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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 Respondents.

No. CV-22-02126-PHX-MTL

ORDER

15 Pending before the Court is Plaintiffs’ “Motion to Compel Compliance” (doc. 253).¹
16 Plaintiffs’ Motion seeks to compel Defendant Garcia Sr. to comply with the District
17 Court’s March 12, 2025, ESI Order. (Doc. 253 at 2.) Specifically, Plaintiffs seek an order
18 compelling Defendant Garcia Sr. to produce email attachments that he is withholding. (*Id.*
19 at 2–3.) Defendant Garcia Sr. and Non-Party DriveTime Automotive Group, Inc.
20 (“DriveTime”) object to Plaintiffs’ Motion, asserting that the documents Plaintiffs seek are
21 irrelevant and contain highly confidential information “concern[ing] the business and
22 operations of nonparty DriveTime and its [non-party] affiliated companies[.]” *See* (doc.
23 281 at 1); *see also* (doc. 270 at 2.)

24 The parties submitted a stipulated electronic discovery agreement. (Doc. 131.) The
25 District Court issued its ESI Order adopting the parties’ stipulation. (Doc. 137.) The order
26 is clear: “if any part of a communication or its attachments is responsive, the entire
27 communication and attachments will be produced[.]” (*Id.* at 8.) The Court will grant

28 ¹ Discovery matters in this case have been referred to this Court by the Honorable
United States District Judge Michael T. Liburdi. *See* (doc. 125.)

1 Plaintiffs' Motion.

2 **I. Background.**

3 On August 3, 2022, Plaintiffs initiated this action by filing their Complaint in the
4 U.S. District Court for the District of New Jersey alleging violations of the Securities
5 Exchange Act of 1934. (Doc. 1 at 2, 33.) On December 12, 2022, this matter was transferred
6 to the U.S. District Court for the District of Arizona. (Docs. 25–26.)

7 On March 12, 2025, the District Court issued an Order governing Electronic
8 Discovery in this action. (Doc. 137.) In pertinent part, the Order stated that:

9 [t]he parties agree that *if any part of a communication or its attachments is*
10 *responsive, the entire communication and attachments will be produced,*
11 *except any attachments that must be withheld or redacted on the basis of*
12 *privilege.* The parties will meet and confer about whether there is an
13 appropriate basis for withholding a family document for any reason other
than attorney-client or work product privilege. The attachments will be
produced sequentially after the parent communication.

14 (*Id.* at 8) (emphasis added).

15 On the same day the District Court issued a Protective Order. (Doc. 136.) This Order
16 established the guidelines for handling discovery and usage of documents another party
17 has labeled “confidential” or “highly confidential.” *See generally (Id.)* This includes
18 discovery requests received by a party for documents that a non-party has labeled as
19 confidential or highly confidential:

20 In the event that a Party is required, by a valid discovery request, to produce
21 a Non-Party’s confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party’s
23 confidential information, then the Party shall, unless otherwise prohibited by
24 law: (1) promptly notify in writing the Requesting Party and the Non-Party
25 that some or all of the information requested is subject to a confidentiality
26 agreement with a Non-Party; and (2) promptly provide the Non-Party with
27 the relevant discovery request(s) and a reasonably specific description of the
information requested. If the Non-Party seeks a protective order, the Party in
receipt of a valid discovery request shall not produce any information in its
possession or control that is subject to the confidentiality agreement with the
Non-Party before a determination by the court or consent by the Non-Party.

28 (*Id.* at 9–10.)

1 The Order further states that documents labeled confidential or highly confidential
 2 that will be “produced to a Party or Parties, or their Counsel, shall not be used by any Party,
 3 or their Counsel, in any other litigation, or for any purpose other than the prosecution or
 4 defense of this Action[.]” (*Id.* at 12.)

5 On January 9, 2026, Plaintiffs filed the instant Motion. (Doc. 253.) Plaintiffs filed
 6 the Motion after discussions with Defendant Garcia Sr. between November 25, 2025, to
 7 January 7, 2026, broke down. *See* (doc. 253-1 at 1); *see also* (doc. 253-4 at 1.) The parties’
 8 dispute arose out of the production of family attachments to the following documents:
 9 Garcia Sr_0002470, Garcia Sr_0002506, Garcia Sr_0001789, and Garcia Sr_0001834.²
 10 (Doc. 253-1 at 1.) Defendant Garcia Sr. and Non-Party DriveTime filed Responses on
 11 January 20, 2026, and January 23, 2026, respectively. (Docs. 270, 280.) On January 30,
 12 2026, Plaintiffs filed their Reply. (Doc. 293.) This Court held a discovery hearing on
 13 February 9, 2026. (Doc. 308.)

