

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United Association National	)	
Pension Fund, et al.,	)	No. 2:22-cv-02126-MTL
	)	
Plaintiffs,	)	
	)	
vs.	)	Phoenix, Arizona
	)	June 23, 2025
Carvana Company, et al.,	)	1:56 p.m.
	)	
Defendants.	)	
	)	

BEFORE: THE HONORABLE JOHN Z. BOYLE, MAGISTRATE JUDGE

TRANSCRIPT OF PROCEEDINGS

HEARING ON DISCOVERY DISPUTE

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P R O C E E D I N G S

(Court was called to order by the courtroom deputy.)

(Proceedings commence at 1:56 p.m.)

THE COURTROOM DEPUTY: All rise. The Honorable John Z. Boyle is now presiding.

THE COURT: Thank you. Please be seated.

THE COURTROOM DEPUTY: This is Civil Case Number 22-2126, United Association National Pension Fund vs. Carvana Company, before the Court for a discovery dispute.

Will the parties please announce for the record starting with the plaintiffs.

MS. COCALIS: Rachel Cocalis on behalf of the plaintiffs.

THE COURT: All right. Good morning -- or good afternoon.

MR. GRONBORG: Tor Gronborg, Robbins Geller Rudman & Dowd, also on behalf of the plaintiffs.

THE COURT: All right. Good afternoon. Thank --

MR. GRONBORG: Good afternoon --

THE COURT: -- you.

MR. GRONBORG: -- Your Honor.

MS. MARCONI: Good afternoon, Your Honor. Melanie Walker on behalf of Ernest Garcia, Sr.

MR. WORD: Good afternoon, Your Honor. Christian Word of Latham & Watkins. I represent the Carvana defendants.

1 THE COURT: All right. Good afternoon.

2 MS. BUERGEL: Good afternoon, Your Honor. Suzanna
3 Buergel from Paul Weiss for the underwriter defendants.

4 THE COURT: Okay. Thank you.

5 MS. MARCONI: Good morning, Your Honor. Andrea
6 Marconi, Fennemore Craig, for the Carvana defendants and the
7 underwriter defendants as well.

8 THE COURT: Give me one moment. Thank you.

9 All right. Good afternoon, everyone.

10 So, first, I try to avoid having people come in for
11 discovery disputes, but given the scope of the case -- and I
12 don't know how far we'll go into this in the future. I do
13 appreciate you coming here for this, but as we go forward, if
14 there are more issues that pop up, I'm happy to do these either
15 through a video teleconference or over the phone, as I normally
16 handle them. And, obviously, I've handled hundreds of these,
17 dozens from district judges that have come down. A little
18 different for a class action. We don't get these normally.

19 So my plan today is to start with 154. And then 155
20 shouldn't take very long. Let me tell you what I've done and
21 give you a roadmap of what I think how we should approach this.

22 So, obviously, I looked at what you filed at 154, and
23 then I went through the motion to dismiss and the operative
24 complaint. And I ended up right where you both were, which
25 was: Okay. What did Judge Liburdi mean in his motion to

1 dismiss when he basically cut out everything except for 1
2 through 8 and 19 through 20.

3 That's how I look at this. Like what did he mean?
4 Did he just keep this down to the title and registration issue,
5 or is it broader than that?

6 And that's what you briefed to me. In the discovery
7 context, obviously this is typically more broad, but let me
8 just cut to it.

9 There are two legitimate ways to review this. You
10 could -- you -- both of them are -- are a fair way of reading
11 this. I have the advantage of the fact that I can just call
12 Judge Liburdi. And to save you all time, that's what I did. I
13 haven't done that before. As I mentioned, I've had this for
14 more than 10 years, and I've just never needed to call a judge
15 on this. But I just -- why should I just try and guess like
16 you and figure out what the judge meant instead of just
17 contacting him and asking -- and said: What's the scope of
18 this for the purpose of discovery, not for the summary
19 judgment?

20 It did align with how I looked at this at the
21 beginning, which is that I went to 19 and 20 because -- and 1
22 through 8 because that's what's left. Everything else is
23 dismissed with prejudice. So that "with prejudice" said to me
24 that what you're left was 19 through 20, 1 through 8.

25 So I'm at page 139 of Doc. 71. This is the -- I think

1 the operative complaint. Paragraph 211. But -- and this is
2 just above where it says -- it's Section C again. Document 71,
3 139. What does statement 19 allege?

4 And there, as I see it -- I'm on lines 12 to 15. "The
5 sales in violation of title and registration laws and
6 regulations; (ii) 'less profitable sales'; (iii) trade-in
7 sales; (iv) 'sales that were less profitable.'"

8 According to Judge Liburdi, that is broader than just
9 the T&R.

10 So, in short, it -- the plaintiff is looking like
11 you're going to have the advantage on this, and you're going to
12 prevail on the idea that the discovery in the case is not going
13 to be just related to the title and registration issue, even
14 though that language, of course, is in the motion to -- or the
15 order dismissing chunks of this case. For the purpose of
16 discovery, because 1, 2, 3, and 4 are in here, and those are
17 broader than title and registration, the discovery will be
18 broader.

19 So I hope you're not frustrated by the fact that I
20 could have had you just argue these points to me. And I'm
21 happy to do that, because I'm still going to write up this
22 order, and it's still appealable to Judge Liburdi. And in that
23 context, you -- he will have the final word, of course, because
24 this is his case.

25 But I just didn't think it was fair to have you all

1 argue to me what you thought Judge Liburdi meant when I've got
2 a sense already of what it was. Just more efficient to tell
3 you and then see if we can use our time effectively today.

