UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LIBERTY FORD LINCOLN MERCURY, INC., *et al.*,	)	Case No. 1:21-cv-02085
	)	
	)	Judge J. Philip Calabrese
Plaintiffs,	)	
	)	Magistrate Judge
v.	)	Jonathan D. Greenberg
	)	
FORD MOTOR COMPANY,	)	
	)	
Defendant.	)	
	)	

SPECIAL MASTER DISCOVERY ORDER #2

This Order resolves what has been labeled by the undesigned as "Issue #108[1]– Final Commitment Reports" (hereinafter referred to as "this topic" or "this issue"). This issue, in one form or the other, has been in dispute for some time now, manifested in different forms. For the reasons set for the below, this issue has been resolved.

As with Discovery Order #1, this Order assumes, for efficiency and cost purposes, the reader's familiarity with the issues and access to the parties'

[1] As of November 3, 2023, the undersigned, and with the agreement of the parties, has utilized a numbering and naming convention to organize and track the status of the various disputed topic areas between the parties. The progress and general status of each topic along with "summary rulings" by the undersigned has, through this date, been reflected in five versions of the "Special Master Index of Issues" (the most recent of which was issued February 6, 2024) prepared by the undersigned and shared with the parties. The primary purpose of this approach has been to aid the parties and the undesigned in resolving as much as possible by way of informal summary rulings and agreements, thus avoiding additional work and review by the District Court, while at the same time preserving all rights upon the issuance of formal orders.

submissions (some of which they submitted to the undersigned without formal filings on the Court's official docket). Every attempt has been made to achieve brevity in explaining the parties' arguments and the undersigned's reasoning while at the same time providing the parties and the District Judge with sufficient information to as to whether to object to this ruling and resolve any such objections that may follow from this Order.

I. Background

This issue involves one element of Ford's wholesale "sales" process in allocating vehicles to dealers. In general, in one form or another, Plaintiffs have claimed that, as it relates to the wholesale process, Defendant failed to produce "missing reports" known as "Dealer Order Commitment Forms," "Commitment Guide Reports ("CGRs")," and "Allocation Schedule Order Bank Reports ("ASOBRs")," collectively referred to as the "missing reports." Plaintiffs' claims as they relate to those three types of reports have been resolved (either by agreement or by summary rulings by the undersigned) and documented in the various Special Master Index of Issues reports. That history will not be repeated here.

By way of a letter dated November 17, 2023, Plaintiff's asserted that there was another "report" that Defendant failed to produce entitled an "eCommitment Order Commitment" (also referred to as "Final Commitment Reports") and attached a sample of same. This is the claim now identified as Issue #108.

After multiple Zoom conferences and informal discussions aimed at resolving Issue #108, it was added as an agenda item to the January 25 and 26, 2024 Final Document Hearing before the undersigned. (Second Amended Case Management Plan and Scheduling Order, p. 1) (ECF No. 75) Issue #108 was the predominant topic of the two-day hearing, which also resulted in follow-up submissions requested by the undersigned.

The combination of the hearing discussion, Zoom conferences and follow-up submissions established that: (1) the ASOBRs contained the final data points sought by the Plaintiffs but could only be manually extracted from the PDFs produced by the Defendant; and (2) that no formal Ford report entitled "eCommitment Order Commitment" (also referred to as "Final Commitment Reports") existed. The open question that remained was whether the data Plaintiffs sought was available in any of the relevant databases utilized by Ford in the wholesale process.

On February 6, 2024, the undersigned issued a Summary Ruling on Issue #108, and it is attached hereto as Exhibit A. In short, the Summary Ruling called for Ford to make available the person that Counsel identified as the "business owner" of the relevant databases so that the undersigned could inquire as to whether the data existed in any of the relevant databases.

Following the February 6 Summary Ruling, and without trigging any appeals by issuing a formal Order, Ford agreed to voluntarily produce the witness while

preserving the unusable format finding, as the interview had the potential to resolve the issue, provided that such production of the witness did not waive any of Ford's rights as it related to certain findings in the Summary Ruling. Plaintiffs agreed.

Based on the agreed approach, on February 13, 2024, the undersigned conducted the interview and the testimony of the Ford employee made clear that the underlying data Plaintiffs seek is only reflected and available in the ASOBRs, and that there is no other means by which to produce that data in another format. In short, Plaintiffs have the data, and it appears that the ASOBRs are the only available source for such.

In a follow-up of conference with the Parties on February 19, 2024, to address email correspondence submitted regarding the undersigned's finding in the Summary Ruling that that the information sought was in a usable format, the undersigned addressed the parties concerns regarding that finding.

II. Issue #108 Ruling

Based on everything submitted by the Parties on this issue, and the related "missing report" claims noted above, Issue #108 is resolved.

Plaintiffs have the data, and it appears that the ASOBRs are the only available source for such.

As to the undersigned's finding regarding "unusable format," that finding remains but it is limited to the question then at hand, *i.e.*, does the data exist in a

format that would be more usable for Plaintiff. That finding was the predicate for the Summary Ruling to produce the Ford employee – which Ford ultimately agreed to do so while preserving its right to appeal that finding.

To the extent that foregoing finding implicates any other possible remedies or other relief to be sought by the parties in the future is a matter to be determined if and when any such remedy is sought. On this record, there is nothing further for the undersigned to resolve and, therefore, this Order resolves Issue #108.

Pursuant to Section II.D. of the Court's Order Appointing Special Master (ECF No. 61), any objection to this procedural order must be made within7 calendar days.

* * *

Dated: February 24, 2024 Special Master: Jane D. Thomas