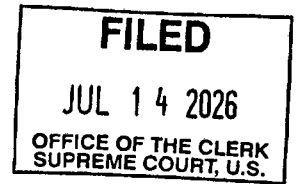


26-5601

ORIGINAL

UNITED STATES SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI



SCOTT FLORER

CASE NO.

vs

Appeal from the Ninth Circuit Court of Appeals

FORD MOTOR CO., et.al.

Case No: 24-2591

APPELLANT'S PETITION FOR A WRIT OF CERTIORARI

APPEAL FROM THE NINTH CIRCUIT COURT OF APPEALS NORTHERN UNIT FROM
AN APPELEABLE ORDER DISMISSING THE ENTIRE CASE WITH PREJUDICE AND
AWARDING FORD FEES AND COSTS BY THE US DISTRICT COURT OF THE
SOUTHERN DISTRICT OF IDAHO

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Questions For Review

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Dennis Florer Pltf; Ford Motor Co. Dft., Lithia Ford of Boise Dft.; Rhett Sheeder Dft.; Rich Steuart Dft.; Angelo Sanchez Dft.; Travis Stear Dft.; Lisa Crabtree Dft.

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VI. JURISDICTION

The basis for jurisdiction is the appealable Order Dismissing the entire Case *With Prejudice* was filed April 4th, 2024. Appendix 1-ER-2. The Notice of Appeal was filed on April 24th, 2024. Appendix 2-ER-128. The U.S. Court of Appeals for the Ninth Circuit Affirmed the District Court on January 22nd, 2026. Appendix; The Petition for Rehearing was Denied on April 20th, 2026. Appendix. The statutory provision to review U.S. Courts is 28 U.S.C. 1254.

VII. STATUTE

This case is brought by a consumer under the Magnason Moss Warranty Act 15 U.S.C. 2304(a)(4) against the warranters of a consumer product.

“(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be).” 15 U.S.C. 2304(a)(4).

Ford’s W&PM 2019 Ed. cites the MMWA, “Under the Act, all warrantors ... are required to make their written warranties available to customers prior to sale of the goods.” Appendix 9-ER-1955 Sealed Ford W&PM 2019 ed.

VIII. STATEMENT OF THE CASE

This case is brought by a consumer whom purchased a product vehicle engine from Lithia Ford of Boise ID and Ford Motor Co. in August of 2020. The consumer claims a defect within the product against Ford, a defect in workmanship when the product was installed against Lithia Ford of Boise, and failure to disclose the warranty terms used by the warranters to deny warranty coverage against both corporations. The U.S. district court of ID dismissed the entire case *with prejudice* contending that the warranters were prejudiced due to not receiving enough deposition time of the consumer when Lithia Ford of Boise never submitted any discovery requests under the F.R.C.P. and absent a showing by Ford of what could be discovered via depositions and/or vehicle inspections in 2023, thus, outside the scope of F.R.C.P. 26(b)(1). Furthermore, the trial court has never explicitly warned plaintiff of the possibility that he faced the ultimate sanction of dismissal *with prejudice*. The consumer has already complied with automotive industry warranties and the statutory law MMWA 15 U.S.C. 2304(a)(4) before filing suit by returning the product to them on several occasions for a cumulative total of 50 days, thus, they have already received all material information proportional to the needs of the case under the F.R.C.P. Rules 26-37. The Ninth Circuit Court of Appeals rubber-stamped the district court.

"District courts, it is broadly accepted, enjoy tremendous freedom in managing their caseload. That flexibility stems in part from the fact that no two district courts are the same. Nor do any two courts employ the same exact practices in overseeing their dockets. Those practices can reflect more art than science, given the unique demands each court faces. But at times, art must yield to science, so to speak. That is the case with the Federal Rules of Civil Procedure. As an overarching goal, the Rules seek to promote procedural uniformity across the federal courts. As a result, the conventions those Rules set out may cede only so much to the whims of a particular district court. Sometimes, a district court can deviate so far from the Rules that its practices amount to an abuse of discretion." CHAD A. READLER, Circuit Judge.