14 Seeing as this matter is fully briefed and finding no cause for delay, the Court will
 15 address Plaintiffs’ Motion.

16 **II. The Parties’ Arguments.**

17 The parties’ arguments are summarized below.

18 **A. Plaintiffs’ Arguments.**

19 Plaintiffs assert four arguments in support of their Motion. First, Plaintiffs assert
 20 that Defendant Garcia is required to produce attachments to a responsive email under the
 21 Court’s ESI Order and caselaw. (Doc. 253 at 2.) Second, Plaintiffs assert that the withheld
 22 attachments “are undeniably relevant and responsive.” (*Id.* at 2–3); (doc. 293 at 4.)
 23 Plaintiffs reinforced this assertion during the hearing, noting that one attachment that
 24 Defendant Garcia Sr. produced referenced Defendant Carvana 87 times. *See* (doc. 308.)

25 Third, Plaintiffs assert that even if the documents are irrelevant, “the weight of authority
 26 rejects withholding attachments for responsiveness where any part of that communication

27
 28 ² All four emails address DriveTime’s Board and all generally state—in the words of Plaintiffs—the following: “All board members, here are the attached documents.” *See* (doc. 308.)

1 is responsive[.]” (Doc. 253 at 3) (emphasis removed). In Plaintiffs’ view, if Defendant
 2 Garcia Sr. were permitted to withhold attachments in such a scenario, the District Court’s
 3 ESI Order would be effectively voided. *See* (doc. 308.) Finally, Plaintiffs assert that any
 4 argument that the attachments contain “highly sensitive and confidential information is a
 5 red herring” that the District Court’s Protective Order covers. (*Id.* at 3) (cleaned up); (doc.
 6 293 at 4–5); (doc. 308.)

7 ***B. Defendant Garcia Sr.’s Arguments.***

8 Defendant Garcia Sr. asserts five arguments in opposition to Plaintiffs’ Motion.
 9 First, Defendant Garcia Sr. asserts that the attachments in issue “have nothing to do with
 10 Plaintiff[s]’ claims” as the documents “concern DriveTime’s dividends, reports from
 11 DriveTime’s auditors, and legal updates about unrelated litigation.” (Doc. 270 at 2)
 12 (emphasis removed). Second, Defendant Garcia Sr. states that the documents are irrelevant
 13 because they contain DriveTime’s financial statements that were “not public[] and could
 14 not have been relied upon by Carvana investors.” (*Id.* at 3.) Because of this averment,
 15 Defendant Garcia Sr. argues that the relevance of each document in a family unit “should
 16 be assessed separately.” (*Id.*) (citing *G.P.P., Inc. v. Guardian Prot. Prods.*, No. 1:15-cv-
 17 00321-SKO, 2016 U.S. Dist. LEXIS 88926, at *2–3 (E.D. Cal. July 8, 2016)).

18 Third, Defendant Garcia Sr. asserts that, beyond being irrelevant, the documents at
 19 issue are highly confidential. (Doc. 270 at 3.) Because the documents are considered highly
 20 confidential, Defendant Garcia Sr. argues that he may withhold them from production. (*Id.*)
 21 Fourth, Defendant Garcia Sr. asserts that he was not required to disclose the four emails
 22 and certain attachments in question pursuant to the ESI Order. (Doc. 308.) Finally,
 23 Defendant Garcia Sr. asserts that the second sentence in section (E) of the ESI Order, which
 24 requires the parties to meet and confer about potential “appropriate basis[es] for
 25 withholding family documents,” authorizes his withholding of attachments due to a
 26 unilateral review of relevancy until such time as the parties have conferred on disclosing
 27 said attachments. (*Id.*)

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1 **C. Non-Party DriveTime’s Arguments.**

2 DriveTime’s arguments largely mirror Defendant Garcia Sr.’s arguments. *See*
 3 *generally* (doc. 281.) But, DriveTime does assert one point that Defendant Garcia Sr. does
 4 not. Namely, DriveTime argues that a protective order is “insufficiently to protect highly
 5 confidential and proprietary information, particularly when such information is irrelevant.”
 6 (*Id.* at 2.)

