

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 8 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DENNIS SCOTT FLORER,

Plaintiff - Appellant,

v.

FORD MOTOR COMPANY; et al.,

Defendants - Appellees.

No. 24-2591

D.C. No. 1:22-cv-00449-BLW-DKG
District of Idaho,
Boise

ORDER

Before: WARDLAW, CLIFTON, and R. NELSON, Circuit Judges.

In August 2026, appellant notified the court that the memorandum disposition filed on January 23, 2026 (Docket Entry No. 50), contains an error in the caption. The January 23, 2026 memorandum disposition is withdrawn. The clerk is ordered to file an amended memorandum disposition with a corrected caption concurrently with this order.

This court will not entertain further filings, including any petition for rehearing, in this closed case.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 8 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DENNIS SCOTT FLORER,

Plaintiff - Appellant,

v.

FORD MOTOR COMPANY; LITHIA
FORD OF BOISE; RHETT SHEEDER;
RICH STUART; ANGELO SANCHEZ;
TRAVIS STEAR; LISA CRABTREE,

Defendants - Appellees.

No. 24-2591

D.C. No. 1:22-cv-00449-BLW-DKG

AMENDED MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Submitted January 22, 2026**

Before: WARDLAW, CLIFTON, and R. NELSON, Circuit Judges.

Dennis Scott Florer appeals pro se from the district court's judgment
dismissing his action alleging violations of the Magnuson-Moss Warranty Act and

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

awarding attorney's fees and costs to Ford Motor Company. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019) (dismissal for failure to comply with a court order under Fed. R. Civ. P. 41(b)); *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002) (dismissal as a discovery sanction under Fed. R. Civ. P. 37). We affirm.

The district court did not abuse its discretion in dismissing as a sanction Florer's action after Florer failed to comply with the district court's discovery orders, including orders to appear for his deposition. *See* Fed. R. Civ. P. 37(b)(2) (permitting dismissal of an action where a party has failed to comply with court's discovery orders); Fed. R. Civ. P. 41(b) (permitting dismissal of an action "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order"); *Applied Underwriters*, 913 F.3d at 890-91 (setting forth five factors to be considered before dismissing under Rule 41(b)); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226, 1233 (9th Cir. 2006) (discussing five factors that courts must weigh in determining whether to dismiss under Rule 37(b) and explaining that "Rule 37 sanctions, including dismissal, may be imposed where the violation is due to willfulness, bad faith, or fault of the party" and that "[d]isobedient conduct not shown to be outside the litigant's control meets this standard" (citations and internal quotation marks omitted)).

The district court did not abuse its discretion by sanctioning Florer in the amount of costs and attorney's fees associated with Ford Motor Company's second motion to compel, motion for sanctions, and attempts to depose Florer. *See* Fed. R. Civ. P. 30(d)(2) ("The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent."); Fed. R. Civ. P. 37(a)(5)(A) (requiring, if discovery is provided after filing a motion to compel, that the court order "the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees"); Fed. R. Civ. P. 37(b)(2)(C) (authorizing sanctions for failure to comply with discovery orders); Fed. R. Civ. P. 37(d)(3) (authorizing sanctions and requiring payment of reasonable expenses and attorney's fees for failure to appear at deposition); *Sali v. Corona Reg'l Med. Ctr.*, 884 F.3d 1218, 1221 (9th Cir. 2018) (setting forth standard of review for a district court's sanctions order).

In light of our disposition, we do not consider Florer's challenges to the district court's interlocutory orders. *See Al-Torki v. Kaempfen*, 78 F.3d 1381, 1386 (9th Cir. 1996) (where dismissal was a sanction, interlocutory orders are not appealable).

AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

D. SCOTT FLORER,

Plaintiff,

v.

FORD MOTOR COMPANY, INC.;
LITHIA FORD OF BOISE, INC.;
RHETT SHEEDER; RICH STUART;
ANGELO SANCHEZ; TRAVIS
STEAR; and LISA CRABTREE,

Defendants.

Case No. 1:22-cv-00449-BLW-DKG

JUDGMENT

In accordance with the Memorandum Decision & Order previously entered in this case, *see April 4, 2024 Order*, Dkt. 212, **IT IS ORDERED, ADJUDGED, AND DECREED** that judgment be entered in favor of Defendants Ford Motor Company, Inc., Lithia Ford of Boise, Inc., Rhett Sheeder, Rich Stuart, Angelo Sanchez, Travis Steer, and Lisa Crabtree.



DATED: July 30, 2024

B. Lynn Winmill

B. Lynn Winmill
U.S. District Court Judge

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

JAN 23 2026

FOR THE NINTH CIRCUIT

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

DENNIS SCOTT FLORER,

Plaintiff - Appellant,

v.

FORD MOTOR COMPANY; LITHIA
FORD OF BOISE; RHETT SHEEDER;
RICH STUART; ANGELO SANCHEZ;
TRAVIS STEAR,

Defendants - Appellees.

No. 24-2591

D.C. No. 1:22-cv-00449-BLW-DKG

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winnill, District Judge, Presiding

Submitted January 22, 2026**

Before: WARDLAW, CLIFTON, and R. NELSON, Circuit Judges.

Dennis Scott Florer appeals pro se from the district court's judgment
dismissing his action alleging violations of the Magnuson-Moss Warranty Act and

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

awarding attorney's fees and costs to Ford Motor Company. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019) (dismissal for failure to comply with a court order under Fed. R. Civ. P. 41(b)); *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002) (dismissal as a discovery sanction under Fed. R. Civ. P. 37). We affirm.

The district court did not abuse its discretion in dismissing as a sanction Florer's action after Florer failed to comply with the district court's discovery orders, including orders to appear for his deposition. *See* Fed. R. Civ. P. 37(b)(2) (permitting dismissal of an action where a party has failed to comply with court's discovery orders); Fed. R. Civ. P. 41(b) (permitting dismissal of an action "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order"); *Applied Underwriters*, 913 F.3d at 890-91 (setting forth five factors to be considered before dismissing under Rule 41(b)); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226, 1233 (9th Cir. 2006) (discussing five factors that courts must weigh in determining whether to dismiss under Rule 37(b) and explaining that "Rule 37 sanctions, including dismissal, may be imposed where the violation is due to willfulness, bad faith, or fault of the party" and that "[d]isobedient conduct not shown to be outside the litigant's control meets this standard" (citations and internal quotation marks omitted)).

The district court did not abuse its discretion by sanctioning Florer in the amount of costs and attorney's fees associated with Ford Motor Company's second motion to compel, motion for sanctions, and attempts to depose Florer. *See* Fed. R. Civ. P. 30(d)(2) ("The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent."); Fed. R. Civ. P. 37(a)(5)(A) (requiring, if discovery is provided after filing a motion to compel, that the court order "the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees"); Fed. R. Civ. P. 37(b)(2)(C) (authorizing sanctions for failure to comply with discovery orders); Fed. R. Civ. P. 37(d)(3) (authorizing sanctions and requiring payment of reasonable expenses and attorney's fees for failure to appear at deposition); *Sali v. Corona Reg'l Med. Ctr.*, 884 F.3d 1218, 1221 (9th Cir. 2018) (setting forth standard of review for a district court's sanctions order).

In light of our disposition, we do not consider Florer's challenges to the district court's interlocutory orders. *See Al-Torki v. Kaempfen*, 78 F.3d 1381, 1386 (9th Cir. 1996) (where dismissal was a sanction, interlocutory orders are not appealable).

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 20 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DENNIS SCOTT FLORER,

Plaintiff - Appellant,

v.

FORD MOTOR COMPANY; et al.,

Defendants - Appellees.

No. 24-2591

D.C. No. 1:22-cv-00449-BLW-DKG
District of Idaho, Boise

ORDER

Before: WARDLAW, CLIFTON, and R. NELSON, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See Fed. R. App. P. 40.*

The petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 51) are denied.

No further filings will be entertained in this closed case.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

D. SCOTT FLORER,

Plaintiff,

v.

FORD MOTOR COMPANY, INC.;
LITHIA FORD OF BOISE, INC.;
RHETT SHEEDER; RICH STUART;
ANGELO SANCHEZ; TRAVIS
STEAR; and LISA CRABTREE,

Defendants.

Case No. 1:22-cv-00449-BLW-DKG

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
MAGISTRATE JUDGE**

This matter is before the Court on Plaintiff D. Scott Florer's objections to the Report and Recommendation issued by United States Magistrate Judge Debora K. Grasham. *See* Dkts. 192, 209. Judge Grasham recommends dismissing this case as a sanction for plaintiff's discovery violations. Florer has objected to that recommendation. Pursuant to 28 U.S.C. § 636, the Court has conducted a de novo review of those portions of the Report and Recommendation to which Florer has objected. The objections are overruled. The Court accepts the findings and recommendations of the Magistrate Judge, and adopts the Report and Recommendation in its entirety. The Court agrees that dismissal with prejudice is an appropriate sanction. *See generally Transamerica Life Ins. Co. v. Arutyunyan,*

ER-2

93 F.4th 1136 (9th Cir. 2024). The Court will therefore dismiss this case. The Court will not enter judgment at this time, however, given that Judge Grasham reserved ruling on whether to award fees and costs to Ford Motor Company (FMC) relative to FMC's filing of the motion to dismiss and its failed efforts to depose Mr. Florer. *See Report & Recommendation*, Dkt. 192, at 19. Under these circumstances, the Court will hold off on entering judgment for at least 21 days. If FMC decides against pursuing these fees and costs, the Court will proceed to enter judgment. If FMC elects to seek fees and costs, the Court will refrain from entering judgment until that motion is resolved. Accordingly,

IT IS ORDERED that:

- (1) Plaintiff's Objections to United States Magistrate Judge Debora K. Grasham's Report & Recommendation (Dkt. 192) are **OVERRULED**.
- (2) Defendant FMC's Motion to Dismiss (Dkt. 180), which was joined by Defendants Lithia Ford of Boise, Rhett Sheeder, Rich Stuart, Angelo Sanchez, Travis Steer, and Lisa Crabtree (Dkt. 183), is **GRANTED**.
- (3) This action is therefore **DISMISSED WITH PREJUDICE** pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(v) and 41(b).
- (4) The pending motions at Dkts. 118, 120, 128, 135, 138, 142, 152, 159, 184, 187, 194, 195, 200 are **DEEMED MOOT**.

ER-3

(5) If FMC wishes to pursue fees and costs, it shall file a motion and supporting memorandum within 21 days of this Order.



DATED: April 4, 2024

B. Lynn Winmill

B. Lynn Winmill
U.S. District Court Judge

ER-4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

D. SCOTT FLORER,

Plaintiff,

vs.

FORD MOTOR COMPANY; LITHIA
FORD OF BOISE, INC.; RHETT
SHEEDER; RICH STUART; ANGELO
SANCHEZ; TRAVIS STEAR; LISA
CRABTREE, SUED IN THEIR
INDIVIDUAL AND OFFICIAL
CAPACITIES,

Defendants.

Case No. 1:22-CV-00449-BLW-DKG

**REPORT AND
RECOMMENDATION RE:
MOTION FOR DISCOVERY
SANCTIONS AGAINST
PLAINTIFF**

INTRODUCTION

Before the Court is Defendant Ford Motor Company's Motion for Discovery Sanctions Against Plaintiff Scott D. Florer (Dkt. 180), which has been referred to the undersigned by District Judge Winmill.¹ (Dkt. 53). Defendants Lithia Ford of Boise, Rhett Sheeder, Rich Stuart, Angelo Sanchez, Travis Stear, and Lisa Crabtree move to join Ford Motor Company's Motion. (Dkt. 183). The motion has been fully briefed and is ripe for

¹ Federal Rule of Civil Procedure 72(b) provides that a magistrate judge hearing a pretrial matter dispositive of a claim or defense must enter a recommended disposition. Fed. R. Civ. P. 72(b)(1).

ER-9

the Court's consideration. (Dkt. 180, 183, 185, 186, 188, 191). Having fully reviewed the record herein, the Court finds the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding delay, and because the decisional process would not be aided by oral argument, the motion will be decided on the record presently before the Court. Dist. Idaho L. Rule 7.1(d). For the reasons that follow, the Court makes the following report and recommendation.

BACKGROUND

The factual and procedural history of this case is extensive relative to its filing date. This case arises from a customer dispute over vehicle repairs and applicable warranty terms. In July 2020, Plaintiff D. Scott Florer contacted a Boise Lithia Motors repair center for assistance with replacing his Ford truck engine. (Dkt. 1 at 4). 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. (Dkt. 1 at 4-14).

On October 26, 2022, Plaintiff filed a Complaint alleging six total claims against multiple defendants: (1) arbitration is not applicable; (2) manufacturer defect; (3) failure to disclose warranty terms; (4) defendant's warranty is unilateral, (5) defendant's warranty is a full written warranty; and (6) installer workmanship defect. (Dkt 1 at 15-19). On June 16, 2023, Plaintiff, as directed by the Court, filed an amended complaint alleging the same claims against Defendants herein. (Dkt 65).

Although numerous motions have been filed and addressed in this case, and many others remain pending before the Court, the procedural history relevant to the motion

presently before the Court is the parties' motion practice and contentions relating to the inspection of the vehicle at issue in this case and Plaintiff's deposition.

In August 2023, the Court granted Defendant Ford Motor Company's ("FMC") Motion to Compel Inspection of Plaintiff's vehicle after Plaintiff's repeated refusal to do so, and cautioned Plaintiff that failure to comply with proper discovery requests necessitating a motion to compel may result in an award of costs. (Dkt. 82). Plaintiff objected to the Court's order pursuant to Federal Rule of Civil Procedure 72(a) (Dkt. 85), and the District Judge overruled Plaintiff's objections. (Dkt. 133). The ordered inspection had not occurred by November 16, 2023, when a hearing was held on other pending discovery motions. Defendants FMC, Lithia Ford of Boise ("Lithia"), and the named Lithia employees, requested that the Court clarify during the hearing and by written order the specifics of the Court's previous order compelling inspection of the vehicle. (Dkt. 147, 168). The Court clarified that Plaintiff must produce his vehicle for inspection at the location chosen by FMC, which was initially agreed upon by all parties, and that all parties to the case are able to attend the inspection. (Dkt. 157). Plaintiff objected to the Court's order (Dkt. 162), and the District Judge again overruled his objections. (Dkt. 169). Plaintiff produced the vehicle for inspection on December 8, 2023. (Dkt. 184).

The main contention between the parties concerning Plaintiff's refusal to produce the vehicle for inspection relates to Plaintiff's Motion for Default Entry against Lithia Ford of Boise, which Plaintiff filed after Lithia failed to timely answer the amended complaint. (Dkt. 86). Plaintiff argued that because Lithia is in default, it is the responsibility of the Court or the other Defendants to prohibit Lithia from attending the inspection, as well as

ER-11

REPORT AND RECOMMENDATION - 3

his deposition. (Dkt. 151, 168 at 64 and 66). The Court entered a Report and Recommendation that Plaintiff's Motion for Default Judgment be denied, because Lithia filed an answer four days after Plaintiff filed his Motion for Default Judgment, and defense counsel for Lithia, who also represents the other Lithia employee defendants in this action, explained the failure to include Lithia the entity in the answer filed by the other Defendants was a scrivener's error. (Dkt. 107, 115). Plaintiff objected to the Court's recommendation (Dkt. 121), and the District Judge adopted the recommendation of the Court. (Dkt. 170). However, even after the Court's numerous orders have been entered, Plaintiff continues to argue that Lithia is in default. (Dkt. 186).

Additionally, Plaintiff filed a Motion to Terminate or Limit his Deposition after multiple failed attempts by Defendants to take his deposition. (Dkt. 111, 112). The Court heard argument on this Motion at the November 16, 2023, hearing. The Court issued a ruling denying Plaintiff's Motion and ordered that FMC is entitled to take Plaintiff's deposition, up to 7 hours in length, at location and by method of FMC's choosing, with notice to the Plaintiff, and that any party to the case is able to attend the deposition. (Dkt. 155). The Court ordered that the deposition be conducted by December 15, 2023. (Dkt. 155). Plaintiff filed objections to that order. (Dkt. 149). Plaintiff's objections were overruled by the District Judge. (Dkt. 172). Plaintiff's deposition was again scheduled for December 14, 2023. (Dkt. 176). Days before Plaintiff's deposition was to take place, Plaintiff filed a motion requesting the deposition be conducted via remote means. (Dkt. 174). The Court denied Plaintiff's Motion and instructed that he must appear in person at his noticed deposition. (Dkt. 177). Plaintiff again objected to the Court's order (Dkt. 178),

REPORT AND RECOMMENDATION - 4

ER-12

and the District Judge overruled Plaintiff's objections. (Dkt. 179). Despite these rulings, Plaintiff did not appear for the deposition as ordered by the Court. (Dkt 180).

