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 #3

This Order resolves certain disputed matters between the parties related to Issue #109 – Non-Expert Deposition Scheduling.[1] Specifically, this Order addresses the following matters.

1. Certain objections related to two depositions sought by Plaintiffs.

    a. "Navis" issues. At issue with the April 17, 2024, 9:48 email to the undersigned attaching Plaintiffs' Memorandum in response to Defendant's Objection served by April 10, 2024, 3:46 p.m. email.

[1] As previously reported, as of November 3, 2023, the undersigned, 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 versions of the "Special Master Index of Issues" (the most recent of which Number 6 was issued April 10, 2024, following an April 9 Zoom conference with counsel) prepared by the undersigned and shared with the parties. These reports have also been shared with the District Court in connection with periodic Chamber Procedural reports by the undersigned.

b. "Jorge Weber" issues. At issue as of April 24, 2024, with the 3:40 p.m. email to the undersigned attaching Plaintiffs response to Defendant's Objection served by April 17, 2024, 5:06 p.m. email.

2. Plaintiffs' Motion for Additional Depositions. (ECF Nos. 77, 83 and 84).

As with Discovery Order #1 and #2, this Order assumes, for efficiency and cost purposes, the reader's familiarity with the issues and access to the parties' submissions (some of which were 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.

Additionally, given the immediacy of the April 30, 2024 session set by the Court on other related matters, the undersigned has attempted to streamline the discussion even more so that the Court had the benefit of the undersigned's rulings in advance of April 30. The undersigned is prepared to provide further clarification or explanation to the Court at that hearing or in writing.

I. Issue #109 – Background

Generally, Issue #109 Non-Expert Deposition Scheduling, relates to the undersigned's monitoring role as it relates to the Non-Expert Deposition scheduling pursuant to the Second Amended Case Management Plan and Scheduling Order issued December 29, 2023. (ECF No. 75, PageID #:1925). In that role, the undersigned has held multiple conferences (*i.e.*, ten such conferences between

January 9 and April 9) that touched upon these issues in one form or another. As of April 9, 2024, the parties had completed fourteen (14) depositions (nine by Plaintiffs; five by Defendant), putting aside the depositions addressed in this Order. *See* Special Master Index Version #6 issued April 10, 2024, at page 2 and Appendix I.

Excluding the disputes over the two depositions addressed in this Order, the parties have worked together in scheduling and completing the depositions with little involvement required by the undersigned.

II. "Navis" Issues

For the reasons stated herein, the undersigned finds that Plaintiffs' version of what led to this disputed issue comports with the undersigned's recollection of the matter (by way of multiple Zoom conferences and email exchanges) and the related documentation. As such, Defendant Ford's objection is not well taken.

In general, the "Navis" issue arose in early January 2024, when both parties suggested that certain additional Rule 30(b)(6) depositions were necessary. During those early discussions and thereafter, the undersigned and the parties referred to these issues as the "competing Rule 30(b)(6)" issue. *See* January 28, 2024 Special Master Email to Counsel summarizing the Issue #109 discussions to date. After more than one Zoom discussion with counsel, the "competing Rule 30(b)(6)" issue was resolved by the agreement of the parties to withdraw their respective Rule 30(b)(6) requests, thus obviating any need for a ruling by the undersigned.

Plaintiffs' statement in their April 1, 2024 email to the undersigned contains a succinct description of what was agreed upon early in these discussions related to the "competing Rule 30(b)(6)" issue and in particular the Navis issue.

> Please find attached a courtesy copy of Plaintiffs' Notice of their 30(b)(6) deposition of Ford on the spreadsheet that Ford produced Bates-numbered FLIBE1 00157663. This is the NAVIS-data document on which Plaintiffs have been asking Defendant for a deponent since January. In the February 2, 2024, Special Master Conference, Attorney Wood proposed that Plaintiffs postpone, until after Plaintiffs' deposition of Schneider Downs, Plaintiffs' deposition on FLIBE1 00157663, and Attorney Wood repeated that suggestion during the January 25-26, 2024, Hearing. (ECF No. 78-1, PageID ##1972-1973; ECF No. 81-2, PageID # 2538.) Plaintiffs deposed Schneider Downs on March 12; defense counsel attended and participated. On March 17, Plaintiffs' counsel asked defense counsel to identify the deponent on/for FLIBE1 00157663.

April 1, 2024 email to Special Master regarding Notice of Deposition.

