

From: [Hensley, Drew](#)
To: [Jordan Malz](#)
Cc: [IBM Carvana Service](#); [Ballard Carvana/IBM](#)
Subject: RE: Carvana v IBM (SDNY)
Date: Wednesday, August 7, 2024 6:30:40 PM

Hello Jordan,

We agree to the proposed mutual withdrawal of 30(b)(6) topics from your email below.

IBM Topics:	38, 39, 40, 41, 44, 48, 49, 50, 52, 56, and 58
Carvana Topics:	14, 20, 21, 22, 32, 33, 34, 35, 36, 37, and 40

Thank you,

Drew Hensley

He/Him/His

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From: Jordan Malz
Sent: Monday, August 5, 2024 4:03 PM
To: Hensley, Drew
Cc: IBM Carvana Service ; Ballard Carvana/IBM ; LaCorte, Brian W. ; Stein, Wendy R.
Subject: RE: Carvana v IBM (SDNY)

⚠ EXTERNAL

Drew,

We provide the following counterproposal, whereby IBM would be amenable to withdrawing the following IBM topics so long as Carvana agrees to mutually withdrawing the following Carvana topics:

IBM Topics:	38, 39, 40, 41, 44, 48, 49, 50, 52, 56, and 58
Carvana Topics:	14, 20, 21, 22, 32, 33, 34, 35, 36, 37, and 40

Separately, please respond to the issues below:

- IBM Topics 1, 3 – Please confirm that Carvana will put up a witness in relation to Carvana implementing authentication services from third parties Apple, Google or Facebook for account creation and sign-in on carvana.com and the Carvana mobile applications.
- IBM Topics 2, 6, 13, 17, 21, 25, 27 – To achieve an amicable resolution of the parties' respective issues, IBM would be amenable to limiting the scope of these topics to the printed source code IBM has requested to date and any other source code IBM will identify at least one week in advance of the deposition. Please confirm Carvana agrees to put up one or more witnesses on Topics 2, 6, 13, 17, 21, 25, 27.
 - In your email dated Friday, August 2nd you once again mischaracterize the protective order. Section 8.d.ix of the Protective Order makes clear that **any** source code printing request of no more than 25 **contiguous** pages of source code is considered presumptively reasonable. It does not limit IBM to 25 total pages of source code. IBM

and Carvana were unable to agree on the total number of source code pages when negotiating the protective order and hence added a provision that the parties would meet and confer to discuss the total number of source code pages reasonable for this case. The parties did not agree to meet and confer every time IBM requests source code, as you seem to believe. IBM remains willing to meet and confer to discuss the total number of source code pages reasonable for this case. The number of pages IBM has requested printed to date is miniscule comparison to the total number of pages of source code produced by Carvana. By way of comparison, the protective orders in the Rakuten and Zynga cases limited source code printouts to 750 and 1850 total pages, respectively. In fact, the Zynga protective order originally limited printouts to 750 pages and Zynga stipulated to increase the number of pages to 1850.