On December 19, 2023, Defendant FMC filed the Motion presently before this Court requesting sanctions against Plaintiff pursuant to Federal Rules of Civil Procedure 30(d)(2), 37(a)(5)(A), 37(b), 37(d), and 41(b) for repeatedly failing to comply with numerous Court orders, including those ordering Plaintiff's deposition. (Dkt. 180).² FMC requests the Court to dismiss all of Plaintiff's claims against FMC with prejudice, or in the alternative moves the Court to sanction Plaintiff with other sanctions or enter further orders compelling Plaintiff to appear at his deposition. (Dkt. 180 at 2). Defendant Lithia and the named employee defendants moved to join FMC's Motion. (Dkt. 183). Plaintiff opposes FMC's Motion, arguing again that the deposition should be terminated or limited, or otherwise conducted via remote means. (Dkt. 185). Plaintiff also opposes Lithia's joinder in FMC's Motion, arguing that Lithia is in default. (Dkt. 186 at 7).

LEGAL STANDARDS

A district court has the authority to sanction a party under Rule 37 who "fails to obey an order to permit or provide discovery." *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1337 (9th Cir. 1985); Fed. R. Civ. P. 37(b)(2). Pursuant to Federal Rule of Civil Procedure 37(b)(2) "[i]f a party . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders. They may include

² Defendant FMC acknowledged that the Court had not yet addressed their earlier filed Motion to Dismiss as Sanctions but stated that the events that have occurred after the filing of FMC's first Motion necessitated the new motion. (Dkt. 180-1 at 4).

the following: (v) dismissing the action or proceeding in whole or in part.” Fed. R. Civ. P. 37(b)(2)(A)(v). The Court may order sanctions for a party’s failure to attend its own deposition after being served with proper notice, and those sanctions may include dismissal of the action or proceeding. Fed. R. Civ. P. 37(d)(1)(A) and (d)(3). Further, a defendant may move to dismiss the action if the plaintiff fails to comply with the Federal Rules of Civil Procedure or court orders. Fed. R. Civ. P. 41(b). Unless the court states otherwise, a dismissal pursuant to Rule 37 and 41(b) operates as an adjudication on the merits. *Id.*

DISCUSSION

1. Dismissal pursuant to Rule 37 and 41(b)

Here, Defendants ask the Court to dismiss Plaintiff’s case, in its entirety, based on his pattern and practice of disregarding Court orders. “Before imposing the harsh sanction of dismissal, the district court should consider the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006) (quoting *Anheuser-Busch v. Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995)). This five-factor test is used to review the propriety of Rule 37 sanctions, as well as those pursuant Rule 41(b). *Leon*, 69 F.3d at 958 n. 4; *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019). The Ninth Circuit has said that where a court order is violated, factors one and two support sanctions and four cuts against case-dispositive sanctions, and therefore factors three and five are decisive. *Valley Eng’rs v. Electric Eng’g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998);

ED-14

REPORT AND RECOMMENDATION - 6

Adriana International Corp. v. Thoeren, 913 F.2d 1406, 1412 (9th Cir. 1990). This multifactor test “amounts to a way for a [judge] to think about what to do, not a series of conditions precedent before the judge can do anything.” *Valley Eng’rs*, 158 F.3d at 1057. However, in the interest of comprehensiveness, the Court will address each factor in consideration of whether dismissal is warranted.

The first two factors – the public’s interest in expeditious resolution of litigation and the Court’s interest in controlling the docket – will be addressed together and weigh strongly in favor of dismissal. “[T]he public’s interest in expeditious resolution of litigation always favors dismissal.” *Yourish v. California Amplifier*, 191, F.3d 983, 990 (9th Cir. 1999). This case was originally filed in October of 2022, and has since accumulated almost two hundred docket entries in the Court’s electronic filing system. Since the filing of Plaintiff’s First Amended Complaint in June of 2023, he has filed nineteen motions, most regarding discovery related issues.³ Plaintiff has filed thirteen objections to Court orders and Recommendations made by the referred Magistrate Judge (Dkt. 85, 98, 121, 122, 132,

³ See Plaintiff’s Motion to Compel Discovery (Dkt. 73), Plaintiff’s Motion to Compel Discovery (Dkt. 80), Plaintiff’s Motion to Join an outside party (Dkt. 83), Plaintiff’s Motion for Entry of Default Judgement (Dkt. 86), Plaintiff’s Motion for Relief from Expert Discovery Deadline (Dkt. 88), Plaintiff’s Motion to Strike (Dkt. 96), Plaintiff’s Motion to Terminate or Limit his Deposition (Dkt. 111), Plaintiff’s Motion for Entry of Default (Dkt. 123), Plaintiff’s Motion to Strike (Dkt. 124), Plaintiff’s Motion to Strike (Dkt. 128), Plaintiff’s Motion to Compel Discovery (Dkt. 135), Plaintiff’s Motion to Compel Discovery (Dkt. 138), Plaintiff’s Motion for Protective Order (Dkt. 140), Plaintiff’s Motion to Strike (Dkt. 142), Plaintiff’s Motion to Vacate the Magistrate Judge (Dkt. 152), Plaintiff’s Motion to Strike (Dkt. 159), Plaintiff’s Motion for Remote Deposition (Dkt. 174), Plaintiff’s Motion to Compel Discovery (Dkt. 184), Plaintiff’s Motion to Change Venue and to Dismiss for Lack of Subject Matter Jurisdiction (Dkt. 187).

ER-15

146, 148, 149, 150, 161, 162, 163, 178), and the District Judge has overruled each objection and/or adopted the recommendation while failing to find merit in Plaintiff's arguments.⁴ Plaintiff's continued objections to any adverse decision, without even attempting to proffer a good faith argument in support of his contentions that the orders are erroneous, has hindered the Court's ability to control the docket and caused the case to stall for many months in order for the Court to address duplicative issues. Fed. R. Civ. P. 72(a). Although Plaintiff's objections have continuously been overruled, he has continued to assert that the Court's orders are not binding on him. For example, the Court has on multiple occasions now denied Plaintiff the ability to have his deposition taken via remote means (Dkt. 155, 177, 179), yet in his response to the pendant motion, he states that "any additional deposition time must be by remote means as the plaintiff no longer resides in Idaho or the manufacturer and attorney Bell's mommy magistrate can come to Utah." (Dkt. 185 at 6). The Court being forced to enter redundant orders because Plaintiff continues to object to and argue details already addressed in this case is a waste of the Court's time and resources.

Similarly, Plaintiff continues to argue that Lithia is in default and although the Court refuted that contention, Plaintiff unreasonably refused to comply with Court orders for months based on this previously resolved assertion. (Dkt. 186). While Plaintiff has now allowed the Defendants to conduct the Court ordered vehicle inspection, that specific dispute between Plaintiff and Defendants lasted from April 2023 until Plaintiff finally

⁴ The District Judge has not decided in favor of any of Plaintiff's objections beyond clarifying that the Magistrate Judge's oral ruling that FMC must produce certain documents identified in the order that are not only in FMC's "possession", but also within their "custody and control". (Dkt.172). ER-16

produced the vehicle for inspection in December 2023. (Dkt. 67, 73, 184).⁵ Plaintiff was ordered by the Court on at least five separate occasions to produce his vehicle for inspection. (Dkt. 82, 133, 155, 157, 169). Much of the delay in the vehicle inspection was due to Plaintiff's assertion that Defendant Lithia was in default, and therefore he would not produce the vehicle unless Lithia was prohibited from attending the inspection. (Dkt. 151; 168 at 64, 66). Even after multiple orders informing Plaintiff that Lithia is not in default, he continues to present the same unmeritorious argument demonstrating his defiance towards the authority of this Court. (Dkt. 186 at 7). Now, Plaintiff makes the same argument with relation to Lithia appearing at his noticed deposition. (Dkt 186). Plaintiff's inability to accept binding decisions made by this Court has unreasonably hindered the Court's ability to resolve the case. Plaintiff's conduct has adversely affected the public's interest in prompt case resolution and judicial efficiency.

Plaintiff has been warned on numerous occasions of the requirements imposed on him by the Federal Rules of Civil Procedure and the need to treat the other parties in this case, as well as the Court, with professionalism and civility. (Dkt. 82, 95 at 3, 168 at 64); *See* Dist. Idaho Loc. Civ. R. 83.8. Despite these continued reminders by the Court, Plaintiff's arguments continue to demonstrate disregard for the Court's authority and unprofessionalism towards opposing counsel. (Dkt. 186 at 6) ("The location [of the deposition] has shown that the corporate courthouse magistrate is attempting to be a

⁵ The parties dispute over the vehicle inspection may still be ongoing as Plaintiff has filed a Motion to Compel the report of the inspection, arguing that FMC has refused to provide it to Plaintiff. (Dkt. 184).

ER-17

mommy and babysitter for the Idaho law firm and attorney Bell as well corporate judge Winmill signing off on the magistrate.”); (Dkt. 178 at 5) (“The plaintiffs motion should be granted, the district judge should not be afraid of the magistrate throwing tantrums in the hallways and offices of the federal courthouse to get her way.”); (Dkt. 180-5) (“In [response] to the ford owned district court order by winham or winmill or whatever at dkt text entry on 12/13/2023 about 5pm that plaintiff jump to from SLC Utah and up and run to the Idaho federal courthouse for your mommy magistrate to protect you during a deposition of the plaintiff is simply not going to happen.”). Plaintiff’s actions have demonstrated that regardless of whether Court orders are entered by the Magistrate or the District Judge, if they are adverse to Plaintiff’s wishes, he does not intend to follow them. Plaintiff’s disagreement with the Court’s decisions is not a valid basis for refusing to comply with Court orders. Plaintiff has consistently disrespected this Court’s authority and refused to obey Court orders.

Continuing to address Plaintiff’s duplicative arguments multiple times is inapposite to promoting efficiency of the judicial process. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (The Court has the power to manage their own docket without being subject to endless vexatious noncompliance of litigants.). Even in Plaintiff’s response to this Motion, he does not provide any argument against the imposition of sanctions, he simply reiterates arguments that have already been addressed by this Court. (Dkt. 185) (That the Court limit or terminate his deposition, allow it to be taken via remote means, and that Lithia not attend the deposition because they are in default.). Each of these arguments have been decided by the Court on numerous occasions. While the Court has given a modicum

ER-18

of leeway to Plaintiff given his *pro se* status, that grace period has long since run its course. (Dkt. 82 at 8); *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987 (“Pro se litigants must follow the same rules of procedure that govern other litigants.”) (citation omitted), overruled on other grounds, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012); *Sanchez v. Rodriguez*, 298 F.R.D. 460 (C.D. Cal. 2014) (“Pro se status does not excuse intentional noncompliance with discovery rules and court orders.”). Further, the Court is governed by Federal Rule of Civil Procedure 1, mandating it to “secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. Given the weight of the Court’s docket, it is not inclined to continue to referee discovery matters that should be standard practice, and restate Court orders ad nauseam, when Plaintiff has continued to disobey and ignore those orders. For these reasons, factors one and two weigh strongly in favor of dismissing the case.

The third factor concerns the risk of prejudice to Defendants as the party moving for sanctions. “To prove prejudice, 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.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Malone v. United States Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987). The risk of prejudice to all Defendants is great if the case is not dismissed for Plaintiff’s failure to obey the Court’s orders and the Rules of Civil Procedure. While the Court ordered deposition was to be noticed and taken by FMC, all Defendants were planning to attend the noticed deposition in order to reduce the need for duplicative questions, as is allowed under the Federal Rules of Civil Procedure. Fed. R. Civ. P. 30(d)(1), Advisory Committee’s Note on

2000 Amendment (“In multi-party cases, the need for each party to examine the witness may warrant additional time, although duplicative questioning should be avoided and parties with similar interests should strive to designate one lawyer to question about areas of common interest.”). Deposing Plaintiff is a standard and critical form of discovery that is necessary for Defendants to move forward in this litigation. Defendants’ inability to examine Plaintiff’s claims through his deposition impairs their ability to pursue a motion for summary judgment or adequately develop a defense if the case is to proceed to trial. Plaintiff’s conduct has not allowed Defendants to investigate the factual basis for his claims, and therefore the risk of prejudice to Defendants is high.

In other Ninth Circuit cases involving dismissal under Rule 41(b) for failing to comply with a court order, the third factor considers the plaintiff’s excuse for noncompliance. *Pagtalunan*, 291 F.3d at 642; *Malone*, 833 F.2d at 131 (“Whether prejudice is sufficient to support an order of dismissal is in part judged with reference to the strength of the plaintiff’s excuse for the default.”). *Malone* involved a Rule 41(b) dismissal for noncompliance with a court order, and the district court found Plaintiff’s excuse to be “groundless”, justifying dismissal. *Id.* Similarly, *Yourish* also involved plaintiff’s noncompliance with a court order, and the court found the defendants were sufficiently prejudiced where the plaintiff offered only a “paltry excuse” for their failure to comply with the court order. 191 F.3d at 991-92. Here, Plaintiff provides no excuse for his failure to comply with numerous orders of this Court. (Dkt. 185).

Even if the Court considers that Plaintiff has moved out of state as an excuse for his noncompliance, it is not sufficient to justify his absence, nor his other instances of failing

to comply with the orders of this Court. The Court previously found that argument to be unconvincing in Plaintiff's Motion to have his deposition taken by remote means. (Dkt. 177, 179); Wright & Miller, Federal Practice & Procedure, § 2112 (3d ed. 2013) (As a general rule, a "plaintiff will be required to make himself or herself available for examination in the district in which suit was brought."). Both the Court Order regarding the date, location, and method of the deposition and the District Judge's order overruling Plaintiff's objections were entered prior to the date of Plaintiff's noticed deposition. (Dkt. 155, 172) (The deposition was ordered to occur on or before December 15, 2023, at the location and method of FMC's choosing, with notice to Plaintiff.). Although it is unclear when exactly Plaintiff moved out of state, the Court previously addressed this argument and found that it was not sufficient justification to allow for remote deposition.⁶ (Dkt. 177, 179); (Dkt. 185 at 3) ("The plaintiff has moved out of state on December 1st 2023"); (Dkt. 187-1 at 3) ("[T]he plaintiff lived in Idaho until December 8th, 2023."); (Dkt. 184 at 2) (Plaintiff produced his vehicle for inspection in Idaho on December 8, 2023). Regardless of when Plaintiff decided to voluntarily move out of state, Plaintiff was aware of the scheduled deposition with adequate advance notice, yet still failed to appear.

⁶ "FMC has demonstrated that allowing Plaintiff to have his deposition conducted remotely would be prejudicial. (Dkt. 176). Plaintiff has previously failed to appear to multiple depositions noticed by FMC. (Dkt. 119, 176). When Plaintiff did appear for the deposition the precipitated his earlier Motion to Terminate his Deposition (Dkt. 111), he was non-compliant, refused to answer legitimate questions posed to him, and unilaterally terminated his deposition. (Dkt. 118-21). The Court is concerned that allowing the deposition to be conducted by remote means will result in Plaintiff continuing to refuse to participate in defiance of Court orders and unnecessarily and unreasonably extend the discovery process." (Dkt. 177 at 4).

ER-21

Additionally, if the Court were to enter an additional order somehow securing Plaintiff's appearance at his deposition, his arguments in opposition to this Motion demonstrate that he does not intend to meaningfully participate in his deposition in compliance with the Rules of Civil Procedure. He again argues that that FMC's questioning during their prior deposition attempt was inappropriate, irrelevant, or duplicative. (Dkt. 185 at 4-5). The Court first addressed this issue during the November hearing:

Mr. Florer, I have reviewed all of the paperwork and briefing in this case and I am concerned about your -- your actions during the deposition. I understand you're representing yourself. You're not an attorney so when you say objection, attorney/client privilege, that's inappropriate. You do not have an attorney representing you.