IX. ARGUMENT

A. By Upholding the District Court's Finding of Prejudice, The Ninth Circuit Panel Decision Conflicts With Another Court of Appeals in the Sixth Circuit and has so far Departed from the Accepted and Usual Course of Judicial Proceedings The Full Court's Consideration Is Necessary to Secure or Maintain Uniformity of The Court's Decisions

As discussed below, the Ninth circuit decision is in conflict with the Sixth circuit decisions in T. Wu v T.W. Wang, Inc., 420 F.3d 641 (6th Cir. 2005); Harris v. Callwood, 844 F.2d 1254, 1256 (6th Cir. 1988) and decisions in In re Phenylpropanolamine (PPA) Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006); Payne v. Exxon Corp., 121 F.3d 503, 507 (9th Cir. 1997); Wanderer v. Johnston, 910 F.2d 652, 656 (9th Cir. 1990); In re Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994); Transamerica Life Ins. Co. v. Arutyunyan, 93 F.4th 1136, 1147 (9th Cir. 2024); Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992)(as amended). Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002); Malone v. Unites States Postal Serv., 833 F.2d 128, 131 (9th Cir. 1987).

The Ninth circuit has entered a decision that is in conflict with the Sixth circuit and is so far departed from the accepted and usual course of judicial proceedings in the conclusion it reached of *finding prejudice* by "impairing their ability to pursue a motion for summary judgement" Appendix 1-ER-20 and that Ford and it's Ford Authorized Dealer (FAD) are entitled to additional depositions/vehicle inspections in 2023. Payne, 121 F.3d 507 ("speculative discovery"). Pagtalunan, 291 F.3d 642 ("a defendant must establish that Plaintiff's actions impaired Defendant's ability to proceed to trial or threatened to interfere with the rightful

decision of the case.” (citing Malone, 833 F.2d 131). Thus, the key factors are “prejudice and availability of lesser sanctions.” Wanderer, 910 F.2d 656. Here, the Ninth circuit affirming the district court’s decision of “*dismissal with prejudice*” absent a showing of actual prejudice to the defendants need for speculative discovery is clearly outside the acceptable range of sanctions. Furthermore, *the trial court has never explicitly warned plaintiff of the possibility that he faced the ultimate sanction of dismissal with prejudice*. “[W]e will overturn a dismissal sanction only if we have a definite and firm conviction that it was clearly outside the acceptable range of sanctions.” In re PPA., 460 F.3d 1226. Dismissal as a sanction is a harsh penalty to be imposed only in “extreme circumstances” that are not present here. Id.

The Ninth circuit decision is in conflict with the Six Circuit in T Wu, 420 F.3d 641 (whether the party's failure is due to willfulness, bad faith, or fault; whether the adversary was prejudiced by the dismissed party's conduct; whether the dismissed party was warned that failure to cooperate could lead to dismissal; whether less drastic sanctions were imposed or considered before dismissal was ordered... This court has repeatedly "reversed district courts for dismissing cases because litigants failed to appear or to comply with pretrial orders when the district courts did not put the derelict parties on notice that further noncompliance would result in dismissal")(citing, Harris, 844 F.2d 1256).

Here, the district court concedes it did not provide any warning of the possibility of the ultimate sanction dismissal with prejudice of the entire case “Although the Court never specifically warned Plaintiff about the possibility of dismissal as a sanction.” Appendix 1-ER-26 or consider the possibility of lesser sanctions absent pure speculation and conjecture. Id. One consideration pertinent in determining whether dismissal should be *with or without prejudice* is whether the court previously warned plaintiff that failure to obey a court order would result in dismissal.

T Wu, 420 F.3d 641. Dismissal with prejudice may be inappropriate if “the Court has never explicitly warned plaintiff that he faced the ultimate sanction.” North v. Persons, No. 14-cv-0847-VBF-AJW, 2016 WL 4035719, at *8 (C.D. Cal. May 20, 2016) (emphasis added).

Discovery via another deposition in 2023 cannot change the basis of the claims, the Ford invoices in 2020-2021, is outside the acceptable range of sanctions, and not extreme circumstances.

Defendants investigated the facts upon which plaintiff bases his claims and documents which support the claims. The undisputed factual invoices show-when the engine failed at 2,400 miles/28 days after the purchase and installation of the engine in 2020-the vehicle was *immediately delivered* back to the FAD under Ford’s Service Parts Warranty (SPW). Lessin v Ford Motor Company, 3:19-cv-01082-AJB-AHG (S.D. Cal. Aug. 25, 2021); WL 3810584 (S.D. Cal. Aug. 5, 2021)(Laying out the steps a Ford consumer must take prior to bringing suit under Ford’s warranty).

