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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In re Carvana Co. Securities Litigation

No. CV-22-2126-PHX-MTL

This Document Relates To:

All Actions.

PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL COMPLIANCE

1 Plaintiffs submit this reply in further support of their Motion to Compel Compliance
 2 (ECF 253) (“Motion” or “Mot.”) with the Court’s Order granting the Parties’ Stipulated ESI
 3 Order.¹

4 **I. PLAINTIFFS’ ARGUMENT**

5 Garcia Sr. violated the Court’s ESI Order by withholding attachments to responsive
 6 communications based on a unilateral “non-responsiveness” determination, in direct
 7 contravention of the ESI Order’s plain language. DriveTime does not dispute this.
 8 Likewise, Garcia Sr. concedes that a portion of the communications are responsive and that
 9 the ESI Order mandates that “if *any* part of a communication or its attachments is
 10 responsive, the entire communication and attachments will be produced.” ESI Order at 8.
 11 Unable to dispute the text of the ESI Order, Garcia Sr. and DriveTime instead advance a
 12 series of meritless post hoc rationalizations. None are persuasive. The Motion should
 13 therefore be granted. Further, given the straightforward nature of the dispute and in the
 14 interest of expediency, Plaintiffs do not believe that oral argument on the Motion is
 15 necessary.

16 *First*, Garcia Sr. and DriveTime claim that Plaintiffs must establish that each
 17 document is individually relevant even if it is a part of a singular, responsive communication.
 18 *See* G.Opp. at 1; D.Opp at 1-3. That argument squarely contradicts the ESI Order. ESI
 19 Order at 8. Tellingly, DriveTime’s response does not even mention the ESI Order. And
 20 Garcia Sr.’s citation to the ESI Order’s provision describing a “process for determining ‘an
 21 appropriate basis for withholding a family document’” (G.Opp. at 2) only underscores his
 22 noncompliance, as he did not follow that process, which requires the Parties to “meet and
 23 confer” prior to withholding any portion of the document family. ESI Order at 8. Instead,
 24 Garcia Sr. unilaterally withheld the documents, obscured that fact in a production letter, and

25 ¹ Capitalized terms not defined herein have the same meaning as in Plaintiffs’ Motion.
 26 “G.Opp.” refers to Defendant Ernest Garcia II’s Response to Plaintiffs’ Motion to Compel
 27 Compliance (ECF 270), “D.Opp.” refers to Nonparty DriveTime Automotive Group Inc.’s
 28 Response to Plaintiffs’ Motion to Compel Compliance (ECF 281), and “Ex. 2” refers to
 Exhibit 2 attached to the Motion (ECF 253-2). Unless otherwise stated, all emphasis is
 added and citations are omitted.

1 then flatly refused to produce the attachments during *Plaintiffs'* requested meet and confer.
 2 *See* Ex. 2 at 2-3.

3 Even if the ESI Order did not unequivocally require the production of the withheld
 4 documents (it does), and even if Garcia Sr. and DriveTime's unilateral, inappropriately
 5 narrow relevance determinations were correct (they are not), the documents must still be
 6 produced under well-settled law. "Courts in this Circuit have long recognized that an email
 7 and its attachment comprise 'one document or message unit,'" and must be produced
 8 together. *Symettrica Ent., Ltd. v. UMG Recordings, Inc.*, 2020 WL 13311682, at *5 (C.D.
 9 Cal. 2020); *see also* Mot. at 2 (citing additional cases); *Leon v. Am. Honda Motor Co. Inc.*,
 10 2025 WL 3255005, at *5-*6 (C.D. Cal. 2025) (ordering party to "[p]roduc[e] the entire
 11 family, except for any portions that are privileged and properly designating confidential
 12 portions" because this "allows Plaintiffs – and the Court when appropriate – to review the
 13 document family as it was created and maintained" and "breaking up the document family is
 14 effectively a[n improper] 'relevance redaction'"); *Endo Fitness LL, LLC v. F19 Holdings,*
 15 *LLC*, 2023 WL 12015974, at *6 (C.D. Cal. 2023) (ordering party to produce "all attachments
 16 to all emails").

17 Notably, DriveTime had no response whatsoever to this wealth of authority. Nor did
 18 it cite any authority supporting its position that breaking up responsive families is
 19 permissible or consistent with the requirement that a party produce "documents as they are
 20 kept in the usual course of business." Fed. R. Civ. P. 34(b)(2)(E)(i). Garcia Sr.'s attempt to
 21 distinguish just a *single case* also fails. *See* G.Opp. at 2. That the emails in *Karnoski v.*
 22 *Trump*, 2020 WL 2736961 (W.D. Wash. 2020) were purportedly responsive, as opposed to
 23 the attachments here, is a distinction without a difference. The ESI Order is explicit: "[I]f
 24 *any* part of a communication *or its attachments is responsive*" ESI Order at 8.²

25
 26 ² Garcia Sr.'s limited authority is inapposite. *See G.P.P., Inc. v. Guardian Prot. Prods.,*
 27 *Inc.*, 2016 U.S. Dist. LEXIS 88926, at *2-*3 (E.D. Cal. 2016) (unlike here, the parties in this
 28 decade-old case did not have an ESI order requiring production); *see also Weidman v. Ford*
Motor Co., 2021 U.S. Dist. LEXIS 20095, at *8 (E.D. Mich. 2021) (same and relying on
G.P.P. as its legal support); *see also* Ex. 2 at 2-3 nn.1-2.