When you refuse to answer questions because you say you're in a representative capacity, when you're put under oath, sir, you are put under oath. The rules require you to answer in good faith the questions that are reasonably posed to you. And so I am concerned, sir, about at least the first go-around about you're not following Rule 30 of the rules of -- Federal Rules of Civil Procedure, sir. I understand you want to represent yourself. You're entitled to do so, sir. But you must still follow the rules and will be held accountable to those rules during the terms of your deposition.

Now, with respect to the questions that are asked, I can tell you that attorneys can ask any question related to the lawsuit and usually those questions are related to discovery responses that they got already. So it is not an objection to say asked and answered because you asked that in discovery. That is what a deposition is intended to be, to get your clarity, to get your responses to the issues in this lawsuit.

And so, sir, I am concerned about your behavior during a deposition where you've been put under oath and you're subject to the rules and you're not answering the questions posed and then by all accounts, you decided to unilaterally terminate your deposition and end the matter.

(Dkt. 168 at 51-52). The District Judge agreed with the Magistrate Judge's assessment of Plaintiff's conduct during the earlier attempted deposition. (Dkt. 172 at 12-13).

ER-22

Nonetheless, Plaintiff continues to make the same arguments regarding the substance of Defendants' questions posed to him, and the Court is not convinced that having Plaintiff appear for an additional deposition would allow Defendants to obtain sufficient responses to the questions posed. Plaintiff's actions further signal his intention to prevent Defendants from investigating his claims against them.

Plaintiff does not provide any further justification for his noncompliance, and his refusal to participate in the timely resolution of this case on the merits is prejudicial to Defendants. Although Plaintiff's most recent refusal to appear for his Court ordered deposition prompted Defendants to file the instant Motion, the Court concludes that Plaintiff has demonstrated a pattern of disrespect of the Court's authority and noncompliance with the Court's orders that has prejudiced Defendants. The third factor weighs in favor of dismissal.

The fourth factor – the public policy favoring disposition on the merits – weighs against dismissal, as it always does even when Plaintiff openly fails to follow Court orders. *See Pagtalunan*, 291 F.3d at 643. Although this factor weighs against dismissal, it is not sufficient to outweigh the other four factors, which here, support dismissal of Plaintiff's claims.

The fifth and final factor considers the availability of less drastic measures. "[T]he following factors are of particular relevance in determining whether a district court has considered alternatives to dismissal: (1) Did the court explicitly discuss the feasibility of less drastic sanctions and explain why alternative sanctions would be inadequate? (2) Did the court implement alternative methods of sanctioning or curing the malfeasance before

ER-23

REPORT AND RECOMMENDATION - 15

ordering dismissal? (3) Did the court warn the plaintiff of the possibility of dismissal before actually ordering dismissal?" *Malone*, 833 at 131-32.

Although the Ninth Circuit has not held that an explicit discussion of alternative sanctions is necessary for an order of dismissal to be upheld, it has indicated a preference for the Court to discuss the feasibility of alternatives in its consideration. *Id* at 132. Though the Court does not believe a less drastic sanction exists that will rectify Plaintiff's noncompliance, it will discuss the possible alternatives. *Id*. ("Under the egregious circumstances present here, where the plaintiff has purposefully and defiantly violated a court order, it is unnecessary (although still helpful) for a district court to discuss why alternatives to dismissal are infeasible.").

Other alternative sanctions pursuant to Rule 37(b)(2) include "(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; . . . (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey any order." Fed. R. Civ. P. 37(b)(2)(A)(i-vii).

Allowing the Court to take facts as established, restricting Plaintiff from supporting or opposing claims or introducing certain evidence, or striking Plaintiff's pleadings would not sufficiently remedy his noncompliance with Court orders, nor would it eliminate the need for Defendants to acquire information from Plaintiff via his deposition. Additionally,

ER-24

striking Plaintiff's First Amended Complaint would have the same ultimate result as dismissal. Staying the proceeding until the Court order is complied with would likely further prejudice Defendants. Plaintiff has been noncompliant with the Rules of Civil Procedure and unprofessional during Defendants previous attempts to depose him (*See* Dkt. 118-21), and although the Court has informed him that his conduct was inappropriate on numerous occasions, there is no reason to believe he will suddenly become compliant with the Rules as a reaction to staying the proceedings or imposing another available sanction. Even further, during the November 16, 2023, hearing, Plaintiff became agitated and informed the Court that he would not obey Court orders, and the Court responded that, "[w]ell, then you're going to be in contempt because I'm. . ." (Dkt. 168 at 65). Plaintiff interrupted the Court and stated, "[w]ell, then we'll deal with that when we get to it." (Dkt. 168 at 65). Contempt as an alternative sanction does not appear to be an adequate deterrent for Plaintiff's conduct and provides no relief to allow Defendants to investigate Plaintiff's claims. Under the circumstances presented here, the Court has considered alternative sanctions and finds those other, lesser sanctions to be ineffective and insufficient to address Plaintiff's behavior.

Plaintiff has been repeatedly warned regarding the imposition of sanctions against him. (Dkt. 95 at 3) ("Should Plaintiff's failure to follow discovery rules and court orders continue, FMC may properly bring a motion to ensure compliance and seek appropriate sanctions."); (Dkt. 168 at 63-64) ("If you do not follow the orders of this Court, I direct you to look at Federal Rule of Civil Procedure 37(b)(2). In that rule, it gives this Court authority to impose a range of sanctions for failure to follow the Court's orders.").

Although the Court never specifically warned Plaintiff about the possibility of dismissal as a sanction, he would have been well aware of that fact, given that FMC first moved for dismissal as sanctions against Plaintiff for failing to comply with Court orders in October 2023. (Dkt. 118). Plaintiff provided a response to FMC's October Motion for Sanctions arguing that because the District Judge had not yet overruled his objections, he did not violate a Court order.⁷ (Dkt. 131 at 3). However, at this time and prior to his recent refusal to appear for his noticed deposition, the District Judge had considered and overruled all Plaintiff's filed objections, and he still refuses to comply. An explicit warning to Plaintiff that violating Court orders may lead to dismissal of his claims here would be unnecessary. The Court finds Plaintiff was aware of the possibility of sanctions being imposed against him and that dismissal of his claims was a type of sanction available to the Court. He can hardly be surprised by the imposition of a harsh sanction in response to his repeated and willful violation of pretrial orders and his increasingly disrespectful and volatile actions directed at the other parties and this Court. Therefore, this factor weighs in favor of dismissal.

Having given careful consideration to the above-mentioned standards and acknowledging that dismissal is a disfavored sanction to be imposed sparingly, the Court

⁷ Plaintiff also argued in his previous response to FMC's first Motion for Sanctions, that there was no Court order compelling the inspection of his vehicle, because "the Magistrate's recommendation is not authority". (Dkt. 131 at 5). As the Court has informed Plaintiff on multiple occasions, he has the right to object to orders of this Court pursuant to Rule 72(a), but all orders made by the referred Magistrate Judge regarding non-dispositive matters are Court Orders, not recommendations. *Compare* Fed. R. Civ. P. 72(a), *with* Fed. R. Civ. P. 72(b).

ER-26

finds and recommends that dismissal of Plaintiff's claims against all Defendants is warranted in this case pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(v) and 41(b). Under these egregious circumstances, a dismissal with prejudice is appropriate. *See Malone*, 833 F.2d at 133 (upholding dismissal with prejudice for failure to comply with court orders).

2. Fees and Costs

FMC also moves the Court to award fees and costs for the making of this Motion and for its failed efforts in deposing Plaintiff. (Dkt. 180-1 at 17). The Court must "require the party or deponent whose conduct necessitated the motion to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). Additionally, when a party fails to appear for his deposition, "the court must require the party failing to act . . . to pay the reasonable expenses, including attorney's fees, caused by the failure." Fed. R. Civ. P. 37(d)(3). However, the Court is not required to award reasonable expenses in either of these circumstances if the failure was substantially justified or other circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5)(A) and (d)(3).

Considering that FMC has yet to submit a motion for attorney's fees and costs and memorandum of the reasonable fees and costs incurred, the Court will reserve its ruling on that issue until the issue of sanctions is resolved and FMC has filed its Motion and supporting memorandum.

ER-27

RECOMMENDATION

NOW THEREFORE IT IS HEREBY RECOMMENDED that:

1. Defendant FMC's Motion for Sanctions (Dkt. 180) be **GRANTED**.
2. Defendant Lithia Ford of Boise, Inc., Rhett Sheeder, Rich Stuart, Angelo Sanchez, Travis Stear, and Lisa Crabtree's Motion for Joinder to Defendant FMC's Motion for Sanctions (Dkt. 183) be **GRANTED**.
3. This action be **DISMISSED**, with prejudice, pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(v) and 41(b).

Written objections to this Report and Recommendation must be filed within fourteen (14) days pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(b), or as a result of failing to do so, that party may waive the right to raise factual and/or legal objections to the United States Court of Appeals for the Ninth Circuit.



DATED: January 9, 2024

A handwritten signature in cursive script, appearing to read "Debora K. Grasham".

Honorable Debora K. Grasham
United States Magistrate Judge

ER-28

**NOTICE OF APPEAL TO THE NINTH CIRCUIT COURT OF
APPEALS NORTHERN UNIT FROM AN APPELABLE
ORDER OF THE US DISTRICT COURT OF THE
SOUTHERN DISTRICT OF IDAHO**

Appeal From the United States District Court for the Southern District of Idaho

Docket Number 1:22-cv-0449-BLW/DKG

SCOTT FLORER, Plaintiff

v.

FORD MOTOR CO., LITHIA
FORD OF BOISE, SHEEDER,
STUART, STEAR, CRABTREE,
and SANCHEZ. Defendants

NOTICE OF APPEAL

Scott Florer appeals to the United States Ninth Circuit Court of Appeals Northern Unit from the Order by the District Judge Adopting Findings and Recommendations of a Magistrate Judge, Dismissed With Prejudice pursuant to F.R.C.P. Rule 37(b)(2)(A)(v) and 41(b) Dkt. 212 entered on April 4th, 2024 and all related issues, including but not limited to, the pending motions and other motions, Orders, Memorandum Decisions, and Reports n Recommendations (RnR) at Dkts. 77 Lithia Ford of Boise's Answer to the First Amended Complaint, 82 Magistrate RnR Re Motion to Compel Vehicle Inspection, 83-84 Motion to Join AER Manufacturing Inc. FRCP Rule 19(a), 86-87 Motion for Default Judgment Against Lithia Ford of Boise, 90 Lithia Ford of

ER-123

Boise's Amended Answer to the First Amended Complaint, 96-97 Motion to Strike Lithia Ford of Boise's Amended Answer, 111-112 Motion to Terminate or Limit Deposition, 115 RnR Re Motion for Default Judgment and Motion to Strike Lithia Ford of Boise's Amended Answer, 118 Motion to Dismiss Claims Against FMC Alternative to Compel Inspection of Vehicle and Deposition ..., 120 Motion to Join FMC's 118 Motion by Lithia Ford of Boise, 123 Application to the Clerk for Entry of Default Sum Certain Against Lithia Ford of Boise, 124 Motion to Strike Lithia Ford of Boise's Memorandum in Opposition to Terminate or Limit Deposition, 127 RnR Re Motion to Join AER Manufacturing Inc., 128-129 Motion to Strike Lithia Ford of Boise's Joinder to FMC's 118 Motion, 133 Order Re FMC Motion to Compel Vehicle Inspection, 134 Prior Shortened Deadlines Notice of Hearing being Vacated and Reset by Magistrate, 135-136 Motion to Compel Discovery from Lithia Ford of Boise, 138-139 Motion to Compel Discovery from Crabtree Sanchez Stear Stuart Sheeder, 140 Motion for Protective Order from Lithia Ford of Boise's Interjection into the FMC Court Ordered Vehicle Inspection, 142 Motion to Strike Filed Unreviewed Deposition Transcript at 117-1 and 118-21, 152 Motion to Vacate Magistrate Pursuant to 28 U.S.C. 636(c)(4), 157 RnR Re Motion to Clarify by Lithia Ford of Boise and Re Motion for Protective Order, 159 Motion to Strike Lithia Ford of Boise's Motion to Modify Dockets 82 and 133 to Include Lithia Ford of Boise, 169 Order Re Lithia Ford of Boise's Interjection into the FMC Vehicle Inspection, 170 Order Re Application to the Clerk for Entry of Default Sum Certain Against Lithia Ford of Boise, 171 Order Re Joinder of Ford Authorized Remanufacturer of the Consumer Product AER Manufacturing Inc., 172 Order Re Discovery, 173 Notice of Change of Address, 174 Motion for Deposition by Remote Means, 177 RnR Re Deposition by Remote Means, 179 Order Re Deposition by Remote Means, 184 Motion to Compel Discovery of the FMC Vehicle Inspection, 187 Motion to Transfer Case for Lack of

ED-

129

Venue Over Ford Alternatively Dismissal Without Prejudice Due to Lack of Subject-Matter
Jurisdiction Over the Manufacturer, 189 Returned Mail of Dkt. 189 Due to the Plaintiffs Change
of Address, 192 RnR Re Motion for Discovery Sanctions. 194 Motion for Summary Judgment,
195 Motion Filing Under Seal, 199 Order Re Staying Case, 200 Motion for Joinder by Lithia
Ford of Boise, 202 Addendum to Florer Decl. In Support of Motion for Summary Judgment, 211
Documents Filed Under Seal the Replacement Pages of Exhibit No. 37.

04/24/2024

Scott Florer

/s/scottflorer

dennisflorer8@outlook.com

6211 Highland Dr. Unit 111

Holladay UT 84121

ER

130

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

D. SCOTT FLORER,

Plaintiff,

vs.

FORD MOTOR SERVICE COMPANY
INC.; LITHIA MOTORS SUPPORT
SERVICES INC.; JAMES D. FARLEY, JR.;
LISA DRAKE; BRYAN DEBOER; CHRIS
HOLTZSHU; RHETT SHEEDER; RICH
STUART; ANGELO SANCHEZ; TRAVIS
STEER; and LISA CRABTREE, sued in
their individual and official capacities,

Defendants.

Case No. 1:22-cv-00449-BLW-DKG

**ORDER RE: MOTION TO
COMPEL (DKT. 67)**

This matter comes before the Court on Defendant Ford Motor Company's ("FMC") Motion to Compel (Dkt. 67) pursuant to Federal Rules of Civil Procedure 34 and 37. The parties filed responsive briefing and the matter is ripe for the Court's consideration (Dkt. 70, 71, 75.) Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument the Court will decide the motion based on the

ER-92

record. Dist. Idaho L. Civ. Rule 7.1(d). For the reasons that follow, the Court will grant FMC's motion to compel and deny Plaintiff's motion for protective order.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from a customer dispute over vehicle repairs and applicable warranty terms. Plaintiff D. Scott Florer alleges that in July 2020, he contacted a Boise Lithia Motors repair center for assistance with repairing and/or replacing the engine in his 2013 Ford F-150 Truck (the "Vehicle"). (Dkt. 1 ¶¶ 1, 7.) Between July 2020 and September 2021, Lithia performed service work on the Vehicle, but Florer alleges continued engine trouble. Florer filed his Complaint on October 26, 2022, alleging six claims against Defendants: (1) arbitration is not applicable; (2) manufacturer defect; (3) failure to disclose warranty terms; (4) Defendants' warranty is unilateral; (5) Defendant's warranty is a full written warranty; and (6) installer workmanship defect. (*Id.* at 15-19).

FMC filed a motion to compel production of the Vehicle for inspection following multiple requests for Florer to produce and a request for Florer to pay FMC's costs of filing the motion under Federal Rule of Civil Procedure 37(a)(5)(A). (Dkt. 67.) Prior to filing the motion, FMC attempted to coordinate with Florer to conduct an inspection, but he refused to produce the Vehicle and asked that FMC "submit a formal discovery request, than [*sic*] obtain a court order." (Dkt. 67; Bell Decl. ¶ 2, Ex. 1.) FMC also sent a meet and confer letter to Florer responding to his objections to their request for inspection and set a telephone conference, which Florer failed to attend.