4 I will write my order promptly. If you have issues
5 with it, of course, you don't have to take my word for it. You
6 get a chance to take this up with Judge Liburdi, but this just
7 seemed like the quickest way to get through this.

8 So I am not curtailing any argument on what you filed
9 here. And then I do think there was some -- I did go through
10 the RFPs at 154-5. There might be some outstanding questions
11 that you might want me to resolve, and we could go through
12 those. I have that prepared.

13 I don't think I need to turn to plaintiffs here. So
14 given what I've mentioned from the outset, I thought you might
15 think of it as like a prospective ruling.

16 But from the defense side, who would like to talk more
17 about 154?

18 MR. WORD: Thank you, Your Honor. Christian Word
19 again --

20 THE COURT: Yeah.

21 MR. WORD: -- on behalf of the Carvana defendants.

22 And I appreciate you cutting to the chase on that,
23 everyone's time. We appreciate it by that.

24 So I don't assume I could persuade you that, look,
25 what Judge Liburdi told you is not what he thinks the

1 opinion --

2 THE COURT: I -- I could make any record you want,
3 because if there's something that's im- -- that's improper
4 about this, certainly it's appealable not only to him, but
5 otherwise, so -- and, by the way, you all are welcome to stand.
6 I know we always stand in federal court, but for the purposes
7 of today you can sit if you wish. I don't know that you need
8 to come up here unless there's something you need to do,
9 because you have all your documents with you. So -- but given
10 that your computers and what you might have in front of you, if
11 you want to remain seated as well. We don't normally do that
12 here. You have permission to do that.

13 Please continue.

14 MR. WORD: I note that you're standing. I have a
15 standing desk, too. I actually prefer to stand.

16 THE COURT: Yeah, I've done it since I started. So
17 either way's fine with me, but go ahead.

18 MR. WORD: And I -- appreciating the Court's time as
19 well, I'm not going to belabor this point --

20 THE COURT: Okay.

21 MR. WORD: -- that Judge Liburdi's decision is what it
22 is. And he, of course, is the only one who can tell us
23 definitively what it means. I think the language is somewhat
24 ambiguous. I do think, you know, the Ninth Circuit has
25 cautioned us at times -- several times, you know, not to treat

1 judicial opinions like statutes. There aren't statutory
2 construction rules for interpreting an opinion. And judges are
3 deciding cases, deciding issues, and they're not -- not
4 thinking that each word is going to be parsed. And that's one
5 of the issues I have with the plaintiffs' argument.

6 But more than that -- let's move beyond that, because,
7 again, I appreciate what Judge Liburdi's told you. My problem
8 comes -- and I can appreciate -- this is what I will raise with
9 Judge Liburdi, is that other components of the decision only
10 focus on T&R. So if it's a securities class action -- excuse
11 me. For a securities claim under Section 10(b) there are
12 numerous elements. He dealt with falsity. And that's mostly
13 what we've discussed so far, is falsity, and whether or not
14 certain statements were false. And when it comes to the retail
15 retail sale -- retail unit sales, Judge Liburdi indicated that
16 maybe these factors were in them. He's clarified now that they
17 are all in and provided a basis for that statement to be false.

18 But then when you step beyond that to the next
19 elements, scienter, for example, all of the allegations that
20 Judge Liburdi credited for purposes of saying that each of
21 these defendants have the requisite level of intent to commit
22 securities fraud deal with T&R. There's not a single one he
23 identifies about any of the other factors.

24 So how is it that statement could -- I mean, the
25 statement might be false and misleading, properly pled for that

1 purpose, but there's no evidence, no finding in his opinion
2 that suggests that anybody made those statements with the
3 requisite intent. So that would be my first point.

4 And then the second one is -- is a corollary. The
5 last elements that a plaintiff has to plead is lost causation.
6 And Judge Liburdi rejected all of the non-T&R corrected
7 disclosures. What that means is that plaintiffs don't have a
8 loss that they can tie to any other element other than title
9 and registration.

10 And so for that purpose, it just it's -- I'm not sure
11 how it fits in the case. And maybe your -- your conclusion's
12 to summary judgment where it comes out, or class cert or
13 something, in discovery. You know, this greatly expands the
14 scope of discovery from T&R, which is arguably a very large
15 issue anyway, to basically everything at the company. Because
16 you're talking about the foundation of the company, its entire
17 business model. And I just worry that we're going to spend
18 lots of money on discovery on topics that there's no scienter
19 for and there's no loss causation pled and approved. So we
20 just get in a position where we're going to have discovery into
21 all these issues, but it's for not. My client's just going to
22 waste millions and millions of dollars. My client's going to
23 waste lots of time in discovery on statements and issues that
24 cannot support a securities fraud violation because there's no
25 scienter and there's no loss causation. And, quite frankly,

1 that was the whole purpose of the Reform Act; right? As
2 Congress said: Look, we -- we don't want claims that don't
3 survive a basic motion to dismiss to proceed.

4 And so, again, appreciating the Court's time, I'll cut
5 it off there --

6 THE COURT: This is --

7 MR. WORD: -- but that's -- those are my points.

8 THE COURT: Yeah, let's have a conversation about how
9 I read this as well, which is -- and, to be clear, this is --
10 you know, the parameter of me ruling on this, I just -- this is
11 the one case I did seem to get the -- you know, input from
12 Judge Liburdi would be valuable just to save time.

