HILL WALLACK LLP

21 Roszel Road, P.O. Box 5226
Princeton, NJ 08540-5226
main 609.924.0808
fax 609.452.1888

WRITER'S DIRECT DIAL: (609) 734-6358

August 19, 2024

***Via ECF*:**
Honorable Rukhsanah L. Singh, U.S.M.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, Case No.: 3:23-cv-01368-RK-RLS

Dear Judge Singh:

This firm, along with Goodwin Procter, represents Plaintiff, Cambridge Mobile Telematics, Inc. ("CMT"), in the above-captioned patent infringement matter. Pursuant to the Court's Order dated July 26, 2024 (D.I. 122), we write jointly with Daignault Iyer, counsel for Defendant Sfara, Inc. ("Sfara"), to provide the Court with the status of discovery and proposed schedule for the case going forward.

I. Status of Discovery

Fact discovery is scheduled to close on August 20, 2024. The parties agree that certain depositions, which were requested during the period for fact discovery, should be scheduled out of time. The parties also agree that supplementation of interrogatory responses should occur no later than seven (7) days after the last deposition is complete. As explained below, the parties dispute whether there is good cause for an official extension of fact discovery.

A. Depositions and Supplemental Interrogatory Responses

CMT's Position on Remaining Depositions:

In addition to the two depositions scheduled for tomorrow, August 20th, the parties agree that there are seven (7) witnesses who have been timely requested but not yet deposed, as set forth below:

Witness	Party Seeking to Take Deposition	Deposition Date
Sascha Simon	CMT	August 28, 2024
Erik Goldman	CMT	August 29, 2024
Katherine Wellman	Sfara	August 22, 2024
Krisztian Kopasz	Sfara	September 4, 2024
Joe Adelman (Third Party)	Sfara	September 6, 2024
Brad Cordova (Third	Sfara	TBD[1]

[1] CMT notes that Brad Cordova, a third party, who has not yet been subpoenaed, has offered August 6,

Party)		
Geronimo Mirano	Sfara	September 6, 2024

For these seven (7) witnesses, the parties have been working together to schedule the depositions as soon as possible.

In addition, Sfara seeks to depose three (3) additional third party witnesses not listed above and whom the parties dispute were timely requested: Dan Shiebler, Eddie Vaisman, and Craig Largent. CMT opposes any extension of fact discovery that would allow Sfara to serve deposition subpoenas and take the deposition of these witnesses, who are all third parties for whom Sfara has failed to serve subpoenas. In addition, Dan Shiebler and Eddie Vaisman were identified over one year ago in CMT's Initial Disclosures, dated July 21, 2023. Sfara served on CMT notice of subpoenas for these three witnesses on August 19, 2024 at 6:56 pm ET—one day before the scheduled close of fact discovery and as the parties prepared the instant joint status letter.

Sfara's Position on Remaining Depositions:

Mr. Shiebler and Mr. Vaisman are inventors on a patent asserted by CMT and CMT's initial disclosures state that Sfara should contact them through CMT counsel. Consistent with CMT's request, Sfara notified CMT that it wished to depose these inventors in July and has been trying to work in good faith with CMT's counsel to schedule these depositions. CMT also has been aware that Sfara intends to depose Mr. Largent, who is a prosecution counsel on the CMT asserted patents.

B. Privilege Logs

The parties exchanged privilege logs on August 12, 2024. The parties are reviewing the logs but have not yet had an opportunity to meet and confer regarding the sufficiency of the logs, nor have certain depositions needed to evaluate the logs occurred. The parties propose that the Court set a deadline for filing any motions challenging the sufficiency of a party's privilege log.

C. Fact Discovery Deadline and Discovery Disputes

The parties have met and conferred regarding the close of fact discovery and several potential and actual discovery disputes.

2024 and August 30, 2024 for his deposition. Sfara declined both of those dates. Sfara notes that Mr. Cordova is also an inventor that is listed in CMT's initial disclosure, which again states that Sfara should not contact him and should request discovery through CMT's counsel. Again, consistent with that request, Sfara has been working in good faith with CMT's counsel for a date for Mr. Cordova's deposition.

CMT's Statement:

(1) CMT Opposes a Whole-Sale Extension of Fact Discovery

CMT is willing to be flexible in scheduling timely noticed depositions out of time to accommodate the schedule of witnesses and attorneys. CMT opposes, however, any whole-sale extension of fact discovery, which would only reward Sfara's lack of diligence during discovery. Pursuant to Fed. R. Civ. P. 16(b)(4), a case schedule "may be modified only for good cause and with the judge's consent." *Washington v. Hovensa LLC*, 652 F.3d 340 (3d Cir. 2011). "In determining whether 'good cause' exists, courts generally consider the diligence of the party seeking the modification of the scheduling order." *Duran v. Merline*, 923 F. Supp. 2d 702, 732 (D.N.J. 2013).