Florer objects to FMC's motion on the grounds that the requested inspection is beyond the scope of relevant discovery, not proportional to the needs of the case, is

vague, unreasonable, unduly burdensome, and cumulative. (Dkt. 70 and 71.) He also moves for a protective order limiting the production of the Vehicle. The primary basis for Florer's objection is his argument that FMC already inspected the Vehicle when it was in the possession of another defendant, Lithia Ford of Boise, prior to the filing of the complaint.

LEGAL STANDARD

Parties may obtain discovery regarding any nonprivileged matter that is relevant to the party's claim or defense and is proportional to the needs of the case. Fed. R. Civ. P. 26(b). Federal Rule of Civil Procedure 34 provides that a party may serve on any other party a request within the scope of Rule 26(b) to produce and allow the requesting party to inspect items in the responding party's possession, custody, or control, including any tangible things. Fed. R. Civ. P. 34(a)(1).

If a party fails to produce documents or fails to respond to a Rule 34 request, Federal Rule of Civil Procedure 37 allows "[a] party, upon reasonable notice to other parties and all persons affected thereby, [to] apply for an order compelling disclosure or discovery." *Id.* at 37(a)(1).

A party from whom discovery is sought may move for a protective order, but must include a certification that the movant in good faith attempted to confer with other parties in an attempt to resolve the dispute without court action. Fed. R. Civ. P. 26(c)(1). "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . ." *Id.*

ER-94

An award of sanctions is mandatory under Rule 37(a)(5) unless the party shows that the failure to respond was substantially justified or that an award of expenses would be unjust. *Infanzon v. Allstate Ins. Co.*, 335 F.R.D. 305, 311 (C.D. Cal. 2020). It is the burden of the party being sanctioned to establish this substantial justification or the existence of special circumstances. *Infanzon*, 335 F.R.D. at 311. A plaintiff's *pro se* status does not insulate him from an order requiring the payment of such expenses. *See Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1994) (a court cannot decline to impose sanctions simply because a plaintiff is proceeding *pro se*); *Shabazz v. Giurbino*, No. 1:11-cv-01558-DAD-SAB (PC), 2016 WL 4992684, at *2 (E.D. Cal. Sept. 19, 2016) (because plaintiff's opposition to the motion to compel was not justified, reasonable expenses of attorney's fees should be assessed against plaintiff).

DISCUSSION

1. FMC's Motion to Compel

Here, FMC seeks an order compelling Florer to produce the Vehicle for inspection. (Dkt. 67.) Florer raises several objections the court will address in turn below¹. (Dkt. 71.)

First, Florer objects to the inspection arguing it is beyond the scope of relevant discovery. The inspection of the engine by FMC is relevant to Florer's allegation of

¹ Florer also contends that FMC's Motion to Compel should be denied for failure to follow District of Idaho Local Rule 7.1(b)(1), which provides, "[e]ach motion, other than a routine or uncontested matter, must be accompanied by a separate brief, not to exceed twenty (20) pages, containing all of the reasons and points and authorities relied upon by the moving party." FMC filed a single motion (Dkt. 67) and included within the motion what would typically be contained in the separate memorandum required by Local Rule 7.1. While the Court encourages FMC to follow the local rules in any future filings, it will not deny FMC's motion on an error of form that does not prejudice Florer.

ER-95

ongoing mechanical problems with the Vehicle, which underly all the claims raised in the complaint. Parties may obtain discovery of items relevant to a party's claim or defense and proportional to the needs of the case. Fed. R. Civ. P. (26)(b)(1). Here, FMC's request to inspect is relevant and necessary to its ability to defend itself against Florer's claims, particularly where FMC has not had the opportunity to inspect the Vehicle.

Second, Florer objects arguing that the term "inspection" is vague. Federal Rule of Civil Procedure 34 allows a party to request another party to produce and permit inspection of tangible things. Fed. R. Civ. P. 34(a)(1)(B). FMC provided Florer with further details in their response to his objection stating the inspection would include an examination of the Vehicle's engine and function. (Dkt. 71.) The Court finds that such a request is appropriately defined and clear.

Third, Florer objects on the grounds that the offered location for FMC to conduct the inspection raises concerns of bias and prejudice. Florer refused the opportunity to coordinate with FMC regarding the details of the requested inspection. (Dkt. 67.) FMC suggested Lithia Ford of Boise as a possible location to conduct the inspection. (Dkt. 67.) FMC stated it would be willing to discuss a mutually agreeable location, such as another Boise area dealership, if Florer prefers. (Dkt. 75.) Florer's failure to engage meaningfully in this process to secure a mutually agreeable inspection location is not a proper basis for denying FMC's request.

Fourth, Florer objects stating "[t]he defendants themselves have already conceded that they have no viable remedy for another remedial attempt" (Dkt. 71.) He cites to multiple portions of his complaint concerning the three initial repair appointments for the

Vehicle at Lithia Ford of Boise. (Dkt. 1.) However, FMC has not conceded that a defect exists as stated in Florer's complaint or that there is no remedy if a defect does exist.

Fifth, Florer contends that FMC had possession of the Vehicle during all relevant times in the complaint for a total of 87 days on three separate occasions, and therefore objects as to timeframe. On those occasions, the Vehicle was in the possession of Lithia Ford of Boise as shown by the repair orders attached to Florer's response. FMC was not present on the occasions that Florer took the Vehicle to Lithia Ford of Boise. FMC does not own the Lithia Ford of Boise dealership, nor are the employees at Lithia Ford employees of FMC. Lithia Ford of Boise and FMC are separate entities. Thus, Florer's objection is without merit.

Sixth, Florer contends that if an inspection does occur, audio and visual recording conducted by an independent camera crew should be provided. Again, this is not a proper basis to deny FMC's request. Audio and visual recording during a discovery inspection is not a requirement of the Federal Rules of Civil Procedure. FMC advised Florer that he is able to be present or send someone on his behalf to be present during the inspection to document the process. But, FMC is not required to provide audio or visual recording of its inspection of the Vehicle to Florer.

Florer's final objection is that an inspection would be unreasonably cumulative, duplicative, and burdensome. He argues that the information sought by the inspection is in the care, control, and custody of FMC. FMC has reviewed the repair orders from the three occasions that Florer took the Vehicle to Lithia Ford of Boise, but those occasions were not for the purpose of inspecting the Vehicle in advance of litigation, but rather for the

purpose of repairing the Vehicle prior to the filing of Florer's complaint. As indicated above, FMC has not yet had an opportunity to inspect the Vehicle for purposes of this litigation.

Accordingly, the Court finds that FMC is entitled to inspect the Vehicle pursuant to Rules 26, 34, and 37, and, therefore, the motion to compel Florer to produce the Vehicle for inspection is granted. Parties are directed to meet and confer on or before September 29, 2023 to agree on a mutually acceptable date, time, and location for the inspection.

For the same reasons, Florer's motion for protective order is denied. The requested inspection is not unreasonable or duplicative, because as discussed above, FMC itself has not yet had the opportunity to inspect the Vehicle. Fed. R. Civ. P. 26(b)(2)(C). The three prior occasions identified by Florer when the Vehicle was in the possession of Lithia Ford of Boise were prior to the initiation of this lawsuit and for the purpose of repairing the Vehicle, not to inspect it in relation to the claims raised in this litigation. Further, FMC was not present during those occasions and FMC is a separate entity from Lithia Ford of Boise. Additionally, the inspection will not be unduly burdensome or expensive given FMC will pay for the inspection and the Court's direction that the date, time, and location of inspection shall be mutually agreed upon by the parties and in such a manner so as to not unduly burden Florer. Fed. R. Civ. P. 26(c)(1).

2. FMC's Request for Costs

FMC seeks an award of its reasonable expenses incurred in bringing its successful motion to compel against Florer, pursuant to Federal Rule of Civil Procedure 37. Such an award is mandatory unless "(i) the movant filed the motion before attempting in good faith

to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A).

Here, Florer raised several objections to FMC's request for production. While the objections did not ultimately prove to be successful, the Court finds that the *pro se* Plaintiff's objections were substantially justified given his sincere belief, albeit mistaken, that FMC had previously inspected the Vehicle on three occasions by virtue of the inspections performed by Lithia Ford of Boise for the purpose of repairing the Vehicle. (Dkt. 71). Further, Florer was responsive to the request for inspection and raised legitimate concerns regarding how the inspection would be performed. For these reasons, the Court will deny FMC's request for costs on the present motion to compel. Florer is cautioned that future failures to comply with proper discovery requests that necessitate a motion to compel may result in an award of costs if the moving party prevails. *See Sanchez v. Rodriguez*, 298 F.R.D. 460 (C.D. Cal. 2014) ("*pro se* status does not excuse intentional noncompliance with discovery rules and court orders.").

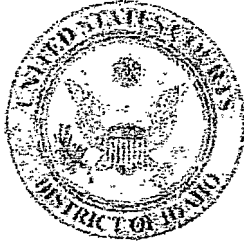
ORDER

THEREFORE IT IS HEREBY ORDERED that Defendant's Motion to Compel Inspection (Dkt. 67) is **GRANTED IN PART AND DENIED IN PART** as follows:

- 1) The Motion to Compel production of the Vehicle for inspection is **GRANTED**.
- 2) The Defendant's request for costs is **DENIED**.

FURTHER, IT IS HEREBY ORDERED that Plaintiff's Motion for Protective Order (Dkt. 70) is **DENIED**.

ER-99



DATED: August 15, 2023

A handwritten signature in cursive script, reading "Debora K. Grasham".

Honorable Debora K. Grasham
United States Magistrate Judge

ER-100

U.S. COURTS

JAN 02 2024

Rev'd _____ Filed _____ Time _____
STEPHEN W. KENYON
CLERK, DISTRICT OF IDAHO

DISTRICT COURT

DISTRICT OF IDAHO

Case No. 1:22-cv-00449-BLW-DKG

MEMORANDUM DECISION &
ORDER

Dennis Scott Florer, I
5460 NW Tennant Av. TRLR B
Mountain Home, ID 86347

EXXIE

935 DE 2

RETURN TO SENDER
VACANT
UNABLE TO FORWARD

VAL. REC. 25024

INTRODUCTION

On Plaintiff D. Scott Florer's objections to a
Magistrate Judge Debora K. Grasham. See
below, the Court will overrule Plaintiff's

STANDARD OF REVIEW

(A), a magistrate judge may hear and determine
with certain exceptions not relevant here. This
judge's ruling on such a matter if that ruling is
" 18 U.S.C. § 636(b)(1)(A).

ER-426

U.S. COURT OF
APPEALS
Seale, ID 83724

OFFICIAL BUSINESS

1 somebody doesn't follow the rules and they're now before the
2 Court and being told to follow the rules, I expect you to follow
3 the rules, sir. And so --

4 MR. FLORER: And I did follow the rules.

5 COURT: So the defendants are able to ask questions
6 that are related to this lawsuit. This is your lawsuit that you
7 brought, sir.

8 MR. FLORER: They don't have a right to have a fishing
9 expedition. Their questions need to go to a certain point of
10 evidence.

11 COURT: Mr. Florer.

12 MR. FLORER: And they don't --

13 COURT: Please don't interrupt me one more time, sir.
14 I'm happy -- I'm trying to be patient with you but my patience
15 is running low.

16 Everything I looked at in that transcript was relevant,
17 was presented in a professional manner. It is not a fishing
18 expedition. Your responses to each of those relevant questions
19 was not appropriate. When you object to something, you may do
20 so but the rules require you to answer the question after you
21 have posed your objection. Merely saying you object and you're
22 not going to answer is not consistent with Federal Rule of
23 Criminal Procedure 30, sir. Do you have anything else,
24 Mr. Florer?

25 MR. FLORER: So yeah. *EL-611* They cannot demonstrate what

Scott Florer, Pro-Se

UNITED STATES DISTRICT COURT IN THE
SOUTHERN DISTRICT OF IDAHO

S. FLORER

CASE NO. 1:22-cv-0449-BLW/DKG

v

MOTION FOR DEPOSITION BY REMOTE

FMC, et.al.

MEANS

Hearing Date: 12/25/2023

COMES NOW THE PLAINTIFFS Motion under F.R.C.P. Rule 30(b)(4) to depose by
remote means.

12/10/2023

Scott Florer

/s/scottflorer

EP-637

CERTIFICATE OF SERVICE 1:22CV449-BLW/DKG

I certify that I filed the enclosed documents electronically thru the courts iCourt/e-File sys. which caused the following parties or counsel to be server by electronic means:

P.J. Collaer pcollaer@ajhlaw.com 250 S Fifth St. Ste. 700 PO Box 7426 Boise ID 83707

J.T. Simmons jsimmons@evanskeane.com

A. Bell abell@evanskeane.com 1161 W River St. Ste. 100 PO Box 959 Boise ID 83701

12/10/2023

Scott Florer

/s/Scott Florer

ER-638

Scott Florer, Pro-Se

UNITED STATES DISTRICT COURT IN THE
SOUTHERN DISTRICT OF IDAHO

S. FLORER

CASE NO. 1:22-cv-0449-BLW/DKG

v

MEMORANDUM IN SUPPORT OF MOTION

FMC, et.al.

FOR DEPOSITION BY REMOTE MEANS

COMES NOW THE PLAINTIFFS Memorandum In Support of Motion under F.R.C.P.
Rule 30(b)(4) to depose by remote means.

I. ARGUMENT

The plaintiff attended the first FMC deposition at the attorney of records office in Boise on August 23rd 2023 where the court reporter was a, no show. Thus, three hours counts to the plaintiffs deposition time. FMC now has five hours left per F.R.C.P. Rule 30.

ER-639

FMC than rescheduled the deposition and changed the method of recording from stenographic recording with a transcript only, to audio visual recording. FMC Second Amended Notice of Deposition Dated 08/23/2023.

FMC, again, made yet another change as to the deposition of the plaintiff by changing the location of the depo from the attorney's office conference rooms to a U.S. Courthouse conference room on the sixth (6) fl. in Boise. Id. Attachment C, FMC Third Amended Notice of Deposition. On October 4th, 2023.

Currently, FMC has noticed several more depositions absent any communication with the plaintiff and deposing itself at each one claiming the plaintiff has failed to show. Because FORD OWNES THE FEDERAL DISTRICT COURT OF IDAHO as the record is clear that the judges on this case are corporate judges.

However, the plaintiff has moved to another state. Dkt. 173, Change of Address. Accordingly, when the ford owned district judge signs off on the ford owned magistrate judges recommended order as to the numerous depositions by ford, Per F.R.C.P. Rule 30(b)(4) the deposition of the plaintiff must be by remote means.

III. CONCLUSION

ER-640

For the foregoing reasons the motion should be granted.

12/10/2023

Scott Florer

/s/scottflorer

ER-641

CERTIFICATE OF SERVICE 1:22CV449-BLW/DKG

I certify that I filed the enclosed documents electronically thru the courts iCourt/e-File sys. which caused the following parties or counsel to be server by electronic means:

P.J. Collaer pcollaer@ajhlaw.com 250 S Fifth St. Ste. 700 PO Box 7426 Boise ID 83707

J.T. Simmons jsimmons@evanskeane.com

A. Bell abell@evanskeane.com 1161 W River St. Ste. 100 PO Box 959 Boise ID 83701

12/10/2023

Scott Florer

/s/Scott Florer

ER-642

Scott Florer, Pro-Se

UNITED STATES DISTRICT COURT IN THE
SOUTHERN DISTRICT OF IDAHO

S. FLORER

CASE NO. 1:22-cv-0449-BLW/DKG

v

NOTICE OF PLAINTIFF'S CHANGE

FMC, et.al.

ADDRESS

TAKE NOTICE the plaintiff has changed addresses from 5460 NW Tennant Mountain Home
ID 83647 to 6211 Highland Dr. Unit 111 Holladay UT 84121.