13 But let's talk about paragraph 211, because I get your
14 point. It looks like everything's been carved out except for
15 title and registration. But 2- -- under paragraph 211, you
16 still have a case for you all.

17 What's the scope of this case? What are you trying,
18 you know, if this case goes to trial; right?

19 You're saying, we're just trying these issues as they
20 relate to title and registration, but you still have these --
21 these subparagraphs of a less profitable sales, trade and
22 sales, sales that were less profitable in an immediate period.

23 Like, that seems broader to me than title and
24 registration. So by carving out everything except 19 and 20,
25 like you said, which supports your argument, it does seem like

1 there's still these -- these other facets of the case that are
2 still here.

3 MR. WORD: There are --

4 THE COURT: Your thoughts?

5 MR. WORD: And those are the -- the sort of drivers or
6 devices and artifacts that plaintiffs identify as animating
7 their retail unit sales statement --

8 THE COURT: Right.

9 MR. WORD: -- right?

10 Judge Liburdi, however, dealt with those in other
11 parts of the opinion. And so you might ask him: Well, why
12 when it comes to the Court's role -- the opinion that matters
13 where Judge Liburdi mentions this, does he only mention
14 DriveTime and T&R?

15 All right. But that's what he does: He says, for
16 example, some of these have been disclosed. DriveTime, for
17 example, it was disclosed. He says for others, like T&R, that
18 wasn't disclosed. And so to claim this is sufficient to plead
19 a false statement.

20 And plaintiffs make an argument, you know, the he used
21 the plural word "practices" and things like that. But, again,
22 he's gone through already and said that these other issues were
23 disclosed. He held -- and that's why he dismissed the
24 statements regarding those claims.

25 So they match -- they match it perfectly. It's the --

1 this -- the same portions of the false statements, the other
2 false statements that Judge Liburdi dismissed animate the
3 retail units in the sales claim, too.

4 And so I have a presentation. It seems unnecessary
5 now. But, for example, there -- in the complaint, there were
6 six categories of motions -- of misstatements alleged.

7 THE COURT: Right.

8 MR. WORD: T&R, purchases, retail unit sales,
9 expansion, aged inventory and profitability.

10 Now, we've -- and Judge Liburdi got rid of all of
11 those except, as you pointed out, title and registration and
12 retail unit sales.

13 Now, retail unit sales had five components that
14 animated these five components you're identifying as
15 paragraph 211. The first was title and registration. No
16 debate. That one's in. Judge Liburdi said that.

17 THE COURT: No question.

18 MR. WORD: Expansion. Well, Judge Liburdi already
19 said the expansion claims are out.

20 Purchases. Same thing. He said that purchases claims
21 are out. They hadn't been pled. There wasn't -- Carvana
22 hadn't disclosed sufficient information.

23 Profitability. Same thing. Plaintiffs' allegation is
24 that Carvana hid that it was -- that it was selling cars
25 unprofitably. No. That was the entire business model, is what

1 Judge Liburdi said. That was well public. So those three
2 things are public, along with the DriveTime; right? Because he
3 says in this paragraph that one's public.

4 How can those either four items besides T&R still be
5 in the case? Because he's already held there weren't false
6 statements based upon those.

7 THE COURT: So let me ask you -- I'm looking at his
8 order at 105, page 25. And this is right where I'm sure
9 everyone honed in on as well, which is the language in his
10 order that at the same time -- I'm on line 25. Again, 105,
11 page 25, line 25.

12 "At the same time, some of Carvana's other expansion
13 practices, such as the alleged practice of selling vehicles
14 without proper title and registration, may not have been known
15 to investors a later date. Therefore, they alleged a material
16 omission as to these statements, and Defendants'
17 truth-on-the-market defense shall be reserved for another day,"
18 which, of course, is summary judgment."

19 And I take plaintiffs' argument to be when he -- this
20 language does not say explicitly this is the only -- this is
21 the gray area, I think, why we're here.

22 MR. WORD: Yeah.

23 THE COURT: The order itself does not say: This is
24 all that's left, parties. It says: This is something that is
25 left.

1 And does that "something that is left" mean that
2 everything you've just described is automatically out because
3 he excluded it before and dismissed it with prejudice?

4 You get to reserve that for another day. But I'm
5 sympathetic to the point that now you have these discovery
6 issues on a broader case. And I -- as I read it, my
7 understanding in reviewing this as well is -- is that for the
8 purpose of discovery -- and this has no bearing on summary
9 judgment, of course. I have nothing to do with that. Your
10 discovery's going to be as broad as I started before, which is
11 19 is in, page 139, 1 through 4, for example. That's been left
12 in. Those four subsections broader than what you've described,
13 but it's -- I think that's the scope of discovery.

14 So am I missing anything so far? I know you've made
15 your points; I've made mine.

16 MR. WORD: No. I mean, I --

17 THE COURT: Is it clear?

18 MR. WORD: I can't -- yeah. I mean, your order's
19 perfectly clear.

20 THE COURT: Okay.

21 MR. WORD: It's the language was ambiguous. We did
22 our best to try to interpret it. The plaintiffs did the same
23 thing. We happen to carry the day of what Judge Liburdi meant.
24 And I'm not sure that anyone could be the arbiter of his words
25 other than him.

1 THE COURT: Okay.

2 MR. WORD: But I will take it up with him.

3 These points, I don't think it's consistent, then, the
4 other portions of his opinion, to try to clarify from him what
5 this means going forward.