Here, Sfara has already sought and obtained one extension of fact discovery, which it obtained by misrepresenting its reasons for an extension. In its previous request for an extension of fact discovery, Sfara represented to the Court that it needed an extension of time to continue its review of CMT's source code. *See* Dkt. 95 (Sfara's Request for Extension) at 2 ("[Sfara's] reviewers approximate that the review process is about 60% complete. . . . In order to submit meaningful amended infringement contentions, all of the computer code and technical documents must be appropriately reviewed and analyzed."). The Court granted Sfara's request to extend the fact discovery deadline by five (5) weeks. *See* Dkt. 98. However, after receiving the Court's extension, Sfara ***never*** again returned to the location of CMT's produced source code laptop to review ***any*** of CMT's code. Sfara should not be rewarded with yet ***another*** extension of fact discovery.

Moreover, Sfara has failed to show diligence during fact discovery, and rather than take advantage of the extension granted by the Court Sfara, continued its delay tactics. Sfara delayed—and continues to delay—providing discovery on its products. For example, CMT served its Rule 30(b)(6) notice on May 17, 2024, but Sfara delayed over two months before finally producing its technical witness, Ari Valtanen, on August 7, 2024. Sfara similarly delayed providing a date for the Rule 30(b)(6) deposition of Sascha Simon, the founder of Sfara and named inventor on Sfara's asserted patents. And then, just this month, Sfara ***twice*** postponed the deposition of Mr. Simon (his deposition has yet to happen) and also postponed the deposition of Mr. Goldman. Sfara has also delayed in requesting depositions of CMT's and third party witnesses. Sfara delayed requesting its first set of depositions until July 3, 2024, with additional requests made on July 22, 2024. Sfara did not serve its Rule 30(b)(6) notice until July 12, 2024. Further, Sfara has failed to conform with the Federal Rules, serving subpoenas two (2) days before depositions or not at all. Sfara's refusal to accept multiple deposition dates or requested new dates weeks after depositions were scheduled has compounded the burden and prejudice caused by its delay and resulted in the need to schedule multiple depositions outside the deadline for fact discovery. In fact, Sfara just served three notices of subpoena this evening (one day before the close of fact discovery), all for third parties that it has been aware of since CMT's Initial Disclosures, dated July 21, 2023.

Sfara has only recently engaged in the discovery process. CMT served its Objections and Responses to Sfara's First Set of Requests for Production on December 4, 2023, detailing its objections to the scope of discovery requested. Subsequently, as part of its substantial completion of document production, CMT produced over 15,000 documents in March 2024. Thus, Sfara has had seven months to meet and confer regarding CMT's responses and over four months to raise any alleged deficiencies about

CMT's document production. Now, on the eve of the close of fact discovery, it is far too late for Sfara to challenge the sufficiency of CMT's document production. *See, e.g.*, *What a Smoke, LLC v. Duracell U.S. Operations, Inc.*, 2022 WL 1442227, at *9 (D.N.J. May 6, 2022) (denying motion to compel due to requesting party's "lack of expediency"); *Ford Motor Co. v. Edgewood Properties, Inc.*, 257 F.R.D. 418, 426 (D.N.J. 2009) (denying motion to compel where requesting party delayed eight months in raising an objection). Indeed, "it is without question unduly burdensome to a party months after production to require that a party to reconstitute their entire production to appease a late objection." *Ford Motor Co.*, 257 F.R.D. at 426.

The Court should not reward Sfara's lack of diligence and its misrepresentation in securing one extension of fact discovery, with yet another extension of fact discovery. Thus, Sfara's proposal for a one-month extension of fact discovery should be denied.

(2) CMT Will Seek the Court's Assistance Regarding Sfara's Technical Schematics

Sfara has failed to produce its technical schematics, despite the fact that another of Sfara's employees, Dr. Guez, confirmed their existence during his deposition in May, and despite Sfara's multiple promises to do so. *See, e.g.*, Email from T. Van Buskirk to L. Lobel (July 22 2024 10:27 PM); Email from T. Van Buskirk to L. Lobel (July 25, 2024 12:39 PM). CMT will separately move the Court for assistance regarding production of Sfara's technical schematics.