1 **Second**, Garcia Sr. and DriveTime are also wrong that the withheld documents are not
 2 individually relevant. G.Opp. at 1. Even setting aside that these documents are part of
 3 responsive families and must be produced, the attachments are plainly relevant. Mot. at 1-2.
 4 Indeed, two of the withheld documents that DriveTime produced expressly reference
 5 Carvana and DriveTime’s sham pass-through agreement – an alleged artifice of the scheme
 6 and an undisclosed driver of Carvana’s reported sales growth. *See id.* at 1-2.³ Garcia Sr.’s
 7 contention that documents discussing an alleged artifice and undisclosed material facts are
 8 irrelevant simply because they are not public (G.Opp. at 2) only illustrates why Defendants
 9 cannot be permitted to serve as the unilateral arbiters of relevance, particularly when the
 10 withheld attachments are part of a single, responsive communication.⁴

11 **Lastly**, DriveTime makes unsupported assertions of harm. *See* D.Opp. at 1-3. It fails,
 12 however, to explain why the Parties’ Stipulated Protective Order (ECF 136 at 4) does not
 13 fully address those harms. Further, DriveTime’s authorities – each considering a motion to
 14 quash under Federal Rule of Civil Procedure 45 – are inapposite.⁵ DriveTime has not moved

15
 16 ³ As such, Garcia Sr. is wrong to claim that he “produced all attachments . . . that were
 17 **responsive** to Plaintiffs’ requests.” G.Opp. at 1. That assertion is demonstrably false.
 18 Further, Garcia Sr.’s claim that “Plaintiffs already have the documents they seek” (*id.* at 2) is
 19 misleading at best as DriveTime produced only **two** of the **109** withheld documents. *Contra*
 20 D.Opp. at 2. Garcia Sr. and DriveTime’s authorities are likewise inapt. They address the
 21 relevance of overbroad requests, rather than the propriety of withholding discrete
 22 attachments that are part of concededly responsive communications. *See In re Bard IVC*
Filters Prods. Liab. Litig., 317 F.R.D. 562, 565-66 (D. Ariz. 2016); *Appel v. Bos. Nat’l Title*
Agency, LLC, 2019 WL 183504, at *2 (S.D. Cal. 2019). Nor does *In re Soc. Media*
Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 2025 WL 2405489 (N.D. Cal. 2025),
 assist Defendants. There, counsel had “conceded” that the requests at issue “could be ‘set
 aside’ as irrelevant,” a circumstance entirely absent here, where the attachments are part of
 communications Defendants concede are responsive. *Id.* at *13.

23 ⁴ Judge Liburdi’s discussion of *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta, Inc.*, 552
 24 U.S. 148 (2008) (ECF 105 at 37-39) does not affect relevance here because he ultimately
 25 upheld Plaintiffs’ retail growth statements and scheme claim against the Carvana Defendants
 and Plaintiffs’ §20(a) claim against Garcia Sr. in full. *See* ECF 105 at 40, 60; *see also* ECF
 173 at 3-5.

26 ⁵ *See Solow v. Conseco, Inc.*, 2008 WL 190340, at *4 (S.D.N.Y. 2008) (quashing
 27 subpoena “where the information is sought by a competitor,” unlike here); *Grand River*
 28 *Enters. Six Nations, Ltd. v. King*, 2009 WL 222160, at *3 (S.D.N.Y. 2009) (same); *Trellian*
Pty, Ltd. v. adMarketplace, Inc., 2021 WL 363965, at *4 (S.D.N.Y. 2021) (finding non-party
 “has shown good cause for its redactions,” particularly given the “direct, ongoing
 competition” between the non-party and plaintiff); *Gerawan Farming, Inc. v. Prima Bella*

1 to quash or for a protective order. Where there is no motion to quash, no cognizable burden,
 2 and the ability to designate documents as “confidential” or “highly confidential,” there is no
 3 basis to withhold production. *Leon*, 2025 WL 3255005, at *5-*6 (ordering production of
 4 entire families because “any concern about disclosure of irrelevant information is mitigated
 5 by the fact that there is a protective order”); *see also Takata v. Hartford Comprehensive*
 6 *Emp. Benefit Serv. Co.*, 283 F.R.D. 617, 621 (E.D. Wash. 2012) (protective orders address
 7 confidentiality concerns).

8 In sum, Garcia Sr. should comply with the ESI Order and produce the withheld
 9 attachments.

10 DATED: January 30, 2026

Respectfully submitted,

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27 *Produce, Inc.*, 2011 WL 13242977, at *4 (E.D. Cal. 2011) (burden on non-party in
 28 producing certain documents was “readily apparent”).

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