A review of the parties' submissions on the Navis issue reflects that Defendant Ford, for whatever reason, backed out of its offer to make a witness available in lieu of a Rule 30(b)(6) deposition. In its objection, Ford states:

> *The parties had previously discussed, generally, a deposition relating to information from Ford's NAVIS system that was produced in response to Plaintiffs' Interrogatories 36-38.* To better respond to such a broad inquiry, however, Ford's counsel sought a list of topics from Plaintiffs' counsel so that an appropriate person could be identified who would be able to provide the information that Plaintiffs sought. When Plaintiffs' counsel responded, by email, with a set of topics that are identical to those in the later-served Rule 30(b)(6) Notice, counsel for Ford sent an email objecting to those topics as they each merely seek to have an employee reiterate information already set forth in Ford's Responses to Plaintiffs' Interrogatories or seek to authenticate the at-issue document (an Excel spread sheet) as a business record. (Exh. A, attached.) *At no time would Ford have agreed to proceed with a NAVIS information-related deposition if Ford had known that those topics were the "information" that plaintiffs were seeking.*

Defendant's Objection served by April 10, 2024, 3:46 p.m. email, at page 2 (emphasis added).

There was discussion among the parties and the undersigned, but Ford's promise to make a witness available was express. There was nothing "general" about Ford's offer to make a witness available who had knowledge of the documents at issue in lieu of a Rule 30(b)(6) deposition. The time for Ford to clarify what it was agreeing to was then, and not after Plaintiffs complied with Ford's suggestion to take the Schnider deposition in order "to assist Ford in identifying the best person to speak to the issue." *See* January 28, 2024 Special Master Email to Counsel summarizing the Issue #109 discussions to date.

Ford's objection is without merit.

III. "Jorge Weber" Issue

For the reasons stated herein, and in the preceding section, the undersigned finds that Plaintiffs' version of what lead to this disputed issue comports with the undersigned's recollection of the matter (by way of multiple Zoom conferences and email exchanges) and the related documentation. As such, Defendant Ford's objection is not well taken.

As with the "Navis" issue, the Jorge Weber issue arose in early January 2024, when the parties suggested that certain additional Rule 30(b)(6) depositions were necessary. As set forth above, ultimately the "competing Rule 30(b)(6)" issue was resolved by the agreement of the parties to withdraw their respective Rule 30(b)(6) requests.

Similar to the Navis issue, Plaintiffs' statement in its April 4, 2024 email to the undersigned contains a succinct description of what was agreed upon early in these discussions related to the Jorge Weber issue.

> During the in-person Hearing in Columbus on 1/25/2024, Attorney Panza confirmed that Plaintiffs had decided to forego 30(b)(6) depositions and had "switched that to let's get the author." (ECF 78-1, PageID #1975.) Attorney Wood told us that "the individual who can talk about that data is Jorge Weber." (ECF 78-1, PageID #1971.) In the Hearing's second day, Attorney Wood confirmed that "Ford has identified Jorge Weber as the former employee to provide that testimony" on "the documents ending 7095 to 7099." (ECF 81-2, PageID ##2538-2539.)

April 4, 2024 email to Special Master regarding Notice of Deposition.

Similar to its postion as the Navis issue, Ford states:

> As the Court is aware, the parties had *previously discussed, generally, a deposition relating to information from the Document Bates Numbered FLIBE1 0027095 through FLIBE1 00027099*. During those discussions, Ford understood that Plaintiffs wished to speak with the person with knowledge concerning the facts underlying the use of the "01" priority designation in the Pittsburgh Region. That person is Jorge Weber, the former Ford employee, who was responsible for any changes to priority codes associated with vehicle scheduling, and who could address any allegation about Ford's use of priority codes. *For that reason, and as an accommodation to Plaintiffs, despite the irrelevance of this testimony, counsel for Ford offered Mr. Weber for a deposition about the use of "01" priority codes*.

Defendant's Objection served by April 17, 2024, 5:06 p.m. email, at page 2-3 (emphasis added).

As with the Navis issue discussed above, there was discussion among the parties and the undersigned, but Ford's promise to make a witness available was express. There was nothing "general" about Ford's offer to make a witness available who had knowledge of the documents at issue in lieu of a Rule 30(b)(6) deposition.

The time for Ford to clarify what it agreed to was then, and not after Plaintiffs complied with Ford's suggestion to depose Mr. Weber. *See* January 28, 2024 Special Master Email to Counsel summarizing the Issue #109 discussions to date. Additionally, if Ford had any doubt as to what Plaintiffs sought it should have raised that in any of the multiple conferences conducted by the undersigned (see excerpts cited by Plaintiffs at pages 4 to 7 of their April 24 response to Ford's objection) and before Plaintiffs expended costs in locating Mr. Weber.