12/10/2023

Scott Florer

/s/scottflorer

EL 643

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE 1:22CV449-BLW/DKG

I certify that I filed the enclosed documents electronically thru the courts iCourt/e-File sys. which caused the following parties or counsel to be server by electronic means:

P.J. Collaer pcollaer@ajhlaw.com

250 S Fifth St. Ste. 700

PO Box 7426

Boise ID 83707

J.T. Simmons jsimmons@evanskeane.com

A. Bell abell@evanskeane.com

1161 W River St. Ste. 100

PO Box 959

Boise ID 83701

12/10/2023

Scott Florer

ss/Scott Florer

ER-634 644



Invoice #: 940986

Tag #: T1461

LITHIA FORD LINCOLN OF BOISE #72
8853 WEST FAIRVIEW AVE. BOISE, IDAHO 83704

TELEPHONE (208) 342-8811

REMIT PAYMENT TO: LITHIA FORD SUPPORT SERVICES
PO BOX 4108 PORTLAND, OR 97206-4108

"ACCOUNTING"

DUPLICATE 3

Customer #47379

Service Advisor: 68538 LISA CRABTREE

DEAN'S FLORES

264 LOCUST WAY

NEW PLYMOUTH, ID 83655

Home: 208-318-8657 Bus:

Cell: Email:

COLOR	YEAR	13	DEL DATE	PROD DATE	WARR EXPI	MAKEMODEL	VIN	LICENSE	INVOICE	NO. ORDERED	MILEAGE	OD
28MAY13						FORD F-150	1FTFW1E4DK66102		31OCT20	09-27 06OCT20	188358	188524
OPTIONS: 5WG, 400lb												

LINE OPCODE TECH TYPE A/HRS S/HRS COST SALE COMP LIST NET TOTAL

A PRIORITY VEHICLE CUSTOMER STATES CHECK ENGINE LIGHT HAS CAME ON HAS A
CODE FOR BANK O CODE P001S CAMSHAFT OVER ADVANCED, B CAMSHAFT
POSITION TIMING (BRACKET ON REAR BANK 1 NOT BOLTED DOWN TOP BOLT
WILL NOT TIGHTEN)

CAUSE:

12500D EEC SYSTEM DIAGNOSIS (QUICK TEST) - L

170253 WP4 9.25 0.20 640 2228

1 KW42*6700*B SEAL ASY

CRANKSHAFT OIL FR

1 BR32*6A340*A BOLT

1 BR32*6C325*B CAM

PORT

6 BR32*6279*A BOLT

1 TA*30* SEALANT

SILICONE

1 VC*13*G ANTI-FREEZE

1 VC*30*A REMOVER

SILICONE

6 KO*5W20*ESP MOTORCRAFT

OIL/SYNTHETIC B

1 AC*31*B CLEANER - METAL

SURFACE

-1-92440 WARRANTY RETURN

68525/6700

TEST - L

12500D45 ENGINE MODULE - DIAGNOSTIC PIN POINT

170253 WP4 0.00 0.38 960 3343

62500P CAMSHAFT SPROCKET OR VCT PHASER - REPLACE

(6256/6A257/6C525/6K256) - L

170253 WP4 0.00 5.48 17280 60167

66000P OIL PRESSURE - ENGINE - DIAGNOSIS - L

170253 WP4 0.00 0.28 1280 4457

FC-450 42

PART#: DL3Z6006FRM

*I acknowledge receipt and full approval of an estimate in the original estimated price.

Signature of Lithia

STATEMENT OF DISCLOSURE AND ARBITRATION AGREEMENT

In the course of selling, or equivalent parts may be used.

This factory warranty constitutes all of the warranties with respect to the sale of this

item/service. The Seller hereby expressly disclaims all warranties, either express or implied,

(including any implied warranty of merchantability or fitness for a particular purpose. Seller

neither assumes nor authorizes any other person to assume for it any liability in connection

with the sale of this item/service. Any dispute between customer and the dealership shall be

resolved by arbitration. Any dispute between customer and the dealership shall be resolved

by arbitration. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

The arbitrator may appoint a neutral arbitrator if the parties are unable to agree on an arbitrator.

CUSTOMER SIGNATURE

DATE

ER 1023

Signature of Customer

Invoice #: 940986

DUPLICATE 3

DENNIS FLORES
264 LOCUST WAY
NEW PLYMOUTH, ID 83655Home: 208-318-8657 Bus:
Cell: Email:

Tag #: T1461

Customer #47379

Service Advisor: 68538 LISA CRABTREE

LITHIA
LITHIA FORD LINCOLN OF BOISE #72
8853 WEST FAIRVIEW AVE. • BOISE, IDAHO 83704
TELEPHONE (208) 342-6811REMIT PAYMENT TO: LITHIA MOTORS SUPPORT SERVICES
PO BOX 4186 PORTLAND, OR 97208-4186

LINE	OPCODE	TECH	TYPE	A/HRS	S/HRS	COST	SALE	COMP	LIST	NET	TOTAL
1	FORD F-150	1F1FW1E4DK66102	17:00	160	120	0.00	CASH	31OCT20	09:27	08OCT20	13:37 31OCT20
MILEAGE IN											188358
MILEAGE OUT											188524
BO. ORDERED											READY

no leaks working as designed at this time. compared to like vehicle noise normal at this time. (EMP# 68538, 30OCT20 17:17): 168524 CHECK FOR CODES P0015, checked connectors going to phasers PULLED PIDS AND AS OF NOW SHOWS THE TIMING TO BE ON CLEARED DTC AND ROAD TEST AND DTC RETURNED, SUBMITTED TO TECHNICAL ASSISTANCE REFERRED TO PINDPOINT TEST HK12 AND HK14, PPT HK 1 YES HK10 NO HK11 NO HK12 NO HK13 CHECK ENGINE OIL PRESSURE PERFORMED OIL PRESSURE TEST AND FOUND TO BE WITHIN LIMITS HK 14 ACTIVATED FLONGER AND VERIFIED PROPER OPERATION OF PLONGER PER RESULT OF PIN POINT TEST HK REPLACE BANK 1 EXHAUST PHASER (RIGHT SIDE) removed front cover per wsm removed and replaced phaser torque to specs replaced all necessary hardware vacuum filled cooling system added oil cleared dtc reset kam performed misfire correlations road test and verified no leaks or dtc return performed extended road test raised and checked for leaks no leaks working as designed at this time. compared to like vehicle noise normal at this time

B PERFORM MULTI-POINT INSPECTION - PROVIDE BRAKE - BATTERY - TIRE

STATEMENT OF DISCLAIMER AND ARBITRATION AGREEMENT

In the course of servicing of equivalent parts may be used. The factory warranty constitutes all of its warranties with respect to the sale of this item. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for him any liability in connection with the sale of this item. Any dispute between customer and the dealer arising from or related to this vehicle or this transaction will be settled by mandatory and binding arbitration pursuant to the Federal Arbitration Act 9 USC 1 et. seq. The arbitration shall be conducted by a single arbitrator. The arbitrator may grant whatever relief the parties may be entitled to as law or in equity.

CUSTOMER SIGNATURE

SIGNATURE OF SELLER

DATE OF SALE

DATE OF SERVICE

DATE OF INSPECTION

DATE OF REPAIR

DATE OF DELIVERY

DATE OF PAYMENT

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW

DATE OF CLOSING

DATE OF SIGNATURE

DATE OF RECEIPT

DATE OF INVOICE

DATE OF ORDER

DATE OF QUOTE

DATE OF ESTIMATE

DATE OF PROPOSAL

DATE OF CONTRACT

DATE OF AGREEMENT

DATE OF ACCEPTANCE

DATE OF COMPLETION

DATE OF SATISFACTION

DATE OF FINAL REVIEW



LITHIA FORD LINCOLN OF BOISE #72
9853 WEST FAIRVIEW AVE. • BOISE, IDAHO 83704

TELEPHONE (208) 342-8811

REMIT PAYMENT TO: LITHIA MOTORS SUPPORT SERVICES
PO BOX 079811 DALLASTEXAS 75217-9811

Invoice #: 978499

Tag #: T1209

Customer #: 47379

Service Advisor: 68538 LISA CRABTREE

ACCOUNTING

DENNIS FLORER

264 LOCUST WAY

NEW PLYMOUTH, ID 83655

Home: 208-318-8657 Bus:

Cell: Email:

LINE	DATE	YEAR	MAKE/MODEL	WARR. EXP.	PROD. DATE	PO. NO.	RATE	PAYMENT	INVT. DATE	MILEAGE IN	MILEAGE OUT	212452	212459
1	26MAY13	13	FORD F-150									READY	
2	17:00 02AUG21						0.00	CASH	26AUG21	16:20 30JUL 21	10:31 26AUG21		

LINE OPCODE TECH TYPE A/HRS S/HRS

A CUSTOMER STATES THERE IS A TICK NOISE IN TOP PORTION OF ENGINE THAT IS GETTING WORSE (WILL SHOW SHOP FOREMAN) HAD LONG BLOCK REPLACED ALL THE TIME

CAUSE: COULD NOT DUPLICATE ABNORMAL TICKING NOISE IN UPPER ENGINE CND COULD NOT DUPLICATE CONCERN AT THIS TIME

VERSION 1 (EMP# 170253, 24AUG21 13:25): 212452 COULD NOT DUPLICATE ABNORMAL TICKING NOISE IN UPPER ENGINE NO ABNORMAL NOISE IN UPPER DRIVE TRAIN 0.00

B CUSTOMER STATES THERE IS A KNOCKING NOISE COMING FROM LOWER FRONT OF ENGINE POSSIBLE AT OIL PAN ONLY WHEN COLD SOUNDS LIKE FROM OIL PAN AREA IT IS A SLOPPY KNOCK CAN HEAR OUTSIDE AND INSIDE CAUSE: NORMAL 0.00

INFO INFORMATION ONLY

170253 IF 0.08 0.00 0.00 0.00 0.00 0.00

VERSION 1 (EMP# 170253, 24AUG21 13:23): 212452 NORMAL

VERIFIED CUSTOMER CONCERN SLIGHT KNOCK NOISE HEARD IN REAR OF ENGINE WHEN VEHICLE FIRST STARTS THEN GOES AWAY

FOR 8 DAYS TESTED EACH CYLINDER FOR NOISE BY STARTING COLD AND TESTING CYLINDERS

NO NOISE CHANGE WHEN CANCELING EACH CYLINDER

RAISED VEHICLE AND TEST FOR ABNORMAL NOISE

USING STETHOSCOPE CAN HEAR SLIGHT NOISE FROM REAR OF ENGINE

COMPARED TO LIKE VEHICLE AND SAME NOISE C PERFORM MULTI-POINT INSPECTION - PROVIDE BRAKE - BATTERY - TIRE MEASUREMENTS ---

99F PERFORM MULTI-POINT INSPECTION - PROVIDE

BRAKE - BATTERY - TIRE MEASUREMENTS ---

170253 IF 0.00 0.00 0.00 0.00 0.00 0.00

D NOTED PASSENGERS SIDE WINDOW LEAKS WATER MAKE SURE COVERED OR INSIDE

INFO INFORMATION ONLY

170253 IF 0.00 0.00 0.00 0.00 0.00 0.00

1-1

*) acknowledge notice and oral approval of an increase in the original estimated price.

Signature or initial

STATEMENT OF DISCLAMER AND ARBITRATION AGREEMENT

In the course of providing the services herein, the parties may be used.

The factory warranty constitutes all of the warranties with respect to the sale of this

including any implied warranty of merchantability or fitness for a particular purpose. Seller

neither assumes nor purports to assume for it any liability in connection

with the sale of this vehicle. Any dispute between customer and the dealer arising from

or related to this vehicle or this transaction will be settled by mandatory and binding arbitration

pursuant to the Federal Arbitration Act 9 U.S.C. § 1 et. seq. This arbitration shall be conducted

by a single arbitrator. The arbitrator may grant whatever relief the parties may be entitled to at

law or in equity.

CUSTOMER SIGNATURE

Ar Copy

Page 1 of 2

THANK YOU!

ER 1030

custody, and control of Plaintiff, and all other documents of which Plaintiff has knowledge.

10. Whenever these Interrogatories request Plaintiff to "identify" a communication, Plaintiff shall indicate:

- (a) the date and place where they were made;
- (b) identify the person or persons who participated in the communication, in addition to all the persons present;
- (c) the nature and substance of the communication; and
- (d) indicate the medium of communication.

If the communication was written, reported, or referred to in any document, identify or produce the document.

INTERROGATORIES

INTERROGATORY NO. 1: State the intended and actual purpose for which you leased or purchased the vehicle, including whether the vehicle was ever used or registered for a commercial purpose.

INTERROGATORY NO. 2: Please state the date and location you took original delivery of the motor vehicle, as well as the mileage on the odometer at that time.

INTERROGATORY NO. 3: Identify all optional equipment or other accessories provided or installed by parties other than the manufacturer subsequent to your taking possession of the vehicle.

INTERROGATORY NO. 4: Identify each service and/or repair of the vehicle from the date of your purchase through the present. Include the

- a. date of service/repair;
- b. the name and address of the person or business establishment where the service/repair was made;

ER-1099

c. the name and position of the person who performed the service/repair, explain the reason for the service/repair;

d. whether the service/repair corrected the problem identified or the complaint you had; and

e. if the service/repair did not correct the problem or complaint, describe the problem(s) and/or complaint(s) that still existed and the actions that you took in connection therein.

INTERROGATORY NO. 5: Identify each individual or employee of Ford Motor Company with whom you spoke with respect to the matters alleged in your Complaint, stating the date and substance of each such conversation.

INTERROGATORY NO. 6: Describe in detail the amount of incidental damages you seek in relation to the allegations in your Complaint and how you arrived at that calculation, including a list of out-of-pocket costs you categorize as incidental damages.

INTERROGATORY NO. 7: Describe in detail the amount of consequential damages you seek in relation to the allegations in your Complaint and how you arrived at that calculation, including a list of out-of-pocket costs you categorize as consequential damages.

INTERROGATORY NO. 8: Describe in detail the amount of compensatory damages you seek in relation to the allegations in your Complaint and how you arrived at that calculation, including a list of out-of-pocket costs you categorize as compensatory damages.

INTERROGATORY NO. 9: Describe in detail the amount of any other damages you seek in relation to the allegations in your Complaint and how you arrived at that calculation, including a list of out-of-pocket costs not described in response to Interrogatories 5-7.

INTERROGATORY NO. 10: State how long you claim to have lost use of the vehicle due to services or repairs being performed on the vehicle.

EX-1100

INTERROGATORY NO. 11: State whether you have been in any accidents/collisions with the vehicle. Include the following:

- a. Describe circumstances, including date and location of accident.
- b. If the vehicle was damaged, please provide name and address of the body shop that performed the repair work.
- c. Please provide the name and address of insurance company to whom any property damage claims were submitted.
- d. If an accident report was filed, please state the name of the reporting agency.
- e. Provide names of persons involved.

INTERROGATORY NO. 12: Describe whether any work has occurred on the vehicle by anyone other than Ford Motor Company, or authorized Ford Motor Company dealerships, including who did the work, when it was done, and what it involved.

INTERROGATORY NO. 13: Identify each person who you may call as a witness at the trial or arbitration of this matter and his or her address, and state the substance of each potential witness' testimony.

DATED this 18th day of May, 2023.

EVANS KEANE LLP

By: /s/ Jon T. Simmons
Jon T. Simmons, of the Firm
Attorneys for Defendant Ford Motor
Service Company

ER-1101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May, 2023, I served a copy of the foregoing upon the following and by the method indicated.

Scott Florer
5460 NW Tennant Ave., #B
Mountain Home, ID 83647
dennisflorer8@outlook.com

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
P.O. Box 7426
Boise, Idaho 83707-7426
pcollaer@ajhlaw.com
rgray@ajhlaw.com

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

/s/ Jon T. Simmons
Jon T. Simmons

EL-1102

Jon T. Simmons, ISB No. 5006
Aaron R. Bell, ISB No. 10918
EVANS KEANE LLP
1161 West River Street, Ste. 100
P. O. Box 959
Boise, Idaho 83701-0959
Telephone: (208) 384-1800
Facsimile: (208) 345-3514
E-mail: jsimmons@evanskeane.com
abell@evanskeane.com

Attorneys for Defendant Ford Motor Service Company

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

D. SCOTT FLORER,

Plaintiff,

vs.

FORD MOTOR SERVICE COMPANY
INC.; LITHIA MOTORS SUPPORT
SERVICES INC.; JAMES D. FARLEY,
JR.; LISA DRAKE; BRYAN DEBOER;
CHRIS HOLTZSHU; RHETT SHEEDER;
RICH STUART; ANGELO SANCHEZ;
TRAVIS STEER; LISA CRABTREE,
SUED IN THEIR INDIVIDUAL AND
OFFICIAL CAPACITIES,

Defendants.