7 **III. Legal Standards.**

8 Under Rule 34(a), a party may request the production of evidence, ESI or otherwise,
 9 so long as it is within the scope of Rule 26(b). *P&B Franchise, LLC v. Dawson*, No. CV-
 10 23-00784-PHX-SMB, 2024 WL 326956, at *2 (D. Ariz. Jan. 29, 2024) (citing Fed. R. Civ.
 11 P. 34). If a party fails to make a disclosure under Rule 34, the moving party may then seek
 12 the production of documents through a Rule 37 motion to compel. *See* Fed. R. Civ. P.
 13 37(a)(3)(B)(iv). A party may request production of evidence that is “within the scope of
 14 Rule 26(b)[.]” Fed. R. Civ. P. 34(a). The party moving to compel discovery under Rule 37
 15 “has the [initial] burden of establishing that its request satisfies the relevancy requirements
 16 of Rule 26(b)(1).” *United States v. Nolen*, No. 2:23-cv-00320-JAM-CKD, 2024 WL
 17 2785307, at *2 (E.D. Cal. May 30, 2024) (quoting *La. Pac. Corp. v. Money Mkt. I*
 18 *Institutional Inv. Dealer*, 285 F.R.D. 481, 485 (N.D. Cal. 2012)). Thereafter, the party
 19 opposing the motion to compel “has the burden of showing that discovery should not be
 20 allowed, and also has the burden of clarifying, explaining and supporting its objections
 21 with competent evidence.” *La. Pac. Corp.*, 285 F.R.D. at 485 (citing *DIRECTV, Inc. v.*
 22 *Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002)); *Blankenship v. Hearst Corp.*, 519 F.2d 418,
 23 429 (9th Cir. 1975) (noting that the opposing party carries “a heavy burden” in showing
 24 why such discovery request should be denied) (emphasis added).

25 The court has broad discretion regarding whether to permit or deny discovery via a
 26 motion to compel. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). Generally,
 27 discoverable evidence is “any nonprivileged matter that is *relevant*³ to any party’s claim

28 ³ Evidence is considered relevant if: “(a) it has any tendency to make a fact more or
 less probable than it would be without the evidence; and (b) the fact is of consequence in

1 or defense and proportional to the needs of the case” Fed. R. Civ. P. 26(b)(1) (emphasis
2 added).

3 While a party’s right to discovery is broad, that does not mean that it is limitless.
4 *See* Fed. R. Civ. P. 26(b)(2). Courts will limit discovery where:

5 (a) the discovery sought is unreasonably cumulative or duplicative, or can be
6 obtained from some other source that is more convenient, less burdensome,
7 or less expensive; (b) the party seeking discovery has had ample opportunity
8 to obtain the information by discovery in the action; or (iii) the proposed
discovery is outside the scope permitted by Rule 26(b)(1).

9 Fed. R. Civ. P. 26(b)(2)(C)(i)–(iii).

10 **IV. Discussion.**

11 This dispute largely stems from Defendant Garcia Sr.’s and Non-Party DriveTime’s
12 desire to preserve attached documents that they assert are highly confidential and
13 proprietary information. Although the Court understands their aversion to the disclosure of
14 such attachments, it finds that their withholding neither comports with the District Court’s
15 ESI Order nor legal authority.

16 **A. Stipulated ESI Order.**

17 As an initial matter, the Court notes that the District Court’s ESI Discovery Order,
18 which the parties—including Defendant Garcia Sr.—stipulated to, clearly addresses the
19 matter at hand. Under section (E), the District Court expressly states that “if *any part of a*
20 *communication or its attachments* is responsive, the entire communication and attachments
21 will be produced[.]” (Doc. 137 at 8) (emphasis added). Such a statement, in this Court’s
22 view, appears to be an unequivocal adoption of the view that family communications
23 should be reviewed for responsiveness and relevancy as a whole, *not* individually.

24 The Court is unpersuaded by Defendant Garcia Sr.’s argument that the second
25 sentence of section (E) permits his unilateral withholding due to his own review of what
26 documents are or are not relevant. To agree with such a position would constructively void

27 determining the action.” Fed. R. Evid. 401. “Irrelevant evidence is not admissible.” Fed.
28 R. Evid. 402. Further, a court may exclude relevant evidence where its probative value is
substantially outweighed by the danger of confusing the issue in the present case. Fed. R.
Evid. 403.