The record does not support Ford's suggestion that it was "accommodating" Plaintiffs. Ford explicitly agreed to the process agreed to by the Plaintiffs and the undersigned.

Ford's objection is without merit.

IV. Plaintiffs' Motion for Additional Depositions

Plaintiffs' motion for leave to take more than ten (10) depositions was a motion that was anticipated during the discussions related to what became the Second Case Management Order (ECF No. 75) in this matter. As such, Ford's initial argument that the motion is premature is without merit.

Plaintiffs seek an additional nine depositions, over and above the ten that Plaintiffs have taken or are scheduled, specifically identifying six potential deponents along with a request for three additional deponents to be identified by Plaintiffs. *See also* "Section I – Issue #109 – Background" above for status of the depositions taken to date. Plaintiffs request for the three additional deponents "to be named later" can be addressed summarily. The request is denied. By Plaintiffs' own articulated

standard for the additional deposition of showing a particularized need, the absence of any identification of witnesses or need makes this request too speculative. As such, that portion of the motion is denied.[2]

As to the other six potential deponents, Plaintiffs seek leave to depose two former Ford employees (John Bradley and Andrew Frick) and one current employee (Nick Steiner). Plaintiffs have set out the basis for the three depositions in both the motion and reply memorandum. The undersigned finds that plaintiffs have shown a particularized need for these witnesses provided, however, that such depositions shall be limited to no more than 3.50 hours in duration. Two of these witnesses (John Bradley and Nick Steiner) are identified by Plaintiffs as being part of the dealer allocation session on July 19, 2022. On this record, limiting the duration for these depositions strikes a balance between the need for additional depositions and preventing subject matter "creep" in the deposition itself.

As to the requested deponents Laura Dearth and Eric Clark, the request to take those depositions is denied without prejudice to revisit the issue. From Plaintiffs' description of the need for these depositions, it appears that the two deponents are third-party witnesses and assumes that the witnesses will not voluntarily cooperate with Plaintiffs by way of an interview/affidavit or otherwise. Plaintiffs' papers are not exactly clear on that circumstance, but that appears to be

[2] The undersigned has a recollection that during one of the many Zoom conferences, Plaintiffs may have informed the undersigned that it had identified the three, but the undersigned did not invite or entertain any details on the three at that time.

the case. What is unclear is whether Plaintiffs have made any attempt to contact those witnesses or their employer, to determine if Plaintiffs can secure information short of a deposition.

As to the final deponent of the six sought, Plaintiffs seek a Ford IT person identified as "Eangati." This individual deponent appears to relate to the ongoing dispute between the parties as to the storage and final disposition of wholesale related data that has been the subject of previous orders and the subject of Plaintiffs' Motion for Sanctions Against Defendant for Failure to Preserve ESI (ECF No. 86), which is now set for an April 30 hearing before Judge Calabrese (ECF No. 87). Given the interrelatedness of this request and the Motion for Sanctions, a ruling by the undersigned is deferred until after the April 30, 2024 hearing.

* * *

For the reasons set forth above:

a. Defendant's objection to the Notice of Deposition related to the "Navis" issues is overruled.

b. Defendant's objection to the Notice of Deposition related to the "Jorge Weber" issues is overruled.

c. Plaintiffs' Motion for Additional Depositions (ECF Nos. 77, 83 and 84) is denied part, granted in part and deferred at to one branch of the motion, to wit:

    i. Plaintiffs' request for the three additional deponents "to be named later" is denied;

    ii. Plaintiffs request to depose two former Ford employees (John Bradley and Andrew Frick) and one current employee (Nick Steiner) is granted, provided, that such depositions shall be limited to no more than 3.50 hours in duration;

iii. Plaintiffs' request to depose Laura Dearth and Eric Clark is denied without prejudice to revisit the issue; and

iv. Plaintiffs' request to depose the Ford IT person identified as "Eangati" is deferred pending the outcome of the April 30, 2024 hearing set by Judge Calabrese. (ECF No. 87).

Subject to an Order by Judge Calabrese otherwise, pursuant to Section II.D. of the Court's Order Appointing Special Master (ECF No. 61, PageID #1328–1329), any objection to this procedural order must be made within seven (7) calendar days.

Dated: April 29, 2024 Special Master: Jame D. Thomas