Here, the Ford Technical Assistance Center citing the SPW responded that “if the engine long block was replaced within the last 30 days and the repair will be more than \$500.00, the engine long block can be replaced again” Appendix 8-ER-1703, 1705. The FAD decided not to replace the engine and tore it down to the point of failure, that did cost over \$500.00 Appendix 5-ER-1023-1027 Invoice. Opening Brief (OB) 47. Answering Brief (AB) 6-11. Ford and it’s FAD do not contest the basis of the claims. Id.

The Rules of discovery seek to promote procedural uniformity across the federal courts. As a result, the conventions those Rules set out may cede only so much to the whims of a particular district court. The FAD chose to disassemble the new engine to the point of failure by removing

the crank balancer, timing cover, timing chains and guides, Bank 1 head, Bank 1 cams to get to the VCT phaser to replace it. Appendix 9-ER-1798 Engine Specifications; Appendix 5-ER-1023-1027 FAD Invoice; Appendix 7-ER-1340 Tr. L. 11-24. The Panel has overlooked the facts that Ford and the FAD admit that they failed to disclose this warranty information until after the engine failed. AB 4-9; FAD Brief (FADB) 1-28. These are not extreme circumstances to dismiss the entire case under the guise of prejudice. The "presumption [of prejudice] may be rebutted and if there is a showing that no actual prejudice occurred, that fact should be considered when determining whether the district court exercised sound discretion." In re Eisen, 31 F.3d 1452-53.

Here, the "presumption [of prejudice]" has been "rebutted" because there is a showing that no actual prejudice occurred. All documentary evidence has been produced per F.R.C.P. Rule 26(a) and each of Ford's Rule 33(a) and 34(a) discovery requests were responded to and supplemented. Appendix 6-ER-1099-1107. In PPA the court found that failure to produce documents prejudice defendants. Here, the defendants make no argument on what evidentiary discovery they seek by an additional depositions and/or vehicle inspections. FADB 22-25; AB 26-28.

The Ninth Circuit Panel's affirmation is absent "extreme circumstances" under the guise of prejudice in conflict with In re PPA, 460 F.3d 1217. This "illogical" interpretation of the above facts by the district court is "by impairing,...their ability to pursue a motion for summary judgment or adequately develop a defense if the case is to proceed to trial." Appendix 1-ER-20; FADB 22; AB 7.

One consideration pertinent in determining wither dismissal should be *with or without prejudice* is whether the court previously warned plaintiff that failure to obey a court order would result in dismissal. The district court concedes it failed to do so. Appendix 1-ER-26. Dismissal with

prejudice may be inappropriate if "the Court has never explicitly warned plaintiff that he faced the ultimate sanction." North, No. 14-cv-0847-VBF-AJW, 2016 WL 4035719, at *8; Pagtalunan, 291 F.3d 642 (citing Malone, 833 F.2d 131; Wanderer, 910 F.2d 656, T Wu, 420 F.3d 641).

The Ninth Circuit decision is in conflict with Transamerica Life Ins. Co., 93 F.4th 1147 as the consumer whom is moving the case "toward disposition on the merits" and the record shows he has not "impede[d] progress in that direction." Id. The consumer has complied with the statutory law that the Ford's SPW that "promises to repair, replace, or adjust a covered part only if a vehicle that malfunctions "during normal use during the applicable coverage period" if "taken to a Ford dealership for a warranted repair during the warranty period." Lessin, 3:19-cv-01082-AJB-AHG; WL 3810584. In Transamerica, "the court found that some of the discovery issues appeared to have already been resolved. Accordingly, the court ordered another round of focused briefing to identify the remaining discovery disputes" and ordered the defendants to "supplement their discovery responses" whom did neither. Id.