Case No. 1:22-cv-00449-DKG

FORD MOTOR SERVICE
COMPANY'S FIRST REQUESTS
FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFF

PLEASE TAKE NOTICE that Defendant Ford Motor Service Company ("Ford"), hereby requires Plaintiff D. Scott Florer to respond to the following Requests for Production within thirty (30) days from the service hereof, in accordance with the Federal Rules of Civil Procedure. The documents requested are to be delivered via email to counsel for Ford, or made available for inspection and copying within thirty (30) days of the date of service at the offices of EVANS

FORD MOTOR SERVICE COMPANY'S FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFF - 1

KEANE LLP, 1161 West River Street, Suite 100, Boise, Idaho 83702, or at such other time and place set by counsel for the parties.

INSTRUCTIONS:

1. You are under a continuing duty to correct any response to any Document Request, either incorrect or incomplete at the time it was made, as soon as the fact that the response was incorrect or incomplete is learned.

2. If you refuse to answer or object to any Document Request, in whole or in part, state clearly the basis for such refusal or objection. If a privilege or objection is claimed, identify the privilege or objection and state the specific basis under which the privilege or objection is claimed. If you withhold otherwise responsive documents from production under claim of privilege or objection, please identify any withheld documents in a privilege log by title or description, author, recipient(s), date and state the specific basis for your claim of privilege or objection.

3. Each document or thing produced in response to any of the requests herein shall be marked specifying to which requests that document is responsive.

4. If any document that is responsive to a request was, but is no longer, in existence or in the possession or control of Plaintiff, state whether it:

- (a) is missing or lost;
- (b) has been destroyed;
- (c) has been transferred, voluntarily or involuntarily, to others; or
- (d) has been otherwise disposed of.

For each instance, explain the circumstances surrounding such disposition, including the identity of the person(s) who authorized and/or effected the destruction, transfer or disposition of the document(s), the approximate date of disposition, and, if known, the present location and custodian of the document(s).

DEFINITIONS:

1. Unless indicated otherwise, "Plaintiff," "D. Scott Florer", "you" or "your," when used herein, refers to Plaintiff D. Scott Florer or anyone acting on his behalf, including counsel.

2. The term "person," when used herein, means any natural person, individual, corporation, partnership or association, firm, bank, savings and loan association, and all other business or governmental entities.

EA-1105

3. The term "communication," when used herein, means any statement or utterance, whether written or oral, made by any means by one person to another or in the presence of another, or any document delivered or sent from one person to another.

4. The term "relating to" or "referring to," when used herein, means consisting of, regarding, relevant to, reflecting, describing, concerning, or factually connected with the matter discussed.

5. The term "vehicle" or "motor vehicle," when used herein, refers to the subject vehicle referred to in Plaintiff's Complaint.

6. The term "document," when used herein, means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Produce any documents, including but not limited to, memoranda, notes, letters, or other informal writings that refer or relate in any way to the matters alleged in the Complaint.

REQUEST FOR PRODUCTION NO. 2: Produce any documents which refer or relate in any way to the amount of damages you claim as a result of the allegations in your Complaint, including evidence of all out-of-pocket costs.

REQUEST FOR PRODUCTION NO. 3: Produce a copy of all work orders, invoices, and receipts relating to service and/or maintenance work performed on the vehicle, repairs made to the vehicle, or any modifications or alterations made to the vehicle.

REQUEST FOR PRODUCTION NO. 4: Produce a copy of the Certificate or Memorandum of Title for the vehicle, or if you have sold or returned the vehicle, all documents relative to the sale or return of the vehicle.

REQUEST FOR PRODUCTION NO. 5: Produce any documents related to the purchase of the vehicle.

EP 1106

REQUEST FOR PRODUCTION NO. 6: Produce a copy of all warranties you claim defendants have breached.

REQUEST FOR PRODUCTION NO. 7: Produce any tests or studies on the vehicle which refer in any way to the allegations in the Complaint.

REQUEST FOR PRODUCTION NO. 8: Produce any documents relating to any accidents or insurance claims involving the vehicle.

REQUEST FOR PRODUCTION NO. 9: Produce any documents relating to an attempt by you to return a vehicle that you have leased or purchased.

REQUEST FOR PRODUCTION NO. 10: Produce any correspondence between you and any defendant regarding the vehicle.

REQUEST FOR PRODUCTION NO. 11: Produce any written statement(s) obtained from any person with knowledge of the allegations in your Complaint, whether such statements are formal, informal, under oath, or otherwise.

REQUEST FOR PRODUCTION NO. 12: Produce each document identified in response to Defendant Ford's First Set of Interrogatories.

DATED this 18th day of May, 2023.

EVANS KEANE LLP

By: /s/ Jon T. Simmons
Jon T. Simmons, of the Firm
Attorneys for Defendant Ford Motor
Service Company

FL-1107

1 is not the original. I object to this document. It is
2 not the original. This is a copy.
3 Q. That's pretty standard for a deposition.
4 I'm asking you about the --
5 A. I want to see the original. This document
6 here, I want to see the original of this document.
7 Q. Well, I believe you have the original.
8 A. This is not the original? You also have --
9 the dealer also has a copy of the original. I can look
10 at it and see this isn't the original document. So
11 being as it's not the original, I can't answer anything
12 on that document.
13 Q. All right. Well, would you agree --
14 A. I would not agree. It's not the original
15 document.
16 Q. Would you agree that Lithia Ford removed and
17 replaced the long block in your vehicle on August 7,
18 2020?
19 A. The -- this document is not the original.
20 You're referring to a document. The document speaks for
21 itself. It's not the original.
22 Q. All right. Without looking at the document,
23 would you agree that Lithia Ford replaced your long
24 block in your truck on or about August 7, 2020?
25 A. I'd have to look at the documents. The

Page 34

1 documents speak for themselves. You're asking me
2 questions referring to the document. It's not the
3 original. The document speaks for itself. That's the
4 answer. The document speaks for itself.
5 Q. All right. Would it be true that Lithia
6 Ford did not replace your long block?
7 A. The document speaks for itself.
8 Q. Are you testifying --
9 A. The document speaks for itself.
10 Q. Are you testifying that you don't recall --
11 A. I'm testifying the document speaks for
12 itself.
13 Q. There's not a document in front of you.
14 A. You're referring to Exhibit 2. You're
15 looking at Exhibit 2. As a matter of fact, you have a
16 couple different copies of it over there.
17 Q. That doesn't matter. My question --
18 A. The document speaks for itself.
19 Q. All right. My question is whether Lithia
20 Ford ever replaced your engine in your truck.
21 A. The documents speak for themselves.
22 Q. Is your answer no, that Lithia Ford did not
23 replace your engine?
24 A. The documents speak for themselves. Thank
25 you for referring to documents. It's not the original.

Page 35

1 The documents speak for themselves. Objection. Asked
2 and answered. Objection. Harassing the witness.
3 Q. Mr. Florer, are you going to answer my
4 question?
5 A. The question's been asked and answered.
6 Q. The question has not been answered.
7 A. Do you have another question to pose?
8 Q. No. I'm going to stay on this question.
9 A. What is the question then, again? For the
10 record, let's clarify what your question is.
11 Q. Did Lithia Ford ever replace your long block
12 in your truck, in your 2020 -- your 2013 Ford F150, in
13 2020?
14 A. That sounds about right. I'd have to look
15 at the file.
16 Q. Would August of 2020 be --
17 A. I'd have to look at the file. I'd have to
18 look at the file.
19 Q. Okay. Do you recall if it was a Coyote
20 Gen 1 --
21 A. I'd have to look at all -- I'd have to look
22 at all the documents in the file, the original
23 documents. We're still addressing that issue. We have
24 motions to compel going on in discovery. Yeah.
25 Q. I'm asking about your knowledge --

Page 36

1 A. You know, you're not answering a lot of
2 questions about that engine in discovery. I'm trying to
3 get information, and you're refusing to produce
4 information in discovery on that engine, so...
5 Q. Mr. Florer, you're not asking about your
6 engine. You're asking about everybody else's engine.
7 So that's the major problem in discovery. That's been
8 briefed. That's in front of the court. That's not
9 what's at issue here today. We're asking you about your
10 knowledge?
11 A. Mr. Bell, do you have a question relevant?
12 Q. Yes, I do. Is there a reason why you've
13 been referring to the engine in your vehicle as a Gen 3
14 Coyote engine?
15 A. I don't recall. I'd have to look at the
16 file.
17 Q. Has the engine in your vehicle been replaced
18 since 2020?
19 A. It was replaced in 2020 by your client, Ford
20 Motor Company and Ford Motor Company's dealer, Lithia
21 Ford of Boise.
22 Q. And since then it has not been replaced?
23 A. It has not been replaced since. Your client
24 is the only ones that have ever touched that engine.
25 Your client and your dealer.

Page 37

10 (Pages 34 - 37)

1 Q. I understand you have some background
2 knowledge as a mechanic. Do you perform repairs on your
3 vehicle yourself?
4 A. I perform repairs myself.
5 Q. And besides oil changes, what have you done
6 to your vehicle?
7 A. Objection. Asked and answered in discovery.
8 Q. Your discovery responses mentioned you
9 performed oil changes, and that you -- and you provided
10 some receipts. Are those all of the receipts for all of
11 the oil changes you performed?
12 A. Objection. Documents speak for themselves,
13 asked and answered in discovery.
14 Q. That question hasn't been answered in
15 discovery. This is about your production. Have you
16 produced all of the receipts for all of the repairs to
17 your vehicle?
18 A. Objection. Asked and answered in discovery.
19 And it's still pending. All those issues are still
20 pending, so, you know, discovery needs to be
21 supplemented.
22 Q. Have you ever gone to a mechanic other than
23 Lithia Ford of Boise regarding this engine?
24 A. What was the question?
25 Q. Have you ever gone to a mechanic other than

Page 38

1 Lithia Ford of Boise regarding this engine?
2 A. Objection. Asked and answered in the
3 complaint, and asked and answered -- excuse me, asked
4 and answered in discovery, to your discovery responses.
5 Asked and answered. Yes.
6 Q. Yes, yes you have gone to another mechanic?
7 A. It has been produced to you in discovery.
8 Q. What's the name of that mechanic?
9 A. I don't recall. I'd have to look at the
10 documents. It's all been produced to you in discovery.
11 Q. Wait a second, here. Does Oakley Moody
12 Service sound correct?
13 A. Sounds familiar.
14 Q. And a Mr. Stan Keller?
15 A. Sounds familiar.
16 Q. And what did Mr. Keller and -- at Oakley
17 Moody Service repair for you?
18 A. That has been produced to you in discovery.
19 I don't recall. All that's been produced to you in your
20 discovery responses.
21 Q. Did he do an oil change?
22 A. No.
23 Q. Did he --
24 A. Mr. Keller didn't touch the engine. Did not
25 touch.

Page 39

1 Q. So what did he do?
2 A. Objection. Asked and answered in discovery.
3 Q. Do you intend to have Mr. Keller testify at
4 trial?
5 A. Objection. Asked and answered in discovery.
6 All this has been produced in discovery.
7 Q. Did Mr. Keller give you anything in writing
8 relating to the visit to him?
9 A. Objection. Produced in discovery.
10 Q. That has not been produced in discovery.
11 A. Then it will be supplemented if it needs to
12 be.
13 Q. Do you remember if there was anything in
14 writing?
15 A. If there's anything else in this discovery,
16 it will be supplemented.
17 Q. But for the purposes of today, do you recall
18 if there was anything given to you that was a written
19 opinion?
20 A. I do not recall. If there's anything else,
21 discovery will be supplemented.
22 Q. Do you remember what the mileage was when
23 your engine was replaced?
24 A. Objection. That documentation has been
25 produced. It's -- that is all on documentation. That

Page 40

1 Exhibit 2 is one of them, although that's not the
2 original. I don't recall these exact numbers. I'd have
3 to look at documents.
4 Q. Would 185,568 miles sound accurate?
5 A. I'd have to look at the documents.
6 Q. How many miles are on your vehicle now?
7 A. I'd have to look at the documents.
8 Q. Do you know how many miles --
9 A. I'd have to look at the documents.
10 Q. Can you estimate how many miles --
11 A. I'd have to look at the documents.
12 Q. Which documents are you referring to?
13 A. I'd have to look at the documents. I'd have
14 to look at the -- I'd have to look at the -- I'd have to
15 do calculations and look at the odometer and whatnot.
16 Everything's been produced to you in discovery. The
17 mileage relevant to the times in the complaint and the
18 allegations have been produced to you in discovery.
19 Q. Well, we requested --
20 A. I don't recall what those numbers are. Off
21 the top of my head, I don't recall those numbers.
22 Q. We've requested to look at your vehicle,
23 including things like the odometer.
24 A. All those issues are pending. Objection.
25 Those issues, those sales, all that subject matter will

Page 41

11 (Pages 38 - 41)

1 not be answered because it is a pending motion to
2 compel.
3 Q. So your answer right now is that you're not
4 willing to answer the question?
5 A. The answer is that all these issues are
6 pending motions to compel that you've just brought up.
7 Q. And you understand that this is a
8 different -- a different process?
9 A. You just referred to a motion to compel. So
10 what are you referring to? The motion to compel? Are
11 you referring to the complaint? What are you referring
12 to now, Mr. Bell? You're jumping all over the place.
13 Are you on medication this morning, Mr. Bell?
14 Q. No. I'm not on medication that would affect
15 my memory. I think that -- I think -- I'm going to
16 state this again, that the deposition is a different
17 process than everything else in the case.
18 A. I told you I don't recall the mileage
19 numbers, Mr. Bell. You're asking me to produce mileage
20 numbers off the top of my head. Please, Mr. Bell.
21 Q. When was the last time that you --
22 A. That's not even a reasonable question. We'd
23 have to look at receipts and look at the documentation,
24 Mr. Bell.
25 Q. I can tell you my mileage on my vehicle is

Page 42

1 80,000 miles right now. You don't know what your
2 mileage is?
3 A. It assumes facts not in evidence. Who are
4 you to bring -- what do you drive, Mr. Bell? Do you
5 drive a Ford?
6 Q. That's not relevant.
7 A. Do you drive a Ford, Mr. Bell?
8 Q. That's not relevant.
9 A. Do you drive a Ford, Mr. Bell?
10 Q. I have driven --
11 A. How many Fords do you own, Mr. Bell?
12 Q. I have owned one Ford before.
13 A. Do you provide a company vehicle, Mr. Bell?
14 Q. Mr. Florer --
15 A. Has Ford offered -- has Ford offered
16 vehicles? Have they offered you a vehicle, Mr. Bell?
17 Q. Mr. Florer, this is not my deposition. I am
18 not under oath and I'm not going to answer your
19 questions.
20 A. Have they offered you a job, Mr. Bell?
21 Q. I'm not going to answer your questions.
22 A. Who hired you, Mr. Bell? That female out of
23 Ohio. Has she offered you any other types of
24 Q. I'm retained -- I'm retained to represent
25 Ford in this case. That is all you need to know.

Page 43

1 Everything else is privileged.
2 A. The female out of Ohio hired you.
3 Q. Everything else is privileged, and you do
4 not need to know --
5 A. Who hired -- and then we need to get to
6 Mr. Collaer. I suppose Lithia out of Oregon would have
7 hired him.
8 MR. COLLAER: It's none of your business,
9 Mr. Florer. If you want to bring that up before the
10 court, I welcome you to do it.
11 THE WITNESS: So Mr. Bell, do you have a
12 question?
13 BY MR. BELL:
14 Q. Yes. I'm asking them. Your testimony is
15 that you -- actually, scratch that. Did you drive here
16 today in the 2013 Ford F150?
17 A. Objection. Relevance. Objection.
18 Relevance.
19 Q. Do you own any other vehicles?
20 A. Beyond the timeframe of the complaint.
21 Objection. Relevance. Beyond timeframes of the
22 complaint. Has no bearing on any issues.
23 Q. Do you still own the Ford F150?
24 A. What Ford F150 are you talking about?
25 Q. The 2013 Ford F150 involved in this

Page 44

1 complaint.
2 A. I own that one.
3 Q. And do you still drive it?
4 A. It still drives.
5 Q. You own any other vehicles?
6 A. Objection. Relevance.
7 Q. It's relevant to the question of whether you
8 have knowledge --
9 A. I don't see it's relevant.
10 Q. Even if you make an objection on relevance,
11 you still have to answer the question. That's how a
12 deposition works.
13 A. Whether I own other vehicles, I may own
14 other vehicles.
15 Q. Which other vehicles may you own?
16 A. That -- that's it. That's all you get,
17 Mr. Bell.
18 Q. Are you refusing to answer my question?
19 A. Yes. Your time's getting short, Mr. Bell.
20 Q. If you'd like to take a break, we can take a
21 break.
22 A. No. No breaks. Let's keep going. Next
23 question.
24 Q. All right. I'm going to show you what is
25 marked as Exhibit 3.