1 the prior sentence's clear language that "if any part of a communication or its attachments
2 is responsive, the entire communication and attachments will be produced[.]" (*Id.*) Instead,
3 the Court is persuaded by Plaintiffs' assertion that section (E)'s second sentence "exists so
4 the parties can discuss the need to withhold documents subject to . . . privileges, such as
5 the bank examiner's privilege, which other Defendants in this case have raised." (Doc.
6 308.) Because Defendant Garcia Sr., nor Non-Party DriveTime, raise any privilege
7 arguments here, they may not unilaterally withhold attachments contained within a
8 responsive family unit.

9 ***B. Relevancy.***

10 Turning next to Defendant and Non-Party's relevancy argument, the Court notes
11 that the Federal Rules of Civil Procedure creates a broad and permissible discovery
12 structure, permitting a party to discover evidence that is relevant and proportional. While
13 relevancy "is the *sin qua non* of discovery," it does not amount to an insurmountable
14 hurdle. *Abu Dhabi Com. Bank v. Morgan Stanley & Co. Inc.*, No. 08 CIV. 7508 SAS, 2011
15 WL 3738979, at *5 (S.D.N.Y. Aug. 18, 2011), *report and recommendation adopted*, No.
16 08 CIV. 7508 SAS, 2011 WL 3734236 (S.D.N.Y. Aug. 24, 2011). Rather, relevancy is
17 liberally construed, whereby evidence is relevant where "it has *any* tendency to make a fact
18 more or less probable[.]" Fed. R. Evid. 401.

19 Because of the liberal relevancy standard, Defendant and Non-Party face a heavy
20 burden in establishing that the requested attachments are irrelevant. *See Blankenship*, 519
21 F.2d at 429. Defendant Garcia Sr. and Non-Party DriveTime have not met this burden.

22 Turning to the Court's review of relevancy, it does not agree with Defendant Garcia
23 Sr. that it must review each attachment alone as if it were in a vacuum. Rather, the District
24 Court's ESI Order and relevant authority establishes that these attachments and their parent
25 communications must be reviewed together.

26 Beyond the District Court's ESI Order, caselaw lends credence to the view that
27 attachments should be reviewed for relevancy alongside the *entire* family relationship, and
28 if either is relevant, the party must then produce the whole. First, several of our sister

districts have found that the production of a communication and its attached documents are reviewed as a whole pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 106 of the Federal Rules of Evidence. *See Karnoski v. Trump*, No. C17-1297 MJP, 2020 WL 2736961, at *1 (W.D. Wash. Mar. 4, 2020) (“The Federal Rules of Evidence favor the *complete* production of non-privileged evidence if some portion of the evidence is deemed responsive. (‘If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time[.]’”) (quoting Fed. R. Evid. 106); *see also Symettrica Ent., Ltd. v. UMG Recordings, Inc.*, No. CV 19-1192-CJC (KS), 2020 WL 13311682, at *4–5 (C.D. Cal. July 17, 2020) (“Rule 34, which governs the production of documents, specifically requires that a party must produce electronically stored ‘documents as they are kept in the ordinary course of business’ Courts in this Circuit have long recognized that an email and its attachment comprise one document or message unit and consistently require a producing party to re-link the emails with the attachments or re-produce the emails with their attachments.”) (cleaned up) (quoting Fed. R. Civ. P. 34(b)(2)(E)(i)).

The Court finds no reason to depart from its sister districts’ holdings. In fact, allowing Defendant to unilaterally withhold an attachment due its own relevancy determination would “effectively [amount to] a redaction of responsive discovery.” *Sanchez Y Martin, S.A. de C.V. v. Dos Amigos, Inc.*, No. 17CV1943-LAB (LL), 2019 WL 581715, at *11 (S.D. Cal. Feb. 13, 2019); *Virco Mfg. Corp. v. Hertz Furniture Sys.*, No. CV 13-2205 JAK(JCX), 2014 WL 12591482, at *5 (C.D. Cal. Jan. 21, 2014) (“Further, by failing to produce email attachments, plaintiff has effectively redacted, based upon relevance, portions of documents it otherwise apparently views to be discoverable/relevant/responsive to defendants’ discovery requests.”). Consequently, because there is responsive material contained within the four family relationships in question, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and federal precedent necessitates their production—even if Defendant Garcia Sr. and Non-Party