Here, the record is clear that Ford nor it's FAD have identified what discovery is in dispute FADB 21; AB 17 that can be resolved via deposition. The plaintiff complied with mandatory disclosures of F.R.C.P. Rule 26(a) and supplemented Ford's numerous Rules 33(a) and 34(a) discovery requests whereas the FAD has not served any requests for discovery. Appendix 6-ER-1099-1107. Obviously, the Ninth Circuit has failed to review to record independently. "[W]e may review the record independently to determine if the district court has abused its discretion." Ferdik, 963 F.2d 1261. These judicial actions and inactions are in conflict with Ferdik by not reviewing the record independently to determine that the district court has abused its discretion. Id. This Ninth circuit decision now allows Auto Manufacturer Ford and Auto Dealer Lithia among others to deny consumers whom have complied with their Warranty & Policy Manuel.

Appendix 9-ER-Sealed 1786-1985 Warranty & Policy Manual; MMWA 15 U.S.C. 2304(a)(4) requiring that the consumer present the vehicle to an FAD prior to filing suit.

B. By Upholding the District Court Granting Ford Motor Co. Continuous Unending Discovery- that is Outside the Scope of F.R.C.P. Rule 26(b)(1)-The Ninth Circuit So Far Departed from the Accepted and Usual Course of Judicial Proceedings of the Federal Rules of Civil Procedure

The United States Court of Appeals for the Ninth circuit has so far departed from the accepted and usual course of judicial proceedings that discovery for Ford in 2023 is outside the scope of F.R.C.P. Rule 26(b)(1).

Here, Ford's Limited Warranty/Service Parts Warranty is controlling that "promises to repair, replace, or adjust a covered part only if a vehicle that malfunctions "during normal use during the applicable coverage period" if "taken to a Ford dealership for a warranted repair during the warranty period." Lessin, 3:19-cv-01082-AJB-AHG; WL 3810584; Opening Brief (OB) 44. The Ninth Circuit Panel failed to independently review the record has caused it to overlook and/or misapprehend that the district court abused its discretion by concluding prejudice to the defendants to "adequately develop a defence." Appendix 1-ER-20; FADB 22. It is undisputed that discovery in 2023 for the FAD is outside the scope of F.R.C.P. Rule 26(b)(1).

The FAD admits it failed to disclose at the sale that if a warranty covered failure arises, the FAD will chose to disassemble the engine they just sold and installed a mere 28 days thereafter to repair the engine failure under warranty that failed in September 2020. FADB p. 1. Defendants have never made any showing of what could be discovered via depositions and/or vehicle inspections in 2023. The plaintiff permitted discovery via deposition. Appendix 7-ER-1336-

1340. The defendants have been provide all information proportional to the needs of the case at the deposition. Id. The plaintiffs "purchase of the vehicle, the type of vehicle, the use of the vehicle, the engine purchase from the FAD, and the warranty's provided at the FAD" Id. The deposition transcript reads in pertinent part;

"It [original engine] was replaced in 2020 by your client, Ford Motor Company and Ford Motor Company's dealer, Lithia Ford of Boise. And since then it has not been replaced? It has not been replaced since. Your client is the only ones that have ever touched that engine. Your client and your dealer." Appendix 7-ER-1336.

The Ninth Circuit overlooked the fact that Ford misrepresented the deposition it took by contending that the consumer "declined to answer most questions." AB 11.

"Q. Have you ever looked up the warranty for Ford's remanufactured engines? I was provided the warranty at the dealership, and that's the invoice, and that's it. Have you ever looked at it online? I was provided the warranty at the dealership, the invoice. That is all. That is what the warranty is in this case. And when you claim you started having problems with your engine, did you ever look for additional terms for that warranty? The warranty was provided by the dealer. I went to the dealer and sought the warranty information. All the warranty information I sought at the dealer. At the dealer" Appendix 7-ER-1340.

Indeed, the deposition taken by defendants is not a failed attempt. "The presumption [of prejudice] may be rebutted and if there is a showing that no actual prejudice occurred, that fact should be considered when determining whether the district court exercised sound discretion." In

Re Eisen, 31 F.3d at 1452-53 (quoting Anderson v. Air West, Inc., 542 F.2d 522 (9th Cir.

1976)); In re PPA, 460 F.3d at 1228. The deposition testimony provided on the claims that took place at the pre-sale, the sale, the engine failure, and the warranty steps taken by the warranters that were undisclosed to the consumer. "A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2)." F.R.C.P. Rule 30(a).