6 Are we really going to do discovery into issues that
7 we already know can't provide a basis for securities law
8 liability? Because in that case, again, we're wasting millions
9 of dollars for no reason at all. And so -- and -- and he might
10 have an answer. I just -- in reading the opinion, I don't see
11 how he spends 73 pages trimming this case down to these issues
12 and then in a single paragraph brings all of the issues back
13 in. I mean, we got rid of so much. So much that the
14 plaintiffs' gone, the allegations and the topics and then
15 everything just gets backdoored in in perhaps the use of a
16 plural when he didn't mean to use a plural. I point out as
17 well -- I mean, it's -- again, "practices" is how plaintiffs
18 refer to T&R, T&R practices. That's what they said. They
19 didn't -- it wasn't the practice. It was the T&R practice.

20 So I -- you know, I'll make all those arguments to
21 Judge Liburdi. I appreciate your time and, again, cutting this
22 to the chase.

23 THE COURT: Anything else you want to add before I
24 turn to co-counsel?

25 You all will get an opportunity to address these

1 points.

2 MS. WALKER: No. I have nothing to add on that.

3 Understand the ruling. And I'm really here to argue 155, so --

4 THE COURT: Okay.

5 MS. WALKER: -- I'll turn it over to plaintiffs.

6 THE COURT: And -- okay. Just the two of you? I know
7 other people announced.

8 UNIDENTIFIED FEMALE VOICE: We have nothing to add.

9 We join in the arguments advanced by the company.

10 THE COURT: Okay. All right. With that, you get the
11 opportunity here to make a record. I know that you -- not
12 just -- not dissatisfied, but, nonetheless, why don't you
13 address the point that is fairly made, which is the judge has
14 cut out everything but 1 through 8 and 19 and 20. And it
15 pretty much, in many ways, cut out everything but title and
16 registration, although, as you've heard from me and I described
17 Sections 1 through 4 on page 139, it's -- that is left in there
18 and that's broader.

19 But what would you like to argue on this point?

20 MS. COCALIS: Sure, Your Honor. Thank you.

21 So I would just point out that this scheme liability
22 claim also, the Carvana defendants moved to dismiss that claim,
23 and Judge Liburdi rejected that motion. So that is still at
24 play. And plaintiffs allege seven artifices, without the
25 majority of which don't involve title and registration. So I

1 just want to make that point clear as well.

2 And then as to your question as to whether they were
3 all dismissed, I would say that's not true. The Court
4 acknowledged that the defendants made a disclosure regarding
5 DriveTime. He also acknowledged in the order at page 36 that
6 plaintiffs challenged the adequacy of that disclosure, and it
7 was never part of another false statement.

8 I would also say that the statements are different.
9 So, for example, one of the artifices is the fact that
10 defendants' internal sales calculation incorporated, you know,
11 a metric and -- or a future sales into it, and that was not a
12 part of another false statement. So there's not -- you know,
13 they're saying everything was dismissed, it all equals up, but
14 I would argue that's not true.

15 THE COURT: Okay.

16 MS. COCALIS: And to the last point regarding
17 scienter, the Court did discuss the drivers of retail sales in
18 the scienter section at -- let me see -- at page 50. So he
19 mentioned title and registration and defendants must have known
20 of the drivers of its retail unit sales.

21 THE COURT: Okay. So let me be clear. I will draft
22 an order. This is how I looked at the case as well. You get
23 to appeal the order and perhaps address this issue of scope
24 to -- just to be clear, my order here is merely about
25 discovery, which, of course, is expensive. This is a huge

1 case. So I don't know if we need to talk about
2 proportionality, but I doubt it given where we're at on this,
3 these allegations. But I just want to make that clear.

4 I -- it's a little unusual for me to say I've
5 contacted your district judge and say, what -- where are you at
6 on this, but it's just better, you know. It -- I've done
7 enough of these that this was the exception. And it gives you
8 the chance to now hone in on what -- what kind of case are you
9 trying and -- and that you maybe are too early for that for
10 those purposes.

11 Anything else to add?

12 MR. WORD: Yeah. No, no. And I -- I -- if I didn't
13 say it enough before, I really appreciate you reaching --

14 THE COURT: Okay.

15 MR. WORD: -- out to Judge Liburdi --

16 THE COURT: Okay.

17 MR. WORD: -- because I do think that made this much
18 easier and got us to the right answer; right? I mean, we know
19 now.

20 One thing I do want to understand, though, is these
21 five artifacts that animate the --

22 THE COURT: Right.

23 MR. WORD: -- retail unit sales, that discovery -- I'm
24 trying to see where this goes. The discovery that you're going
25 to order for that is only for those components with respect to

1 those specific statements; right?

2 I mean, I might be too unclear on that. So for the
3 securities case, we're all driven by statements, for the most
4 part --

5 THE COURT: Right.

6 MR. WORD: -- right?

7 And so I want to know, is the discovery about -- say
8 DriveTime. Is DriveTime relevant only at that point in time of
9 that actual statement? So what was known then what DriveTime
10 was going on and what was disclosed then at the time of that
11 statement, or is it just for all purposes of the case the whole
12 time period?

13 THE COURT: I think it's broad. Why -- why wouldn't
14 it be?

15 MR. WORD: Because it doesn't -- these statements --
16 again, he dismissed the statements --

17 THE COURT: Sure.

18 MR. WORD: -- right? So those statements are gone.
19 This discovery's only relevant to the two retail unit sales
20 statements; right?