- Regarding IBM's 30(b)(6) topics that relate to source code, IBM does not believe that preparing Carvana's witnesses on the pages of source code printouts is unduly burdensome. Those pages represent code relevant to the three asserted patents. As Carvana intends to put up separate witnesses on those patents, each witness would only be responsible for roughly a third of the total volume. Moreover, given their backgrounds, each witness should be capable of reading the code and understanding what functions are included and how they operate. IBM is willing to meet and confer further, should that be beneficial.
- IBM Topics 4, 9, 10, 11, 20, 22, 23, 26, 30, 31, 33, 34, 35, 37 – Wendy said she'd take our discussion back to the Carvana team and get back to us. Please provide an update.
- IBM Topic 18 – We understand Carvana will put up a witness to testify on Topic 18, subject to Carvana's objections, to provide non-privileged testimony regarding its use of Next.js open-source framework in the relevant pages. Please confirm.
- IBM Topics 24, 28, 32 – Please confirm whether Carvana is agreeing to put up a witness on this topic in light of the parties' discussion.
- IBM Topic 36 – Please confirm Carvana will put up a witness to provide non-privileged testimony regarding its internal references to "third party authentication" used for account creation and sign-in, "vehicle search results," "Next.js" and "React."
- IBM Topic 42 – Please confirm that Carvana will put up a witness to provide non-privileged testimony regarding the actions Carvana takes to avoid patent infringement and took to avoid infringing the patents-in-suit, including any design-around.
- IBM Topic 43 – Please confirm that Carvana will put up a witness to provide testimony concerning any opinion of counsel You sought or obtained regarding any patent-in-suit.
- IBM Topic 45 – Please confirm that Carvana will put up a witness to provide non-privileged testimony concerning pre-suit communications between You and IBM that include or result from IBM's notice of infringement. If so, then IBM agrees to put up a witness on Carvana Topic 10, subject to IBM's prior objections, concerning pre-suit communications between Carvana and IBM that include or result from IBM's notice of infringement.
- IBM Topic 47 – Please confirm that no non-privileged communications between You and Chewy, Groupon, Priceline, Expedia, Airbnb, Google, Apple, or Facebook exist. To the extent any do exist, please confirm whether Carvana will produce them and put up a witness on IBM Topic 47.
- IBM Topics 51, 61, 62, 63, 66, 67, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82 – Please confirm whether Carvana will put up a witness on these topics.

IBM Topic 53 – IBM has agreed to put up a witness on Carvana Topic 19 (noninfringing alternatives). Please confirm Carvana is putting a witness up on IBM Topic 53 (noninfringing alternatives).

- IBM Topic 73 – Please confirm whether Carvana will put up a witness to provide testimony concerning its use of third-party authentication via Apple, Google or Facebook for account creation and sign-in, Next.js, and Elasticsearch.
- IBM Topic 83 – Please confirm whether Carvana will put up a witness to provide testimony concerning all analytics dashboards used by Carvana to monitor, test, guide, and measure success of the Carvana website and Carvana mobile applications.

To the extent Carvana refuses to put up a witness on any of IBM's 30(b)(6) topics, IBM will understand that Carvana does not intend to rely on information relevant to that topic to support its theories in this case and will seek to preclude any theories relying on undisclosed information. For example, if Carvana does not agree to put up a witness on IBM Topic 53, IBM will assume that Carvana does not intend to rely on any noninfringing and will seek to preclude any theories relying on undisclosed information. IBM continues to reserves all rights.

Best,

Jordan

Jordan N. Malz

Desmarais LLP

230 Park Avenue

New York, NY 10169

(212) 351-5497

From: Hensley, Drew <hensleyd@ballardspahr.com>

Sent: Monday, July 29, 2024 3:26 PM

To: Jordan Malz <JMalz@desmaraisllp.com>

Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM <BallardCarvanaBMLitTeam@ballardspahr.com>; LaCorte, Brian W. <LaCorteB@ballardspahr.com>; Stein, Wendy R. <steinw@ballardspahr.com>

Subject: [Ext] RE: Carvana v IBM (SDNY)

****EXTERNAL EMAIL** This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

Hello Jordan,

We generally agree with your proposal to mutually “stand down” on topics that relate to expert opinions and legal conclusions. For the avoidance of doubt, we think it is better to specifically identify such topics. Carvana agrees to withdraw the following topics, so long as IBM agrees to mutually withdraw the following topics:

“Expert Topics”

Carvana: 19, 20, 21, 32, 33, 34

IBM: 2, 11(e)-(h), 14, 17, 25, 27, 38, 39(a)-(e), 40, 41, 44, 52, 53, 56, 58

“Lawyer Topics”

Carvana: 35, 36, 37, 40

IBM: 6, 17, 27, 39(e), 44, 50

With regard to all other topics, Carvana maintains its objections and is willing to prepare and produce witnesses consistent with its responses and objections served on July 22.