Additional depositions are inconsistent with Rule 30(a). The FAD and Ford received all material information proportional to the needs of the case on all claims. As such, the plaintiff has

permitted discovery and has not failed "to obey an order to permit or provide discovery."

Fjelstad v. Am. Honda Motor Co., 762 F.2d 1334, 1337 (9th Cir. 1985); F.R.C.P. 37(b)(2);

41(b).

C. This Case Involve Questions of Exceptional Importance For All Auto Consumers Whom Have Already Complied With Automotive Industry Warranties and Federal Statutory Law 15 U.S.C. 2304(a)(4) Magnason Moss Warranty Act By Delivering the Warranted Product to the Warranters on Three Separate Occasions for a Cumulative Totle of 50 days Before Filing Suit As to Call For an Exercise of this Courts Supervisory Power

This case involves one or more questions of exceptional importance for all auto consumers whom have already complied with automotive industry warranties and the statutory law MMWA 15 U.S.C. 2304(a)(4) before filing suit. The Ninth circuit has overlooked and misapprehended the fact that Ford concedes that its FAD Lithia Ford of Boise has investigated all claims against them prior to the consumer filing suit the cumulative totle days the FAD inspected the engine on behalf of Ford is fifty (50) days. Their Warranty & Policy Manuel 9-ER-Sealed 1786-1985 and stat. law MMWA 15 U.S.C. 2304(a)(4) require that the consumer present the vehicle to an FAD prior to filing suit to investigate claims brought by consumers. Id. Accordingly, there is not any discoverable information on the claims brought by this consumer. This decision allows auto manufactures and their dealers to deny consumers whom have complied with their SPW and MMWA. AB p. 4-5. The record demonstrate that the consumer has complied with the controlling statutory law the case is brought under MMWA 15 U.S.C. 2304(a)(4), Ford's Warranty & Policy Manuel ("W&PM") requiring that the consumer present the vehicle to an FAD prior to filing suit and binding Ford auto warranty case law in Lessin, 3:19-cv-01082-AJB-AHG.

The record is clear that was done by the consumer on three separate occasions prior to the filing of the suit by presenting the vehicle to the FAD in 2020 and 2021 whom concluded that a defect of the engine "*does not exist.*" Appendix 7-ER-1499-1500 Invoice; Appendix 5-ER-1030 Invoice. OB 48-49. Discovery in 2023 is outside the scope of F.R.C.P. Rule 26(b)(1).

The defendants make no argument that there is any discoverable information to discover that has "impaired their ability to pursue a motion for summary judgment or adequately develop a defense if the case is to proceed to trial." Appendix 1-ER-20; FADB 22; AB 7. Additionally, the panel decision conflicts with a decision of the court in Doe v. Snyder, 28 F.4th 103, 106 (9th Cir. 2022)(quoting Edmo v. Corizon, Inc., 935 F.3d 757, 785 (9th Cir. 2019)).

The Ninth Circuits reliance on the district court's recounting of discovery events is illogical, implausible, and without support in inferences that may be drawn from the facts in the record to support its dismissal with prejudice of the entire case. Doe, 28 F.4th 106 (quoting Edmo). *The adoption of prejudice is "obstructionism prevented Ford from investigating the factual basis for Florer's claims."* AB 28. *The Ninth Circuit cannot add to nor change the facts on Ford's invoices in 2020 and 2021 that are the factual basis for Florer's claims. Appendix 7-ER-1499-1500 Invoice; Appendix 5-ER-1030 Invoice.*

D. The United States Court of Appeals for the Ninth Circuit Entered a Decision that is in Conflict with Other United States Courts of Appeals for the Fifth and Seventh Circuits by the Ninth Circuit trial court Never Explicitly Warning plaintiff of the Possibility that he Faced the Ultimate Sanction of Dismissal With Prejudice of the Entire Case Based Upon Speculative Discovery Absent Any Showing of Prejudice for Further Discovery by Ford Motor Co.