21 And so discovery -- like you could go look at
22 DriveTime back to the beginning of DriveTime's existence;
23 right?

24 But it seems to me that we're talking about only the
25 retail unit sales statements, so discovery should be cabined

1 around those statements and not every other issue related to
2 DriveTime. To the extent -- to the extent DriveTime was a
3 driver of retail unit sales, it seems like that's what you're
4 saying is in.

5 I -- just I know we're going to have stiff debates
6 about this amongst ourselves. I'm just trying to understand,
7 are you going to specify that in your order, or are you just
8 going to say it's in and it's up to the parties to try to
9 negotiate that?

10 THE COURT: I would try to allow you to fashion what
11 you think is the correct scope and then come back here if that
12 doesn't work now that you have the -- the larger parameter,
13 otherwise we're going to spend a -- I think quite a bit of time
14 parsing, which might be better off done by you.

15 But I'm happy to -- if you -- if you all are ready
16 to -- to do this right now. It's more efficiently done, I
17 think, between you all, and then we get you on the phone if
18 there are little carve-outs.

19 MR. WORD: I think so, too.

20 THE COURT: Okay.

21 MR. WORD: I mean, I'm just trying to understand the
22 scope -- of what you envisioned in your order, whether you were
23 going to say it's all -- it's for all time, or you're just
24 going to say essentially what Judge Liburdi told you, which is
25 that these five drivers, per set discovery, are in the case

1 with respect to the retail unit sales statements.

2 THE COURT: Yeah. I saw it as pretty broad. I don't
3 have that specific from him, but I did see it broader than
4 that.

5 MR. WORD: Okay. Great. Thank you, Your Honor.

6 THE COURT: Okay. How -- let me ask the plaintiffs
7 this: How -- do you anticipate there -- this -- there'd be --
8 be any significant discovery issues you need to have me address
9 right now, or do you think you're -- you agree that you're
10 better to meet and confer and go through this and then come
11 back with --

12 MS. COCALIS: I --

13 THE COURT: -- specifics?

14 MS. COCALIS: Oh, I'm sorry.

15 THE COURT: Go ahead.

16 MS. COCALIS: Excuse me. I think it would be good to
17 meet and confer. I'm not sure I quite understand the point,
18 and we can flush it out further. And I would, again, say that
19 the scheme claim against the Carvana defendants is -- well,
20 particularly Carvana, Garcia, Jr., and Jenkins, is still in.
21 And so to start cabining it off now would be a little
22 premature. And hopefully we can reach a resolution.

23 THE COURT: It does seem, then, it would be helpful if
24 I say what's in and out of my order so you can appeal it and
25 then have a final resolution with Judge Liburdi.

1 MR. WORD: I appreciate that, Your Honor. Yeah.

2 THE COURT: Doesn't that just save time?

3 MS. COCALIS: Sure. But do you mean you're going to
4 set a time period? Is that --

5 THE COURT: I'd like your input on what -- I would
6 like to address these things. My goal here is just to simplify
7 this. This is going to be a lot of discovery. And, again,
8 you -- you're all looking at scope of the case, what are you
9 defending later on. How wide does this go given the fact the
10 judge has carved out a whole bunch of this?

11 So I don't know. That's a summary judgment question.
12 I don't have the answer to that. I don't know that
13 Judge Liburdi does. But I'm sympathetic to the idea that
14 you're diving into discovery that might not -- what -- this
15 doesn't have to be admissible. It just has to be relevant for
16 discovery purposes. But even -- it's not relevant if it's not
17 part of the case. So what I'm trying to do is at least set you
18 up so that you can go back and get the final ruling from your
19 district judge on where do you stand on -- on really this main
20 issue of what's the scope of the trial of this case.

21 So you both made good arguments. I think by setting
22 this up in the discovery context, which is typically
23 broader, maybe you can get some more clarification from
24 Judge Liburdi. And I can -- I can help you with that by
25 putting that in my order. However, if it's better for you all

1 to meet and confer and go through that in a -- you know, over
2 the next time frame, four weeks, whatever you want to pick, and
3 then say to me, here's what we've agreed on, we all agree this
4 is in and here's the gray area we don't know about, it'll give
5 you time to think about it. And you can come back, and then
6 you can have an even more precise order from me, and then that
7 you appeal to Judge Liburdi. It's pretty prompt. And I'd be
8 happy to do this quickly so that we also make it somewhat easy
9 for him.

10 So that's my suggestion --

11 MR. WORD: Yeah.

12 THE COURT: -- is if you meet and confer, decide what
13 you agree on certainly's coming in and then, like, here are the
14 three gray areas you don't know about -- you identify for the
15 Court, here's what we're unclear about, I rule on that, and
16 then you appeal it, I assume, hopefully, all right, assuming
17 you do that, and then you get a final order from the district
18 judge, and then you're off. Because your discovery goes until
19 2026. Your fact discovery, I -- May 29, 2026. So we're in
20 June. We do this process over the next six weeks or
21 eight weeks, whatever your time frame is. Maybe that's the
22 most efficient way to do it.

23 So your thoughts?

24 MR. WORD: Yes. I'm sort of rethinking it the way you
25 laid it out there. I won't be in a position to essentially

1 agree --

2 THE COURT: Correct.

3 MR. WORD: -- that these issues are, it's my position,
4 before Judge Liburdi. It's going to be that, hey, for the
5 other reasons in your opinion, these statements should be out.
6 There's no reason to have discovery.

7 So I don't know how much agreement we'll get other
8 than in the world where if these are in --

9 THE COURT: Correct.

10 MR. WORD: -- these may not be.

11 And so I -- I don't want to inject more ambiguity in
12 your order, whereas if you just say what it is, we'll let
13 Judge Liburdi -- we'll put all this stuff before him, that
14 might be more expeditious. But I feel -- I can see it both
15 ways.