Additionally, on the last meet and confer, IBM stated that it would not be willing to prepare and

produce a witness regarding IBM's valuation of the patents-in-suit, including all considerations supporting such valuations (licenses, settlements, analysis, reports, agreements, etc). We reiterate that these valuations and considerations are vital to the damages issues and *Georgia Pacific* factors in this case, and all discovery to be relied upon by the parties' respective damages experts in this case must be produced during the fact discovery period. Accordingly, any refusal by IBM to prepare and produce a witness is improper. Specifically, Carvana requests that IBM prepare and produce Lisa Regan to testify in a 30(b)(6) capacity regarding all licenses to the patents-in-suit for which she is a signatory. We intend to discuss this during today's meet and confer at 5:00 PM ET.

Further to licenses, you represented that it would be impossible for IBM to prepare and produce a witness to discuss the "thousands" of licenses IBM has issued which are relevant to the patents-in-suit, including portfolio-wide licenses. To date, IBM has produced less than 100 licenses, despite Carvana specifically requesting all licenses to the patents-in-suit (see, e.g., RFPs 60-62, 66, 121, 124). Because IBM has produced less than 100 licenses, (1) IBM cannot claim that it is too burdensome to prepare and produce a witness regarding those documents, especially in view of Carvana's agreement to identify licenses in advance of any deposition; and (2) IBM must immediately produce all other licenses that include any of the patents-in-suit, including all portfolio-wide licenses. Carvana is not able to narrow or otherwise reconsider topics regarding valuations and licenses until IBM has remedied its failure to produce the relevant documents.

Sincerely,

Drew Hensley

He/Him/His

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From: Jordan Malz <JMalz@desmaraisllp.com>

Sent: Thursday, July 25, 2024 5:16 PM

To: Stein, Wendy R. <steinw@ballardspahr.com>

Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM <BallardCarvanaBMLitTeam@ballardspahr.com>; LaCorte, Brian W. <LaCorteB@ballardspahr.com>

Subject: RE: Carvana v IBM (SDNY)

 **EXTERNAL**

Wendy,

We are not available tomorrow (Friday) after 4 PM, but can continue the meet and confer on Monday, July 29 at 5 PM — would that work for you?

In advance of that call, I thought it might be productive to share thoughts on general groupings of 30(b)(6) topics that fact witnesses can cover.

I believe that IBM's 30(b)(6) topics generally fall within the following areas that would lend themselves to the following Carvana witnesses:

- Accused product technical operation — '346 patent
- Accused product technical operation — '234 patent
- Accused product technical operation — '719 patent
- Accused product performance, business, and financial metrics

■ Licenses/communications/miscellaneous

I believe that Carvana's 30(b)(6) topics generally fall within the following areas that would lend themselves to the following IBM witnesses:

■ Inventorship — '346 patent

■ Inventorship — '234 patent

■ Inventorship — '719 patent

■ Licenses/communications/miscellaneous

I believe both sides have expressed mutual concerns with designating 30(b)(6) witnesses on what essentially amount to "lawyer topics" or "expert topics" and am open to considering a mutual standdown on those types of topics.

Finally, your emails mentioned an August 1 deposition; however, my understanding is that each side plans on responding to the respective 30(b)(6) notices with multiple witnesses that will occur on different dates. We look forward to continuing to coordinate those dates with you. For the avoidance of doubt, IBM's 30(b)(6) witnesses are not available for deposition on August 1 and we understand that Carvana's 30(b)(6) witnesses are not available for deposition on August 15.

Best,

Jordan

Jordan N. Malz

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From: Stein, Wendy R. <steinw@ballardspahr.com>

Sent: Thursday, July 25, 2024 6:31 PM

To: Jordan Malz <JMalz@desmaraisllp.com>

Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM <BallardCarvanaBMLitTeam@ballardspahr.com>; LaCorte, Brian W. <LaCorteB@ballardspahr.com>

Subject: [Ext] RE: Carvana v IBM (SDNY)

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Jordan,

Following up on the below: In order for us to take a 30(b)(6) designee on August 1 we need to complete our conferral that began yesterday. Please confirm if 4 PM or later works for your side tomorrow.