The Ninth circuit decision conflicts with an authoritative decision of other United States court of appeals in the Fifth and Seventh circuits in Exxon Corp. v Crosby-Mississippi Resources, Ltd., 40 F.3d 1474, 1487 (5th Cir. 1995) and Hindmon v. National-Ben Franklin Life Insurance Corporation, 677 F.2d 617, 620 (7th Cir. 1982). Here, discovery in 2023 is outside the scope of F.R.C.P. Rule 26(b) and the merits cannot change by "speculative discovery." Exxon Corp., 40 F.3d 1487 (5th Cir. 1995). The Panel has overlooked the facts that the consumer purchased a remanufactured 5.0L-4V Coyote engine in August 2020 from the FAD. See, Record 9-ER-Sealed 1786-1985 Ford W & PM 2019-2021 ed.; Appendix 7-ER-1499-1500 Purchase Invoice ("DL3Z*6006*"). The FAD installed it into the F150 in August 2020. Id. The F150 had 185,538 miles. Id. The FAD provided the warranty on August 31st, 2020 when the consumer picked up the F150, the Warranty Start Date. Id. The FAD's warranty is for 50,000 miles/Three years whichever occurs first. Id. When this suit was filed the F150 had 235,370 miles. See, Record 8-ER-1783 First Amended Complaint. The FAD and Ford concede to said warranties. FADB 5; AB 4. The Ford SPW is for "36 Months/Unlimited Miles. Appendix 9-ER-Sealed 1901. This includes an 12 month/12,000 miles Low Time In Service (LTIS) engine replacement policy rather than repair the engine. Appendix 9-ER-Sealed-1851. Here, Ford's warranty is to "Replace The Longblock Assembly (6006)" Appendix 9-ER-Sealed-1852. Additionally, there is also a 30 day engine replacement warranty for engine failure that occurs within 30 days of installation of an engine installed by an FAD the Panel has overlooked by not reviewing the record. OB 47.

For the defendants to depose the plaintiff as to their inspection of their 2020 repair of the engine in 2023, almost 3 years since the replacement of the original engine with over 50,000 miles on the remanufactured Coyote engine that is no longer under warranty, is outside the scope of F.R.C.P. 26(b)(1).

It is not material for the defendants to depose upon the repair that they did in September of 2020. The consumer does not allege that the repair under warranty in 2020 was deficient, rather the consumer filed suit that-due to the immediate engine failure-the engine must be replaced under warranty not repaired under warranty. OB 47.

The Ninth Circuit affirmed based upon "speculative discovery" in conflict with another court of appeals. Exxon Corp., 40 F.3d 1487. Ford and it's FAD have not made any showing of a significant likelihood that additional discovery via deposition would be fruitful. *Id.* FADB 15-22; AB 1-25. It is a clear error of judgment by the district court to order that the defendants can go on a seven (7) hour fishing expedition of "speculative discovery." Exxon Corp., 40 F.3d at 1487. "They don't have a right to have a fishing expedition" Appendix 4-ER-611. "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." F.R.C.P. Rule 26(b); OB 35. The plaintiff complied with mandatory disclosures of F.R.C.P. Rule 26(a) and supplemented Ford's numerous Rules 33(a) and 34(a) discovery requests. Appendix 6-ER-1099-1107.

Therefore, there is not a finding of "willfulness" in conflict with Hindmon, 677 F.2d 620 (where the plaintiff had "failed to properly answer defendant's Interrogatories and failed to respond to defendant's Request for Production within the time limit set by the district court.") *Id.* The record is clear that the defendants have not made any showing of a significant likelihood that additional discovery via deposition would be fruitful to any claim or defence proportional to the needs of the case. FADB; AB. Discovery per F.R.C.P. 26(b) does not allow a party to engage in a fishing expedition. Rivera v. NIBCO, Inc., 364 F.3d 1057, 1072 (9th Cir. 2004) (District courts need not condone the use of discovery to engage in "fishing expedition[s]." See, e.g., Exxon

Corp., 40 F.3d at 1487). "A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2)." F.R.C.P. Rule 30(a).