16 THE COURT: Yeah. You're certainly not agreeing to
17 any of this. My point is whether you want to take a run at all
18 of these issues without having me get your input. Again, if
19 that's easier for you and it's faster and you -- it takes less
20 time with me because you don't have to double brief this, then
21 we can do it that way. You all can meet and confer and then
22 appeal whatever you wish. And I'll give you plenty of time to
23 do that. Normally there's a deadline for appeals for these
24 orders, but if we build that in ahead of time, that you have
25 the time to meet and confer after I rule, that's longer than

1 normal. And it's the summer. I can give you four, six weeks.

2 MR. WORD: I don't think we need that much time.

3 Do you? I mean, can you meet this week sometime.

4 MS. COCALIS: Yeah, we can meet this week, but I would
5 say just give us, like, two weeks --

6 MR. WORD: Yeah, uh-huh.

7 MS. COCALIS: -- to -- to --

8 MR. WORD: To go back and forth --

9 MS. COCALIS: Yeah.

10 MR. WORD: -- a couple of times? Yeah.

11 So two weeks will be sufficient, I think, Your Honor.

12 THE COURT: All right.

13 MR. GRONBORG: Sorry. Just make sure we're all on the
14 same page.

15 THE COURT: Yeah.

16 MR. GRONBORG: I understood you to be saying you were
17 going to issue the order --

18 THE COURT: I --

19 MR. GRONBORG: -- and give us time to meet and --

20 THE COURT: Correct.

21 MR. GRONBORG: -- confer.

22 THE COURT: Well, I was giving --

23 MR. GRONBORG: So --

24 THE COURT: -- you either option. I could --

25 MR. GRONBORG: Okay.

1 THE COURT: I could have you meet and confer and file
2 a notice with the Court of what you agree to and what you would
3 like clarified, and then I can issue an order. That, I don't
4 think, is what we're doing. Instead what we're going to do is
5 I'm going to issue my order and give you two weeks, then two
6 more weeks to file briefing, and then that will go to
7 Judge Liburdi, and he can give you the scope. And I think
8 that's the plan we're on.

9 MR. WORD: Yeah.

10 MS. COCALIS: Okay. Great.

11 THE COURT: Okay. So, to be clear, I assume you'll
12 be re- -- you want to file first, or do you want to file a
13 joint motion?

14 I doubt you do. I assume, if you're going to object
15 to the ruling, you're going to file an objection.

16 MR. WORD: Yeah. That would be my preferred --
17 preferred path. We'll file our objection, and they can oppose
18 it.

19 THE COURT: Okay. After the -- my order is filed, how
20 much time do you want?

21 MR. WORD: Sorry, Your Honor.

22 THE COURT: That's fine.

23 MR. WORD: Just conferring. I have obligations on
24 that.

25 THE COURT: No. Please take your time.

1 MR. WORD: Two weeks, Your Honor, would be
2 sufficient --

3 THE COURT: Okay.

4 MR. WORD: -- after you rule.

5 THE COURT: Response two weeks after?

6 MS. COCALIS: Yeah, that'd be great.

7 THE COURT: Okay.

8 MS. COCALIS: Thank you.

9 THE COURT: All right. We don't usually do replies on
10 discovery, so response -- or objection and a response will be
11 sufficient.

12 Anything else on 154?

13 MR. WORD: No, Your Honor.

14 UNIDENTIFIED FEMALE VOICE: Thank you. Nothing.

15 THE COURT: So 155. Well, let me go back, actually,
16 on 154, because I do have a question. I went through the RFPs.

17 Do you want to be heard on any of these? I mean,
18 they're -- I'm looking at 154-5, RFP 9. I don't know that we
19 want to dive into every one of these. It's long.

20 But anything to add from plaintiffs on 154-5?

21 MS. COCALIS: I -- no. I would say that we've offered
22 to narrow some of the requests. And I think, you know, given
23 your order, I think the parties will meet and confer to -- to
24 kind of resolve any disputes. But I think the basic dispute
25 now is sort of where we're at. It's a relevance dispute. And

1 I think if there are any issues, we could probably come to you.
2 But hopefully there won't need to be any.

3 THE COURT: Okay.

4 MR. WORD: I think that's right, Your Honor. We'll
5 be -- I think we'll be able to dive into these in more detail
6 with your order in our dispute narrative.

7 THE COURT: That's fine. I mean, for example, I was
8 looking at RFP 9, which is they're -- you're not producing
9 something, but it doesn't appear there's anything for me to
10 rule on there. So I'll let you all continue to work on this
11 and come back to me if you need to.

12 UNIDENTIFIED FEMALE VOICE: Thank you.

13 THE COURT: Okay. So that stops 154 for today.

14 155. Let me tell you how I look at this. I don't see
15 the rules requiring the disclosure of all witnesses right now.
16 My thought on this was that, you know, a CEO of a company --
17 I'm just giving you a hypothetical -- might not remember every
18 memo that came from everyone in the organization. Later on
19 might realize through discovery that, oh, the CFO sent me
20 something. I forgot about this.

21 So I don't see that right now that this has to be
22 dis- -- that every affirmative witness has to be disclosed, but
23 it does have to be done. It seems to me it has to be done
24 before any deposition.