1 DriveTime unilaterally find them irrelevant.

2 **C. Confidentiality.**

3 Furthermore, the Court is not convinced by the assertion that the documents' highly
 4 confidential and proprietary nature precludes disclosure *in this action* where there is a
 5 wholly sufficient protective order in place. First, insofar as Defendant Garcia Sr. appears
 6 to assert that withholding may be permissible because the documents are constructively
 7 DriveTime's property, such an assertion is inapposite with this Circuit's case law. In fact,
 8 pursuant to Rule 34, "[a] party having actual possession of documents *must allow discovery*
 9 *even if the documents belong to someone else*; legal ownership of the documents is not
 10 determinative." *Phillips v. Lycamobile USA, Inc.*, No. 2:25-MC-00001-ACE, 2025 WL
 11 2097453, at *2 (E.D. Wash. July 15, 2025), *objections overruled*, No. 2:25-MC-00001-
 12 ACE, 2025 WL 2096848 (E.D. Wash. July 18, 2025) (emphasis added). Second, to the
 13 extent that Non-Party DriveTime is concerned about the exchange of highly confidential
 14 and proprietary information, "those concerns are best addressed by a protective order
 15 between the parties," which is already in place, "rather than withholding relevant
 16 discovery." *Bartech Sys. Int'l, Inc. v. Mobile Simple Sols., Inc.*, No.
 17 215CV02422MMDNJK, 2018 WL 834589, at *2 n.2 (D. Nev. Feb. 12, 2018).

18 Neither Defendant Garcia Sr. nor Non-Party DriveTime have argued that the
 19 Protective Order in this action is insufficient or that it does not cover the situation at hand.
 20 After independent review of the Protective Order, this Court finds that it sufficiently covers
 21 this situation. However, recognizing the highly confidential nature of these non-public
 22 documents and Defendant Garcia Sr.'s and Non-Party DriveTime's concerns, the Court
 23 will require that the attachments at issue here be produced for attorneys' eyes only.

24 **V. Conclusion.**

25 For foregoing reasons, the Court holds that family units shall be reviewed for
 26 responsiveness and relevancy as a whole, and if either the communication or an attached
 27 document is responsive, it must be produced. Of course, privileged communications and
 28 attachments shall not be produced. Hence, any attorney-client privileged or work product

1 doctrine documents and communications need not be produced—*i.e.*, Defendant Garcia Sr.
2 need not produce “updates from DriveTime’s General Counsel regarding legal issues
3 unrelated to this case[.]” *See* (doc. 281 at 1.) Further, while Defendant and Non-Party may
4 label the documents to be produced as confidential or highly confidential, these monikers
5 do not permit withholding the documents in this action. However, the Court will require
6 the attachments to Garcia Sr_0002470, Garcia Sr_0002506, Garcia Sr_0001789, and
7 Garcia Sr_0001834 which have not yet been produced to be produced for attorneys’ eyes
8 only.

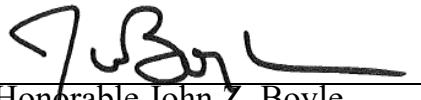
9 Accordingly,

10 **IT IS ORDERED** that Plaintiffs’ Motion to Compel Compliance (doc. 253) is
11 **GRANTED.**

12 **IT IS FURTHER ORDERED** that Defendant Garcia Sr. **SHALL PRODUCE**
13 **ANY Garcia Sr_0002470, Garcia Sr_0002506, Garcia Sr_0001789, and Garcia**
14 **Sr_0001834** non-privileged attachments alongside their responsive and non-privileged
15 parent communications. These attachments shall be produced **FOR ATTORNEYS’**
16 **EYES ONLY.**

17 **IT IS FURTHER ORDERED** that, in this action, the parties **SHALL** review
18 parent emails and their attachments as a whole for responsiveness and relevancy. If **ANY**
19 part of the family relationship is responsive, the Parties **SHALL** produce the **WHOLE**
20 family grouping. The parties need not produce privileged documents or communications.

21 Dated this 10th day of February, 2026.

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23 
24 Honorable John Z. Boyle
United States Magistrate Judge
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