The Ninth Circuits illogical adoption of the facts of this case is "After a series of events and communications with the repair center staff between July 2020 and September 2021, Plaintiff alleges the repair center was unable to resolve the problem with the engine." Appendix 1-ER-10. And "*Ford has not yet had the opportunity.*" Appendix 1-ER-97-98. A plaintiff may proffer an excuse for delay that, if "anything but frivolous," shifts the burden of production to the defendant to show at least some actual prejudice. In re PPA, 460 F.3d at 1228. The record demonstrates that Ford and it's FAD have not shown any "*actual prejudice*" because they inspected the vehicle when it failed in 2020 and again in 2021. The applicable statute MMWA 15 U.S.C. 2304 that reads in pertinent part;

"(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be)." 15 U.S.C. 2304(a)(4). OB 45-46.

Here, Ford concedes that it failed to "*make their written warranties available to [the plaintiff] customers prior to sale of the goods.*" Ford's W&PM 2019 Ed. cites the MMWA, "Under the Act, all warrantors ... are required to make their written warranties available to customers prior to sale of the goods." Appendix 9-ER-1955 Sealed Ford W&PM 2019 ed; OB 32. Thus, this Panels decision is in conflict with the stat. law the case is brought under. It is now the consumers choice of remedy, not discovery. Nonetheless, the additional deposition simply needed to be coordinated as to the date, time, and location rather than this unilateral deposition scheduling of dates and times at a U.S. courthouse. OB 35; AB 11. A federal district court does not have any

authority to order the location of a F.R.C.P. Rule 30(a) deposition be held at its courthouse nor unilateral scheduling of the dates and times. Id. Indeed, the record is devoid of any authority.

E. By Upholding the District Court Piggy-Backing Lithia Ford of Boise Dismissal With Prejudice, Whom Did Not Serve Any Federal Rule of Civil Procedure Discovery Requests, The United States Court of Appeals for the Ninth Circuit So Far Departed from the Accepted and Usual Course of Judicial Proceedings Application of the Federal Rules of Civil Procedure This Panel has overlooked or misapprehended the fact that the FAD did not serve a notice to depose or request to inspect a tangible object under F.R.C.P. Rules 30(a), 34(a). OB 46; FADB 1-35. The FAD should not have been dismissed because it failed to serve a notice to depose a party and/or request to inspect a tangible object under F.R.C.P. Rules 30(b), 34(a). "A party may serve on any other party a request within the scope of Rule 26(b)" Id. The district court's dismissal here is clearly outside the acceptable range of sanctions. In re PPA, 460 F.3d at 1226. A party to the litigation who failed to serve a Notice of Deposition under F.R.C.P. Rule 30(b) and/or Request to Inspect a tangible object F.R.C.P. 34(a) cannot be Piggy-Backed by the trial courts discovery sanctions under F.R.C.P. Rule 37(b)(2) and/or involuntary dismissal with prejudice under Rule 41(b).

F. The United States Court of Appeals for the Ninth Circuit Entered a Decision that is So Far Departed from the Accepted and Usual Course of Judicial Proceedings that Further Discovery Per Federal Rule of Civil Procedure 30(b)(4) Motion for Deposition by Remote Means Would be

Prejudicial

The Ninth Circuit has overlooked the facts and the law that the defendants have failed to make any showing that additional depositions by remote means would be prejudicial. AB p. 1-23. FADB 1-25. The district court abused its discretion and committed clear error of judgment by demanding the Plaintiff appear overnight for another deposition from Southern Utah to Boise Idaho for a seven hour deposition rather than deposition by remote means. The record is clear the plaintiff moved from Boise Idaho to Utah and informed the district court by filing a notice of change of address Appendix 4-ER-643-644 that was returned mail to the trial court. Appendix 3-ER-426. OB 42.

The plaintiff moved the district court for a deposition by remote means under F.R.C.P. Rule 30. Appendix 4-ER-637-642. F.R.C.P. Rule 30 provides that "the court may on motion order that a deposition be taken by telephone or other remote means." 30(b)(4). Courts will liberally grant a Rule 30(b)(4) motion where the movant has advanced a legitimate reason for remote deposition, and then the court will consider whether the opposing party has made a particularized showing that conducting the deposition by remote means would be prejudicial. Vargas v. Evergreen Prof'l Recoveries Inc., 2022 U.S. LEXIS 52508, at *1-2 (W.D. Wash. Mar. 23, 2022); Hernandez v. Bobst Grp. N. Am., Inc., 2020 U.S. Dist. LEXIS 190610, at *2 (E.D. Cal. Oct. 14, 2020). The Ninth Circuit has failed to view the fact that the defendants and the district court have failed to make a "particularized showing of prejudice" if it were to depose the plaintiff by remote means and the plaintiff has shown a "legitimate reason" because he has moved to Southern Utah. See, Record Ford Answering Brief 15-20; Ford Authorized Dealer Brief 22. Vargas, 2022 U.S. LEXIS 52508, at *1-2; Hernandez, 2020 U.S. Dist. LEXIS 190610, at *2. For the district court to Order on Dec. 13th, 2023 a deponet to appear in person from another state on Dec 14th, 2023 at

