before the Court is a Motion for Reconsideration (Doc. 107) filed by the Carvana
16 Defendants* and joined by Defendant Ernest Garcia II (“Garcia Senior”) and Defendants
17 Citigroup Global Markets Inc. and J.P. Morgan Securities LLC (collectively, the
18 “Underwriter Defendants”) (Docs. 108, 110). At the request of the Court, Plaintiff filed a
19 response (Doc. 113). The Court now rules.

20 **I. LEGAL STANDARD**

21 The standard of review for motions for reconsideration is set forth in Local Rule of
22 Civil Procedure 7.2(g). Motions for reconsideration will ordinarily be denied “absent a
23 showing of manifest error or a showing of new facts or legal authority that could not have
24 been brought to its attention earlier with reasonable diligence.” LRCiv 7.2(g)(1). “Motions
25 for reconsideration are disfavored . . . and are not the place for parties to make new
26 arguments not raised in their original briefs. Nor is reconsideration to be used to ask the

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* The “Carvana Defendants” include Carvana Co., Ernest Garcia III (“Garcia Junior”), Mark Jenkins, Stephen Palmer, Michael Maroone, Neha Parikh, Ira Platt, and Greg Sullivan.

1 Court to rethink what it has already thought.” *Motorola, Inc. v. J.B. Rodgers Mech.*
 2 *Contractors, Inc.*, 215 F.R.D. 581, 582 (D. Ariz. 2003) (citations omitted).

3 **II. DISCUSSION**

4 Defendants seek reconsideration of this Court’s order (Doc. 105) granting in part
 5 and denying in part Defendants’ motions to dismiss the Amended Consolidated Complaint
 6 (“ACC”), raising three issues. (Doc. 107.)

7 First, Defendants argue the Court overlooked their “unresponded-to argument that
 8 the ACC lacks a single fact alleging that the speakers of Statements Nos. 4 and 8 acted
 9 with scienter.” (*Id.* at 3-4.) Defendants fleetingly made this argument in the footnotes of its
 10 motion. (Doc. 82 at 29 n.12, 30 n.14, 48 n.30.) The Court reminds Defendants that
 11 “[d]istrict judges are not archaeologists.” *Nw. Nat. Ins. Co. v. Baltes*, 15 F.3d 660, 662 (7th
 12 Cir. 1994). And this Court is not obligated, nor inclined to excavate arguments buried in
 13 briefs. *See id.*; *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 896 n.5 (1990) (“Our district
 14 judges must read footnotes with new care if they are to be reversed for failing to recognize
 15 motions buried in this fashion.”). The Carvana Defendants’ motion to dismiss contained
 16 thirty-three footnotes, reciting lengthy arguments and compound citations to the record and
 17 caselaw. (*See* Doc. 82.) To this Court, Defendants’ superfluous use of footnotes was a clear
 18 attempt to circumvent the page limitation—which the Court already extended to *forty-five*
 19 pages of argument. (Doc. 81.) Therefore, the Court concludes that these arguments are
 20 waived and insufficient to warrant reconsideration of the Court’s order. Defendants may
 21 properly brief these arguments at summary judgment.

22 Next, Defendants claim that this Court “committed ‘manifest error’ in finding
 23 scienter based on inferences and allegations of knowledge alone.” (Doc. 107 at 4-7.) But
 24 Defendants misconstrue and misleadingly isolate portions of the Court’s order related to
 25 the core operations doctrine. Scienter, as pled under the core operations doctrine, was one
 26 factor in a host of many this Court considered. (Doc. 105 at 40-52 (considering stock sales,
 27 misleading statements, confidential witness accounts, the core operations doctrine,
 28 Sarbanes-Oxley certifications, and government investigations in scienter analysis).)

1 Consistent with Ninth Circuit law, the Court conducted a holistic review of all the
 2 circumstances alleged in the ACC, and ultimately found such allegations—when accepted
 3 as true—sufficient to plead a strong inference of scienter. Contrary to Defendants’
 4 argument that a “pump and dump” motive theory was required to allege scienter (Doc. 107
 5 at 4-7), the United States Supreme Court has recognized that “the absence of a motive
 6 allegation is not fatal.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 325 (2007).
 7 And in the Ninth Circuit, “[s]cienter can be established by intent, knowledge, or certain
 8 levels of recklessness.” *In re VeriFone Holdings, Inc. Sec. Litig.*, 704 F.3d 694, 702 (9th
 9 Cir. 2012). Therefore, Defendants have not demonstrated how this Court’s reasoning was
 10 contrary to binding precedent.

11 Lastly, Defendants ask this Court to revisit its conclusion that Statement Nos. 1
 12 and 6 and Statement C were not protected by the Private Securities Litigation Reform Act
 13 (“PSLRA”) safe harbor. (Doc. 107 at 8-9.). By misreading a footnote of this Court’s prior
 14 order, Defendants ask this Court to “rethink what it has already thought”—which is
 15 improper in a motion for reconsideration. *Motorola, Inc.*, 215 F.R.D. at 582; *see also*
 16 *Mogan v. Airbnb, Inc.*, No. 23-55489, 2024 WL 3738480, at *4 (9th Cir. Aug. 9, 2024)
 17 (explaining that a motion for reconsideration is improper if merely sought to relitigate the
 18 arguments earlier made). In assessing whether these statements were protected by the
 19 PSLRA safe harbor, the Court determined that the statements were not forward-looking,
 20 not accompanied by meaningfully cautionary language, and—based on the allegations in
 21 the ACC—made with actual knowledge of falsity. (Doc. 105 at 16.) The Court already
 22 considered and rejected the very arguments Defendants regurgitate here. Therefore,
 23 Defendants fail to show reconsideration is warranted on this issue as well.

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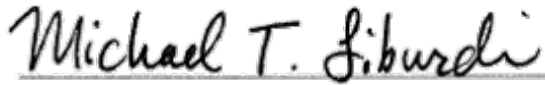
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1 **III. CONCLUSION**

2 Accordingly,

3 **IT IS ORDERED** that Defendants' Motion for Reconsideration (Doc. 107) is
4 **denied.**

5 Dated this 3rd day of February, 2025.

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8 Michael T. Liburdi
9 United States District Judge
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