Page 45

1 (Exhibit No. 3 Marked.)
2 BY MR. BELL:
3 Q. I'm not going to ask you about the contents
4 of the document. I just want to know if you recall
5 receiving this document at any time.
6 A. I have never received this document until I
7 received it in your discovery, and I would say that this
8 document is page FORD 0024.
9 Q. All right. And have you reviewed this
10 document since receiving it in discovery?
11 A. Objection. Attorney-client privilege,
12 attorney work product.
13 Q. Mr. Florer, you don't have an attorney.
14 A. Yeah. I am the lawyer, Mr. Bell.
15 Q. You're not a lawyer.
16 A. Yeah. I am. Thank you so much. That's what
17 pro se means. It means he represents himself.
18 Q. You're not a lawyer.
19 A. Anything about this -- anything about this
20 issue is attorney-client and attorney work product.
21 Thank you, Mr. Bell.
22 Q. Mr. Florer, did you go to law school?
23 A. Do you have a question relevant to the
24 claims in this case, Mr. Bell?
25 Q. That is a hundred percent relevant to the

Page 46

1 questions.
2 A. Objection. Harassing, annoying,
3 embarrassing, oppressing the deponent. Anything else,
4 Mr. Bell?
5 Q. What's your highest level of education?
6 That is a standard question --
7 A. Not relevant, Mr. Bell. Anything else?
8 Q. That's been asked in every single
9 deposition.
10 A. Not relevant, will not be answered.
11 Attorney-client, attorney work product. Anything else,
12 Mr. Bell?
13 Q. Did you go to high school?
14 A. Anything else, Mr. Bell?
15 Q. How long have you lived in Idaho?
16 A. Since 2019.
17 Q. Did you go to school in Idaho?
18 A. I did not.
19 Q. Did you go to school in Washington?
20 A. Objection. Not relevant.
21 Q. Did you go to school in Hawaii?
22 A. Objection. Not relevant.
23 Q. Do you have a college degree? ER-1339
24 A. Objection. Not relevant.
25 Q. Do you have a high school diploma?

Page 47

1 A. Embarrassing the witness. Annoying,
2 embarrassing, oppressing the witness.
3 Q. I'm not intending to embarrass you. I'm
4 asking you a question because you're claiming to be an
5 attorney.
6 A. I'm claiming to represent myself pro se.
7 I'm not claiming to be an attorney.
8 Q. Okay.
9 A. That's what pro se means, you represent
10 yourself.
11 Q. Thank you for clarifying.
12 A. Do you understand that, Mr. Bell? I know
13 it's very difficult for you because the big dog hotshot
14 law firm that's billing them -- how many hours have you
15 billed your client so far, Mr. Bell?
16 Q. I wish I could describe myself as a hotshot
17 lawyer.
18 A. 50 grand? How many hours have you billed
19 your client so far? 50,000? That's how you win. You
20 just eat up the time. We can bill unlimited hours and
21 eat up the time.
22 Q. Mr. Florer, I'd like to get through this so
23 I am not billing my client unlimited hours. Are you
24 willing to answer a few questions?
25 A. Well, Mr. Bell, do you have a question

Page 48

1 relevant to this case?
2 Q. Yes, I do.
3 A. Let's hear it.
4 Q. Are you aware that Ford's limited warranty
5 allows Ford to determine whether an engine needs to be
6 repaired or replaced?
7 A. Yeah. Objection. There's been no limited
8 warranty provided to me in this case, other than what --
9 the original -- the original invoice is the only
10 warranty provided to me in this case, and the statement
11 by the service advisor and by the service director. All
12 in the complaint, all produced in discovery.
13 Q. Are you aware that Ford's warranty is
14 available online?
15 A. Objection. Never produced in this case.
16 Q. I believe we did actually state that in our
17 answer to interrogatories.
18 A. Objection. Objection. Period.
19 Q. Have you ever looked for Ford's warranty
20 online?
21 A. Objection. Period.
22 Q. I need you to answer the question.
23 A. Objection. Client will not answer the
24 question. Thank you.
25 Q. There is no client sitting in front of me.

Page 49

1 A. I am the client, Mr. Bell, and the attorney.
2 The question will not be answered. Thank you. Do you
3 have a question relevant to the case?
4 Q. I'm going to stay on this question until you
5 answer it.
6 A. It's been answered. Next question.
7 Q. It has not been answered. Even if you
8 object, you need to give me an answer.
9 A. It's been answered. Next question.
10 Q. Have you ever looked up the warranty for
11 Ford's remanufactured engines?
12 A. I was provided the warranty at the
13 dealership, and that's the invoice, and that's it.
14 Q. Have you ever looked at it online?
15 A. I was provided the warranty at the
16 dealership, the invoice. That is all. That is what the
17 warranty is in this case.
18 Q. And when you claim you started having
19 problems with your engine, did you ever look for
20 additional terms for that warranty?
21 A. The warranty was provided by the dealer. I
22 went to the dealer and sought the warranty information.
23 All the warranty information I sought at the dealer. At
24 the dealer.
25 Q. Do you know if the dealer's warranty is

Page 50

1 different --
2 A. All information was provided and sought at
3 the dealer. All the warranty information was provided
4 and sought at the dealer.
5 Q. Have you compared this document, No. 3, with
6 the warranty that you received from the dealer?
7 A. All information was received from the
8 dealer. Next question.
9 Q. That wasn't my question. My question was,
10 have you compared the two warranties?
11 A. All information, warranty information was
12 received by the dealer.
13 Q. Have you compared the two warranties?
14 A. All information was -- assumes facts not in
15 evidence. Assumes facts not in evidence. The warranty
16 information was provided by the dealer.
17 Q. Did you read the warranty information
18 provided by the dealer?
19 A. The original invoice receipt is the only
20 warranty information provided by the dealer.
21 Q. If I hand you a document, are you going
22 to -- are you going to let me ask questions about that
23 document?
24 A. All the warranty information was provided by
25 the dealer.

Page 51

1 Q. We've been going for about an hour. I'd
2 like to take a quick break.
3 A. Any more questions?
4 Q. Yes, sir. We still have questions.
5 A. We just terminated it. You're embarrassing.
6 you're annoying the witness. It's terminated.
7 MR. BELL: Are we still on the record?
8 BY MR. BELL:
9 Q. Okay. Are you saying that you are not going
10 to continue forward with this deposition?
11 A. You're embarrassing, annoying the witness.
12 It is terminated.
13 Q. Mr. Florer, we've been nothing but
14 reasonable with you trying to get this deposition done.
15 A. You are embarrassing, annoying the witness.
16 Everything is on the record.
17 Q. That it is. It's on video.
18 A. I request a copy of all the information, and
19 the deposition is over. Thank you.
20 Q. Mr. Florer, would you like a copy of the
21 transcript?
22 A. I'll get all my copies. I put it all on the
23 record.
24 COURT REPORTER: Do you have his email
25 address?

Page 52

1 MR. BELL: Yes. Stating for the record that
2 Mr. Florer has left the room. His email address for the
3 court reporter --
4 VIDEOGRAPHER: I'm still rolling. Do you
5 want me to stay on the record?
6 MR. BELL: Yes. Until we're done here. His
7 email address for the court reporter is -- his email
8 address is dennisflorer8@gmail.com. We'd like a copy
9 of the transcript and the video, and we're leaving the
10 deposition open. Do you have any comments you'd like to
11 make, Mr. Collaer?
12 MR. COLLAER: No. I think the record speaks
13 for itself. Mr. Florer's conduct and his decision to
14 terminate the deposition by himself. I would note that
15 I have not been afforded the opportunity by the witness
16 to ask him any questions whatsoever, so we reserve the
17 right to re-depose him at a later time, and we'll bring
18 this matter to the attention of the court.
19 VIDEOGRAPHER: All right. Then this
20 concludes our video deposition for today of D. Scott
21 Florer, on October 4th, 2023. The time is 9:44 a.m.,
22 and we are off the record.
23 COURT REPORTER: Do you need the copy of the
24 transcript as well?
25 MR. COLLAER: I need the transcript.

Page 53

14 (Pages 50 - 53)

Case 1:22-cv-00449-BLW-DKG Document 87-1 Filed 08/25/23 Page 13 of 13

INVOICE

Inv. # 933823



LITHIA FORD LINCOLN OF BOISE #72
8853 WEST FAIRVIEW AVE. BOISE, IDAHO 83704
TELEPHONE (208) 342-6811

Tag #: T1856

Customer #47379

Cell: Email:

Service Advisor: 66538 LISA CRABTREE

REMIT PAYMENT TO: LITHIA MOTORS SUPPORT SERVICES
PO BOX 4186 PORTLAND, OR 97208-4186

DEL DATE	PROJ DATE	WARR EXP	MAKE/MODEL	VIN	LICENSE	MI/AGE IN	MI/AGE OUT
28 MAY 13			FORD F-150	1F1FW1EE4DKE66102		185538	185568
28 MAY 13						BO OPENED	READY
28 MAY 13						31 AUG 20	17:23 07 AUG 20
28 MAY 13						CASH	17:44 31 AUG 20

LINE OPCODE TECH TYPE HOURS

PERFORMED EXTENDED ROAD TEST

RAISED AND VERIFIED NO LEAKS AFTER REPAIR

B PERFORM MULTI-POINT INSPECTION - PROVIDE BRAKE - BATTERY - TIRE MEASUREMENTS - - - - -

99P PERFORM MULTI-POINT INSPECTION - PROVIDE BRAKE - BATTERY - TIRE MEASUREMENTS - - - - -

PARTS: 0.00 LABOR: 0.00 OTHER: 0.00 TOTAL LINE B: (N/C) 0.00

C INTERNAL RENTAL #23 2020 FORD ESCAPE SEL WHITE 1FMCU9H9XLUAG62605

PARTS: 185568 LABOR: 0.00 OTHER: 0.00 TOTAL LINE C: (N/C) 0.00

CUSTOMER PAID \$6200.00 ON CREDIT CARD, \$800.00 CASH ON AUGUST 7, 2020 AND \$1000.00 ON CREDIT CARD ON AUGUST 14, 2020. LEFT A BALANCE OF \$1925.21. NOTED TIRE KEEPS LOOSING AIR

At Lithia Ford of Boise, we love our customers. With our Assured Guarantee, you will never pay for a repair twice. The Assured guarantee is for 3 years or 50,000 miles on most repairs. See your service advisor for details. We offer FREE alignment checks and FREE Code checks. Have a great day!!

Quick Lane
TIRE & AUTO CENTER

YOU CHOOSE THE TIME WE'LL DO THE REST. QUICK LANE 3, 4 AND 5 ARE NOW APPOINTMENT ONLY MON-FRI. SCHEDULE YOUR NEXT SERVICE! OIL CHANGES TIRE ROTATIONS BASIC SERVICES

MAKE YOUR APPOINTMENT ONLINE AT LITHIAFORDBOISE.COM - SCHEDULE SERVICE WALK-INS WELCOME FOR LANE 3, 4 AND 5

W: SERVICE ALL MODELS!

FordPass Rewards
ARE YOU A MEMBER?
Earn 5% back on service! Simple as downloading the FordPass App from your App Store and accepting the terms and conditions.
SELECT LITHIA FORD OF BOISE AS PREFERRED DEALER.
SEE ADVISOR FOR DETAILS.
Only valid on Ford parts and service.

Ultra Touch
FREE
Compliments of
Expires on 8/15/2020

LABOR AMOUNT	3132.36
PARTS AMOUNT	6408.35
GAS, OIL, LUBE	0.00
SUBLET AMOUNT	0.00
MISC. CHARGES	0.00
TOTAL CHARGES	9540.71
LESS INSIDE/DI/S	0.00
SALES TAX	384.50
PLEASE PAY THIS AMOUNT	9925.21

Customer Copy

Page 2 of 2

THANK YOU!

Technical Support Request 117640960

TSR Information

Contact Date: Oct-06-2020 13:30:51
Dealer: Angelo Sanchez
PSA Code: 03897
Vehicle: 2013 F150/Mark LT
VIN: 1F1FW1EF4DKE66102
R.O. Number: 940986

Description of Vehicle Concern:
check engine light on

Please list any diagnostics already performed:
checked connectors going to plussers
PULLED PIDS AND AS OF NOW SHOWS THE TIMING TO BE ON
CLEARED DTC AND ROAD TEST AND DTC RETURNED

Parts Replaced:
LONG BLOCK INSTALLED

Your Question:
NOW WITH THIS BEING A REMANDED ENGINE DO WE TEAR IT DOWN TO POINT OF FAILURE OR SPW THE LONG BLOCK?

Additional Diagnostics/Comments:

Comment From: Ford Comment Date: Oct 06 2020 16:49:39
Good afternoon Angelo,
Referring to page 107 of the Warranty & Policy manual, if the engine long block was replaced within the last 30 days and the repair will be more than \$500, the engine long block can be replaced again. If it has been more than 30 days since the engine long block has been replaced, and the VCT solenoid is found to be operating properly when performing PC/ED pinpoint test steps "HK12" and "HK14", replace the VCT phaser for the bank 1 exhaust camshaft.

DTCs: P0015 PCM

Uploaded Files

Describe repair and/or any additional comments:

No Reply Required

ER-1703

GCQIS Report Analysis

Report Summary

Report 1 of 2

Report#:	LQFCC010 NHL	Received:	10/06/2020
CCRG/EPRC:		Review Status:	
Vehicle:	2013,F150 4X4 ,F150 ,SUP CRW,STYSD,1FTFW1EF4DKE66102	Date:	
Odometer:	188,358 M	Engine:	5.0L 4V
Transmission:	6R80E	Build Date:	03/23/2013
Dealer:	USA 03897 Lithia Ford Lincoln of Boise	Calibration:	DF615D0A
City:	Boise	A/C:	YES
State:	Idaho	Phone#:	208-342-6811
Country:	USA		
Originator:	ANGELO SANCHEZ		
Symptom:	2 27 Q 68 AID/INFO,WNG IND/MESS/C,ENGINE IMAGE,STAYS ON		
Status:			
VFG:	V29 CHECK ENGINE LIGHT		
Additional Symptom:	CEL on P0015		
Fix:	Causal Component:	--	
Condition Code:			
DTCs:	PCM:P0015		

Comments:

CONCERN

10/06/2020 04:49PM PHIL JACOBS MSS - FCSD - TECH ASSIT CENTER

Web Form Data(117640960) Description of Vehicle Concern: check engine light on Please list any diagnostics already performed: checked connectors going to phasers PULLED PIDS AND AS OF NOW SHOWS THE TIMING TO BE ON CLEARED DTC AND ROAD TEST AND DTC RETURNED Parts Replaced: LONG BLOCK INSTALLED Your Question: NOW WITH THIS BEING A REMANNED ENGINE DO WE TEAR IT DOWN TO POINT OF FAILURE OR SPW THE LONG BLOCK?

RECOMM

10/06/2020 04:49PM PHIL JACOBS MSS - FCSD - TECH ASSIT CENTER

Good afternoon Angelo, Referring to page 107 of the Warranty & Policy manual, if the engine long block was replaced within the last 30 days and the repair will be more than 500, the engine long block can be replaced again. If it has been more than 30 days since the engine long block has been replaced, and the VCT solenoid is found to be operating properly when performing PC/ED pinpoint test steps HK12 and HK14, replace the VCT phaser for the bank 1 exhaust camshaft.