9am absent any "showing of prejudice" by the defendants to conduct the deposition by remote means is an abuse of discretion. Payne, 121 F.3d at 507. OB 41.

Here, Ford responded that upon vehicle inspections by its FAD in 2020 and 2021 it's FAD *"could not recreate these problems and so could not resolve them."* See, Record 8-ER-1761-65 FAC; AB 5. The FAD performed an engine inspection on behalf of the manufacturer on plaintiffs internal engine defect claim from October 6th, 2020 to October 31st, 2020. *"compared to like vehicle noise normal at this time"*. Appendix 5-ER-FAD Invoice 1025. Again, the FAD performed an engine only inspection on behalf of its manufacturer from July 30th, 2021 to August 26th, 2021. Appendix 5-ER-1030 FAD Invoice. The cumulative total days the FAD inspected the engine on behalf of Ford is fifty (50) days. Appendix 5-ER-1025, 1030 FAD Invoice. By attempting to repair the engine by Ford's FAD they have "admitted the defective nature of the condition" of the engine. Milicevic v Fletcher Jones Imports LTD, 402 F.3d 912, 919 (9th Cir. 2005). The alleged discovery violations of more deposition time are founded upon ambiguous orders of clear error. *To depose in 2023 almost 3 years since the replacement of the original engine with over 50,000 miles on the remanufactured engine that is no longer under warranty is outside the scope of F.R.C.P. 26(b)(1)*. The Ninth Cir. has overlooked the fact that the district court's abuse of discretion is it's illogical conclusion inapposite to the documentary evidence that "FMC has not conceded that a defect exists" and "Ford has not yet had the opportunity". See, Record AB 7, 1-ER-97-98; 1-ER-69-72. Ford's FAD states that it *"could not recreate these problems and so could not resolve them."* Record 8-ER-1761-65. *"compared to like vehicle noise normal at this time"* Appendix 5-ER-1025 FAD Invoice. Ford itself does not inspect any vehicles that are under Ford's warranty. "Ford also argues that in order for it to be in breach of its written warranty a plaintiff must have presented their vehicles to authorized Ford

dealers within the written warranty period and have been refused such warranty service.” Walsh v Ford Motor Co., 588 F.Supp. 1513, 1537 (D.D.C. 1984). The trial court attempts to downplay its clear error of judgment. “The ordered inspection is not an attempt to remedy any defect or malfunction under are statutes cited by Florer, but merely an inspection of a tangible object at issue in his claims as allowed under Rule 34(a)(1)(B).” See, Record 1-ER-64. The FAD states its presence is required because “any mechanical repairs or inspections of the pick-up during his ownership clearly relate to the repairs and inspections performed by the defendants.” See, Rec. 7-ER-1362. The consumer has testified that only the FAD has performed repairs and inspections during his ownership of the F150. Appendix 7-ER-1336. “It was replaced in 2020 by your client, Ford Motor Company and Ford Motor Company’s dealer, Lithia Ford of Boise. And since then it has not been replaced? It has not been replaced since. Your client is the only ones that have ever touched that engine. Your client and your dealer.” 7-ER-1336 Tr. Rivera v. NIBCO, Inc., 364 F.3d 1057, 1072 (9th Cir. 2004) (District courts need not condone the use of discovery to engage in “fishing expedition[s].”).

X. CONCLUSION

As articulated above, this Writ should be Granted.

Respectfully,

7/13/2026

Scott Florer

/s/scottflorer

CERTIFICATE OF COMPLIANCE

I certify that the brief complies with the word limitations by being 7020 word calculated by Microsoft Word.

9/12/2026

Scott Florer

/s/scottflorer