(3) CMT Disputes Sfara's Characterization of CMT's Document Productions and Witnesses

CMT disputes Sfara's characterization of CMT's document production and Rule 30(b)(6) witnesses and the timeliness of certain disputes raised by Sfara. CMT reserves the right to respond in a separate filing should Sfara move the court on this issue.

<u>Sfara's Statement on Discovery Disputes:</u>

This letter started as a joint status report as ordered by the Court. At 8:30 p.m. the night the letter was due, CMT added case law and argument to the letter, inflammatory misrepresentations concerning the conduct of discovery and inapposite case law. Given the Court's instruction that the update be filed tonight, Sfara is not able to fully address this newly added, and wholly inappropriate, briefing in a joint status report.

To be clear, Sfara is not requesting a whole-sale extension of discovery. Consistent with Court's instruction to the parties that they should be flexible in scheduling depositions in August, the parties have worked to accommodate the schedules of witnesses and counsel. As CMT indicates above, there are several witnesses whom the parties agree should be deposed after August 20th. To accommodate those depositions, and the discovery disputes which the parties are continuing to work through, Sfara proposes a one-month extension of the fact discovery deadline. The additional time is necessary to allow for the parties' continued discussions and to permit the parties to address any agreed upon (or ordered) discovery relating to those disputes and deficiencies. A single deadline will ensure fact discovery is timely completed but also will avoid any disputes that may arise on timeliness under CMT's proposal. CMT

does not dispute the need for an extension of time to deal with these issues.

With respect to the status of discovery, Sfara has raised significant deficiencies with CMT's discovery regarding the CMT accused products. For example, with respect to damages, CMT has not produced complete and accurate financial information for the CMT accused products and related convoyed sales. CMT also has not produced certain customer contracts and invoice information as requested by Sfara. With respect to merits discovery, Sfara also has issues relating to the adequacy of 30(b)(6) testimony provided, the sufficiency of interrogatory responses, and the production of technical documentation. It is Sfara's understanding that the parties remain in good-faith discussions regarding this outstanding discovery. If the parties reach an impasse, Sfara will move the Court for assistance.

II. Proposed Case Schedule

Currently, there are no dates on the docket beyond the close of fact discovery. The parties propose the following case schedule for the Court's consideration.

Event	Current Date	CMT Proposed Dates	Sfara Proposed Dates	Agreed-Upon Date
Close of fact discovery	August 20, 2024	August 20, 2024	September 20, 2024	
Fact depositions of the seven (7) agreed to witnesses listed above complete	August 20, 2024	September 13, 2024	September 20, 2024	
Fact depositions of the three (3) disputed witnesses identified above complete	August 20, 2024	CMT's objects to these depositions as explained above	September 20, 2024	
Deadline to supplement interrogatory responses with verification	August 20, 2024	Seven (7) days after the last deposition is complete	September 20, 2024 or seven days after the last deposition date.	
Deadline to file motion raising challenge to privilege logs				September 20, 2024

Event	Current Date	CMT Proposed Dates	Sfara Proposed Dates	Agreed-Upon Date
Deadline to produce updated financial information to include 2024 information				Thirty (30) days before opening expert reports are due
Disclosures of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2)(B) and (C)	90 days after the Court's *Markman* decision	November 13, 2024[2]	No change is warranted 90 days after the Court's *Markman* decision[3]	
Disclosure of rebuttal report and evidence pursuant to Fed. R. Civ. P. 26(a)(2)(D)	120 days after the Court's *Markman* decision	December 20, 2024	No change is warranted 120 days after the Court's *Markman* decision	
Deadline to provide experts' availability for depositions		December 20, 2024	N/A	
Expert depositions must be complete	150 days after the Court's *Markman* decision	January 31, 2025	No change is warranted 150 days after the Court's *Markman* decision	

[2] CMT's Position: Setting a schedule for expert discovery will allow the case to proceed and ensure a just and speedy resolution to the case, which was filed in March 2023. CMT's proposed schedule for expert discovery allows time before November for a *Markman* hearing.

[3] Sfara's Position: Maintaining the current schedule (which was agreed to at docket entry 30-1) will allow the parties to avoid excessive expert reports which would otherwise have to address multiple potential claim constructions for the dozens of terms currently at issue. It is also consistent with Local Patent Rule 2.4(b). As some of the constructions are case dispositive with respect to certain patents, accelerating the current schedule could result in both parties incurring significant costs and expenses that might prove to have been unnecessary.

We appreciate the Court's attention to this matter and are available should the Court require anything further.

Respectfully submitted,

/s/ Eric Abraham
ERIC I. ABRAHAM

CC: All counsel of record via ECF