25 So my initial takeaway on this was the disclosure

1 needs to be made, but it's -- it should happen, you know, a
2 week before any deposition. And that gives each side a chance
3 to prepare. You get a chance to go through discovery and --
4 and you know how to defend your case -- how to go forward with
5 your case, and you get a deposition that's fully disclosed.

6 So let me turn to plaintiffs.

7 MR. GRONBORG: Thank you, Your Honor.

8 I agree with you that obviously you could have a
9 hypothetical where a CEO doesn't remember and their memory is
10 jogged as they go through. I guess what I disagree is the
11 point of not every witness has to be disclosed now, where I do
12 think Rule 26 says if you know, if you do know somebody, you
13 have to and you may use them. So they may be a witness. Not
14 even they will be. They have to be disclosed.

15 And the issue with having them just be, say, disclosed
16 before a deposition, but the most obvious is whose deposition.
17 And in this case, it's one person. It's Garcia, Sr.

18 THE COURT: Senior, right.

19 MR. GRONBORG: He's likely to be deposed near the end
20 of the case.

21 THE COURT: Yeah.

22 MR. GRONBORG: If a week before an email says, you
23 know, I'm likely to rely on these 12 people -- or almost going
24 back to square one. If they are, say, third-party experts who
25 haven't been served document requests.

1 And the -- the real-world concern out of all of this
2 is that we end up near or at the end of discovery, you know,
3 with the Court rightly saying, I gave you guys 18 months, and
4 we're having to go back and say, now we've got to take some
5 extra document requests, we've got to do extra depositions, or
6 alternatively you, the Court, need to say these disclosures
7 were made too late. They should have been made timely and
8 expose on that.

9 Last point, I really would hate to have an order that
10 said you don't need to disclose until a week before deposition,
11 because that does run counter to the federal rules. Like I
12 said, even that CEO who had no memory of who they got memos
13 from, in the course of discovery, when they -- those memos
14 popped up and they knew, they'd have an obligation to promptly
15 correct or amend those disclosures.

16 THE COURT: Okay. But that's -- if they are -- if
17 they are allowed to amend with that updated discovery, doesn't
18 go right into your concern, though, that now we might have to
19 do additional disclosures?

20 You know, I mean, that was your concern about why you
21 didn't think this process was fair. You're still going to have
22 that problem, aren't you?

23 MR. GRONBORG: It's possible. But, again, let's say
24 Garcia, Sr., with three weeks left in discovery, says, now here
25 are these three people who I'm going to rely on, and it turned

1 out those memos were produced a year earlier, I'm going to have
2 a grounds to go to the Court and say: They can't rely on those
3 people. They weren't timely deposed.

4 I shouldn't now have to extend the discovery deadline,
5 or at least that should be the option. If the Court wants to
6 extend the discovery deadline, it can. But it also has the
7 option of saying: You didn't timely -- you didn't follow the
8 rules which required a timely amendment of your disclosure.

9 And that will matter because, you know, honestly,
10 we're -- you know, we're going to probably be in the position
11 of the ones who say we want to get this thing to trial as fast
12 as possible and being hurt.

13 And so that -- again, that's not --

14 THE COURT: Yeah.

15 MR. GRONBORG: If -- if that CEO, or in this case
16 Mr. Garcia, Sr., like, truly they just -- they don't know who
17 it is who they relied on -- and we talked about this in the
18 meet and confer process -- then, sure, you know, I can't get
19 blood from a stone. But at a minimum -- and even if it was
20 that, which I -- you know, sort of like I can't -- I can't
21 force somebody to get blood from a stone. The -- the results
22 should just be the federal rules should continue to stand, and
23 the defendant has an obligation to timely disclose anyone who
24 they may rely on.

25 THE COURT: Number 1, one way to perhaps rectify that

1 concern, or at least ameliorate it, is to move up to the
2 deadline for the disclosure not so close to the end of fact
3 discovery.

4 But one other issue I might have with your approach is
5 that now the Court's diving in again as to making decisions
6 about whether Garcia, Sr., what he knew or should have known
7 about this discovery, and it -- and, therefore, should have
8 made the disclosure earlier. So at this -- like what I see the
9 Court having to dive into in the future, that's -- your plan
10 has that as a fault.

11 MR. GRONBORG: It does, but that's what the federal
12 rule says --

13 THE COURT: Okay.

14 MR. GRONBORG: -- as the default. I mean, that's just
15 what the federal rules require. And, unfortunately, you know,
16 timely has different meanings in -- in different places and why
17 courts often have to get involved in it.

18 I would say replacing the federal rules with a regime
19 that just says "make your disclosures by X," you know, the day
20 after document production is done, one, that creates a delay,
21 you know, in a sense of a delay. But, two, even if you have
22 that, some information could come up in the course of a
23 deposition where, you know --

24 THE COURT: Of course.

25 MR. GRONBORG: I don't think Garcia, Sr. -- I -- I

1 doubt they would like to live with a regime that said there's a
2 hard-and-fast deadline of December 1st, 2025. And I'd probably
3 be on their side. And they'd say: Well, that's that not quite
4 fair, because the federal rules let me timely amend whenever it
5 is that I get the information.

6 So it probably just cuts -- you know, it cuts both
7 ways. There's a point in time where I think they're going to
8 want, you know, exactly what the rule says. And obviously
9 we -- we want to have, you know, what the rule requires.

10 THE COURT: Okay. I will -- I'll come back to you.
11 Let me hear from the defense.

12 So, you know, I'm trying to weigh these things,
13 obviously, by setting a deadline here sympathetic to the idea
14 that there might be additional discovery and new amendments and
15 additional depositions, and there should be a -- some
16 disclosure at some point. I also don't want to get our -- you
17 know, I or Judge Liburdi too involved in when Mr. Garcia, Sr.,
18 should have known or knew that he was going to rely on these
19 individuals.