AUDIT

10/06/2020 08:31PM

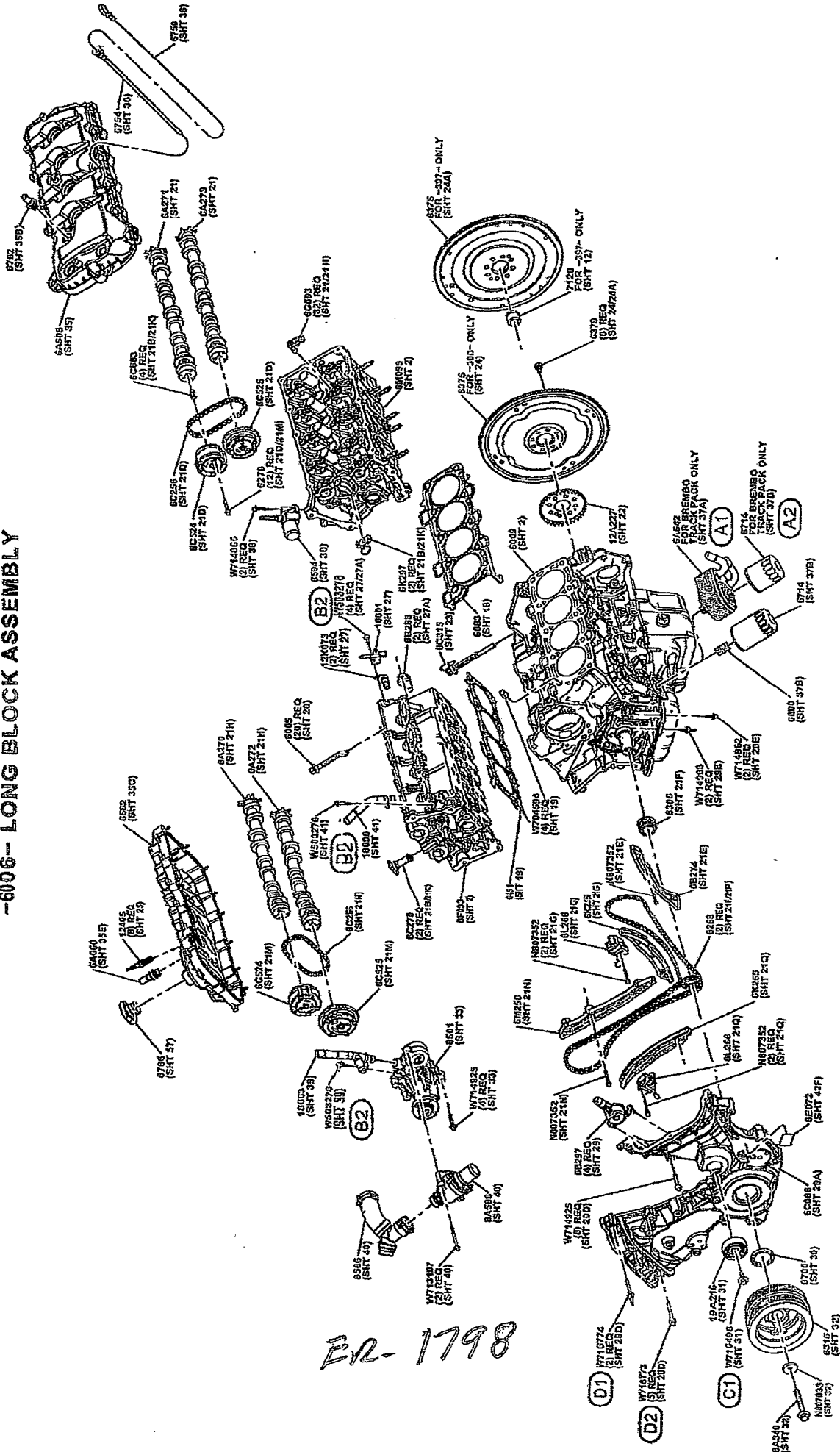
SYNC: Gen1 V3 MODEM:

1705
ER-

SUBJECT TO PROTECTIVE ORDER

PROPRIETARY

2013 5.0L-4V S197 -6006- LONG BLOCK ASSEMBLY



ER-1798

MODEL	2013 5.0L-4V V8 EEP	DRAWING	▽ ILDR3E-543-2A	REV	D2	SHT OF	2A
PUB	NE01-E-12525986-009	DATE	20130709	CAD FILE	il-dr3e-543-2a-002a.dg		
				FORD MOTOR COMPANY			
				SCALE = .10			

PRINTED COPIES ARE UNCONTROLLED

http://www.apdm.ford.com/apdm/v4.0/by-id/item/185227010/ill_index.htm

FORD 0559

WARRANTY & POLICY MANUAL

SECTION 3 – WARRANTY COVERAGES FORD/LINCOLN CARS & TRUCKS

(Continued)

CATEGORY	COVERAGE & OTHER REMARKS
	4. Dealer/FAD is to box the defective component (including a copy of the claim form) with the claim number clearly written on the package(s) and ship them freight prepaid to: Voxx Hirschmann Corp 180 Marcus Blvd. Hauppauge, NY 11788 5. Once a tracking number for the returning component has been issued to Voxx Hirschmann, replacement components will be shipped within 24 hours via regular UPS ground transportation. 6. Dealer/FAD is responsible for service parts not returned/received by the Warranty Service Center within 30 days of the original claim date. Post the 60 days; the Dealer/FAD will be liable for all non-returned components at service part pricing. IMPORTANT: If a repair to the Remote Start System is sublet, it is the dealer's responsibility to obtain the replacement part from Voxx Hirschmann. Reimbursement is labor-only. NOTE: If the package is sent without a claim number/claim number visible on the outside of the package, the shipment will be refused and returned at sender's expense. Removal and reinstallation labor to replace defective components is covered under the New Vehicle Warranty coverage period or 12-month/12,000 mile warranty (whichever is greater) and must be submitted by filling a warranty claim. File labor-only claim using program code "ACC". NOTE: DO NOT CLAIM PARTS ON A WARRANTY REPAIR FORM
Repair Validation Codes (RVC)	Advanced Diagnostic Tests (ADTs) are an enhanced diagnostic procedure required for specific components. RVC requirements vary by component, vehicle, vehicle model year and repair date. The listing of Components with an Advanced Diagnostic Test (ADT) and/or a Repair Validation Code (RVC) requirement can be found on FMC Dealer, under the Parts & Service Tab, Warranty Administration & Warranty Parts Return, in the Important Warranty Information section and within the link titled 'Components requiring a Repair Validation Code and on the Professional Technician Society (PTS) website under the 'Technical Assistance' tab. Repair Validation Codes (RVCs), contain thirteen digits and are generated at the end of fully completed ADT. RVCs are required and MUST be included to claim certain components / modules and/or specific labor operations on a warranty repair. In addition, RVCs may be required when ordering certain components / modules from the Ford Electronics Service Group (FESG) via the online 1878 form process. NOTE: Includes Warranty and Ford & Lincoln Protect paid repairs but excludes Over the Counter (OTC) and Customer Loyalty Program (CLP) paid repairs. NOTE: If an RVC is required for the completion of a Technical Service Bulletin the requirement will be clearly stated in the instructions.
Replacement or Repair Policy Engine/ Transmission Assemblies	The approved procedure is to repair or replace component parts within an assembly, rather than replacing the entire assembly (assembly does not refer to a short block 6009). The only exceptions to this procedure are when: <i>ER-1851</i> Low Time In Service (LTIS)— Vehicle is within 12/12,000 miles from WSD (EFC07308)

WARRANTY & POLICY MANUAL

SECTION 3 – WARRANTY COVERAGES FORD/LINCOLN CARS & TRUCKS

(Continued)

CATEGORY	COVERAGE & OTHER REMARKS
	• LTIS — Effective with Repair Orders opened on or after March 1, 2019, vehicles within 12 months/12,000 miles from the Warranty Start Date requiring an Engine or Transmission repair may be eligible for a replacement assembly. If Diagnostics lead to a replacement of the assembly per this policy, access the Cost Cap Tool and fill out the brief form attesting that the vehicle meets the requirements below. Cost Cap and Prior Approval (PA) codes are not required. — Eligible vehicles are defined by Retail and Fleet customers only within 12 Months/12,000 miles from the Warranty Start Date. — Dealer owned vehicles are not eligible and must follow normal Cost Cap/PA guidelines. — Any repair beyond 12 months/12,000 miles from the Warranty Start Date is still subject to the Cost Cap and gain PA, if necessary. — Engine • Dealer must use OASIS to verify repair procedures (ex. SSM, TSB, FSA) for external and internal to the assemblies. TSBs and FSAs which are directed repairs must be followed and do not apply to this policy. • Exclusions from this policy will be the Ford GT and performance powertrain that are not warranted by Ford Motor Company NOTE: Warranty & Policy Guidelines must be followed and Dealership Warranty Responsibilities still apply. Example: Documenting the 3 C's (Concern, Cause, & Correction) and replacing one-time use parts. Failure to comply with documentation requirements could result in a claim adjustment or denial. • Engine (LTIS) — Diagnostic Testing/Results/observations must support internal Short Block Damage. If the Diagnostic Process determines that a disassembly of internal components is required of the Short Block (ex. Piston/Bearings/Rings/Crankshaft), REPLACE THE LONGBLOCK ASSEMBLY (6006). • IMPORTANT: Examples of repairs that can be performed without disassembling the short block must be completed, this policy is short block only - Including, but not limited to: Head Assembly, Oil Pan Gasket / Rear Main Seal, Head Gasket, Timing components (Cam, chains, Tensioner). • Automatic/Manual Transmission (LTIS) — Diagnostic Testing/Results/observations must support internal damage. If the Diagnostic Process determines that a disassembly of core internal components is required (ex. Clutch Assemblies/Gears/Friction Material) of the transmission, REPLACE THE TRANSMISSION ASSEMBLY (7000/7002). — Any repairs that can be performed without disassembling Core Components internal to the transmission must be performed. • IMPORTANT: Examples of repairs that can be performed without disassembly of core internal components - Including, but not limited to: Solenoid Replacement, Main Control Valve Body, Transmission Fluid Auxiliary Pump, Output Shaft Seal, Transmission Fluid Pan/Gasket/Filter, Torque Converter (or flush procedure). 30 Day Assembly failure <i>Er-1852</i> • A repair is required on an SPW, SSP, or OTC engine or transmission assembly that was installed within the last 30 days/unlimited mileage and the repair cost exceeds \$500. In this case, the dealer may repair or replace

SECTION 3 – WARRANTY COVERAGES

- Ford Remanufactured parts, when available, must be used in all warranty repairs. However, if a customer purchases a new part, the replacement part under warranty can be new or remanufactured, if available.

Important: When an Assembly is replaced or exchanged under Service Parts Warranty, the replacement part includes only the remaining, unexpired portion of the warranty of the original assembly. The warranty period does not start over, nor is extended with subsequent repairs. This includes any related damage that may have occurred.

3.9.02 Determining the Part or Accessory Warranty Start Date

The Warranty Start Date for a Ford or Motorcraft New or Remanufactured Part that is:

- **Dealer-Installed:** The date of installation.
- **Sold Over-the-counter:**
 - To a retail purchaser: The date of sale.
 - To a fleet, general installer or wholesaler: The date the part or accessory is installed which could be later than the date of sale.

Note: Vehicles from 1999 model year and older cannot be registered on the Powertrain Service Warranty site via PTS. These vehicles must have the VIN provided on the original repair order or sales receipt.

Transferability

This warranty is transferable. Any remaining warranty coverage may be transferred to subsequent purchasers. In order for a Dealer or Installer to make a claim under the Limited Warranty, the original owners repair order or sales slip MUST be provided by the:

- Dealer
- Installer or
- Customer whether original or subsequent transferee.

3.9.03 Coverage Application

Note: Prior approval may be necessary to replace an engine or transmission assembly. Refer to 4.1.01 Prior Approval.

If the customer pays for any part of the repair, the following warranty applies: (i.e. the Company pays for parts/ Customer pays labor, Customer pays a deductible or a repair is performed under an Ford/Lincoln Protect Plan purchased by the Customer.)

Gas Engines and Transmissions – Ford New & Remanufactured			
All Vehicles			
Original Part Install/Sale	New Vehicle Limited Warranty^a (includes replacements under Powertrain Warranty), Field Service Actions	Retail Sale, Ford/Lincoln Protect, Ford Loyalty Program, Lincoln Loyalty Program^{d/}	Retail Sale, Ford/Lincoln Protect, Ford Loyalty Program, Lincoln Loyalty Program^{d/}
Effective Date *	6/1/2005 – current date	10/1/2013 – current date	9/1/2010 – current date
Program Code	SPNV b/	OTC or SPW	OTC or SSP
Time/Mileage	12 months/12,000 miles c/	24 months/unlimited miles	36 months/unlimited miles
Gas Engine Base Part Numbers	6006, 6007, 6009	6009	6006, 6007, 6V006, 6V012
Transmission Base Part Numbers	7000, 7002, 7003		7000, 7002, 7003, 7V000

^a date assemblies are installed on or after

^b Includes Propane engines

^c Motorcraft engines and engine components with a "V" in the base part number MAY NOT be used for New Vehicle Limited Warranty repairs (include Field Service Actions) EXCEPT for emergency repairs, but MAY be used for Ford/Lincoln Protect, Ford Loyalty Program, and Lincoln Loyalty repairs.

^d claims on service parts beyond NVLW (but within 12 months/12,000 miles from original install)

ER 1901

WARRANTY & POLICY MANUAL

SECTION 1 - DEALERSHIP ADMINISTRATION DEALERSHIP WARRANTY RESPONSIBILITIES

The dealer is responsible for submitting claims immediately after completion of repairs and for maintaining documents which support these claims.

The dealer must not have pay plans that pay service management (e.g., Service Advisor, Service Manager, Dispatcher), warranty claims administrators, or an outside vendor an incentive based directly on warranty sales. Pay plans that include incentives on a total basis, such as adjusted selling-gross or total shop sales, are acceptable if adequate safeguards are used to prevent improper warranty practices.

The dealer should authorize all necessary repairs to dealership vehicles (this responsibility can be delegated to Service Management).

Repair Authorization for Dealership Vehicles

- For any vehicle in dealership inventory, all safety, compliance and emission recalls, B and L Customer Satisfaction Programs, and Special Service Instructions do not require Dealer Principal, General Manager, or Service Manager Approval.
- Any warrantable repair work, adjustment, or Customer Satisfaction Program (M programs only) to be performed on the following vehicles that will result in a claim being submitted to the Company for reimbursement must be authorized by the Dealer Principal, General Manager, Service Manager or other members of management with delegated authority on the original hard copy or electronic repair order in place of the customer's signature.
 - New vehicles in dealer inventory
 - Dealer demonstrator vehicles
 - All used vehicles owned by a dealer and/or auto group
 - Dealership rental units (e.g., FRACS or L/M DDR units)
 - Parts Department delivery truck
 - Service Department courtesy shuttle

Magnuson-Moss Act

It is important for all Ford, and Lincoln dealers to become familiar with the Magnuson-Moss Act because it applies to consumer products which include cars and light trucks as well as parts and accessories for them. It does not cover 650 and higher series trucks or parts unique to them.

The Act regulates warranties and service contracts for consumer products; however, it does not require that a supplier give a warranty, or that any particular coverage be provided.

The new vehicle warranty provided by Ford is a Limited Warranty which complies with the Act. As permitted under the Act, implied warranties are limited to the same time and mileage as the written warranty. The Limited Warranty also enables Ford to require customers to share the expense of certain repairs.

Under the Act, all warrantors of consumer goods costing \$15 or more are required to make their written warranties available to customers prior to sale of the goods. Ford Motor Company requires the dealers to:

- Display the wall poster which lists car and light truck warranty statements in a prominent place in the dealership's new vehicle showroom.

NOTE: The posters are made available to dealers by Ford.

- Show the warranty to the customer before the customer signs the buyer's order by:
 - Pointing out the warranty on the poster, or
 - Showing the buyer the coverage in the Warranty Guide.
- Give the customer the Warranty Guide at the time the new vehicle is delivered. This booklet is supplied with each vehicle.

NOTE: Customers purchasing Ford vehicles that have been modified, altered, or final stage manufactured by an entity other than Ford must be informed that the modified parts, as well as Ford parts that fail because of the