Best,

Wendy

From: Stein, Wendy R.

Sent: Wednesday, July 24, 2024 8:58 PM

To: Jordan Malz <JMalz@desmaraisllp.com>; LaCorte, Brian W. <LaCorteB@ballardspahr.com>

Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM <BallardCarvanaBMLitTeam@ballardspahr.com>

Subject: RE: Carvana v IBM (SDNY)

Thank you Jordan. In order to move forward with deposing additional IBM 30b6 designee(s) on August 1, please confirm availability to continue today's meet and confer on Friday July 26 at 4 PM EST. Thanks very much,

Wendy Stein



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From: Jordan Malz <JMalz@desmaraisllp.com>
Sent: Wednesday, July 24, 2024 3:08 PM
To: Stein, Wendy R. <steinw@ballardspahr.com>; LaCorte, Brian W. <LaCorteB@ballardspahr.com>
Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM
<BallardCarvanaIBMLitTeam@ballardspahr.com>
Subject: RE: Carvana v IBM (SDNY)

 **EXTERNAL**

Wendy,
Yes, that works.
I'll circulate a webex.
Jordan
Jordan N. Malz
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From: Stein, Wendy R. <steinw@ballardspahr.com>
Sent: Wednesday, July 24, 2024 12:52 PM
To: Jordan Malz <JMalz@desmaraisllp.com>; LaCorte, Brian W. <LaCorteB@ballardspahr.com>
Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM
<BallardCarvanaIBMLitTeam@ballardspahr.com>
Subject: [Ext] RE: Carvana v IBM (SDNY)

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We are available at 4 PM EST, please let us know if that works.

Thanks,

Wendy Stein



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From: Jordan Malz <JMalz@desmaraisllp.com>

Sent: Tuesday, July 23, 2024 8:48 PM

To: Stein, Wendy R. <steinw@ballardspahr.com>; LaCorte, Brian W. <LaCorteB@ballardspahr.com>

Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM
<BallardCarvanaIBMLitTeam@ballardspahr.com>

Subject: Re: Carvana v IBM (SDNY)

 **EXTERNAL**

Brian and Wendy,

Please let us know your availability tomorrow to meet and confer regarding IBM's July 15 letter and the parties' respective objections/responses to their 30(b)(6) notices.

Best,

Jordan

Jordan N. Malz

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From: Jordan Malz <JMalz@desmaraisllp.com>

Sent: Monday, July 22, 2024 11:11 PM

To: Stein, Wendy R. <steinw@ballardspahr.com>

Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM
<BallardCarvanaIBMLitTeam@ballardspahr.com>

Subject: RE: Carvana v IBM (SDNY)

Wendy,

We can meet and confer tomorrow at 4 PM Eastern regarding IBM's July 15 letter (we believe the parties have amply met and conferred regarding those issues but are happy to try again) as well as the parties' respective objections/responses to their 30(b)(6) notices.

Please let us know if that time works or if you prefer another time.

Best,

Jordan

Jordan N. Malz

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From: Stein, Wendy R. <steinw@ballardspahr.com>

Sent: Monday, July 22, 2024 10:15 AM

To: Jordan Malz <JMalz@desmaraisllp.com>

Cc: IBM Carvana Service <IBMCarvanaService@desmaraisllp.com>; Ballard Carvana/IBM
<BallardCarvanaIBMLitTeam@ballardspahr.com>

Subject: [Ext] Carvana v IBM (SDNY)

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Jordan,

Please see attached responses and objections. As requested in our email of July 18, please advise when your side can confer tomorrow morning, and we will send a zoom invite.

Best,

Wendy Stein



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