20 So do we move up a deadline and sort of cut this in
21 half so that there is a -- a -- faster deadline than perhaps
22 the one I was proposing and sort of balance both of these?

23 Your thoughts?

24 MS. WALKER: Thank you, Your Honor.

25 I think we don't have a ripe dispute yet is part of

1 the problem. And we're talking in a lot of hypotheticals. So
2 the purpose of the motion to compel, obviously, is to force a
3 party to disclose information that it's withholding.

4 Mr. Garcia, Sr., is not withholding information known
5 to him at this time from his initial disclosures. He had an --
6 he has an affirmative defense that he relied on others.
7 "Others" being people other than himself. He identified in his
8 initial disclosures officers and directors of Carvana that he
9 relied on.

10 All that we said in the back and forth on -- in the
11 meet and confer process was that if he during discovery
12 identified additional people, either through his memory being
13 refreshed from the scope of the dispute being clarified, we
14 would timely amend. We have always agreed to timely amend. We
15 recommended a date of December to try to give plaintiffs some
16 clarity. They would still have five months, almost six months
17 of discovery left. I don't know that we need a date. We
18 agreed to timely amend. But what we couldn't agree to, and why
19 we're here, is to be limited at the very beginning of discovery
20 to only the people that he put in his initial disclosures and
21 not have the option to amend later or supplement.

22 And we could not agree to sort of adopt plaintiffs'
23 preferred formulation of his affirmative defense. We have our
24 different affirmative defense. We've disclosed the individuals
25 known to him at this time. We're simply reserving the right

1 that we have under Rule 26 to timely amend or supplement if we
2 later determine that we should disclose additional people.

3 If -- if we put a time limit on that, I do think that
4 the December date that we put out is reasonable. At that point
5 we'll have the benefit of documents from the Carvana
6 defendants, from plaintiffs, who I think have nothing related
7 to Mr. Garcia -- Garcia, Sr. But to the extent we -- they do,
8 we'll have that. Plaintiffs will still have five, almost
9 six months to conduct depositions and -- and further discovery.
10 If it needs to be earlier, you know, we certainly would agree
11 to that.

12 But I just want to make clear we were not trying to --

13 THE COURT: Oh, I --

14 MS. WALKER: -- engage in gamesmanship. I'm afraid
15 that we were putting in a -- being put in a position of sort of
16 a gotcha. If we didn't disclose now, we were foreclosed.

17 THE COURT: You agree, then, under your proposal that
18 after December, whatever -- if that's the deadline, there's no
19 more amendment? You'll have enough discovery to have listed
20 your affirmative defense witnesses?

21 MS. WALKER: We -- we actually had proposed that to
22 plaintiffs, and they rejected it, which I think is -- is
23 more than generous, because something could come out in --

24 THE COURT: No.

25 MS. WALKER: -- a -- in a deposition later.

1 THE COURT: Sure.

2 MS. WALKER: You know, and I think then if we try to
3 supplement and, you know, claimants wants to come in and say
4 we've been sandbagged --

5 THE COURT: No.

6 MS. WALKER: -- you know, we could have that dispute
7 at that time when it's ripe and when --

8 THE COURT: That's --

9 MS. WALKER: -- the Court has all of the facts.

10 THE COURT: So the answer's yes?

11 MS. WALKER: But the answer is yes.

12 THE COURT: Okay.

13 MR. GRONBORG: Oh, I -- we never understood that to be
14 a proposal. And, honestly, just about everything Ms. Walker
15 said is a very good characterization of our meet and confer.
16 But I suppose if Garcia, Sr., is willing to timely amend up to
17 and through December of 2025 and that's the cutoff, we're fine
18 with that.

19 THE COURT: That seems right. I mean, it does allow
20 us to administer the case efficiently, which is the main issue
21 here. You heard my thoughts about his needing to amend, if
22 necessary, but also making sure the case goes forward.

23 So I am in agreement with what you all have said.
24 We'll set a December 31, 2025, deadline for Garcia, Sr.'s
25 disclosure of affirmative witnesses.

1 Okay. Well, that handles 154 and 155 for today.

2 Let me turn to plaintiff. Anything else to address?

3 MS. COCALIS: No, Your Honor.

4 THE COURT: From the defense?

5 MR. WORD: Not for the Carvana defendants, Your Honor.

6 MS. WALKER: Not for Mr. Garcia, Sr. Thank you.

7 THE COURT: Let me just say before we adjourn that I
8 really want to say that I appreciate you all coming here in
9 person. I am very much in favor of not having discovery
10 disputes like this and requiring you all to -- to come down to
11 court or to travel. So I assume we can handle all of this in
12 the future not doing it this way. So I am thankful for you
13 being here in person. I know that's not the most efficient way
14 to do this. It's been a little unusual overall. And my goal
15 here is not only to give you a clear order, but also to put
16 myself in both of your shoes and see what is the case that you
17 have so that you know what it -- how to try and defend the case
18 going forward.

19 So I appreciate your input and our discussion. And
20 with that, we're adjourned.

21 Thank you.

22 (Proceedings conclude at 2:39 p.m.)

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C E R T I F I C A T E

I, CATHY J. TAYLOR, court-approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

DATED at Phoenix, Arizona, this 27th day of June,
2025.

/s/Cathy J. Taylor
Cathy J. Taylor