UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION)

AIR DOCTOR, LLC,	)	CASE NO: 2:23-cv-00353-GW-ASx
	)	
Plaintiff,	)	CIVIL
	)	
vs.	)	Los Angeles, California
	)	
LONNI, INC, ET AL,	)	Thursday, June 11, 2026
	)	
Defendants.	)	(10:06 a.m. to 11:36 a.m.)

HEARING RE:

MOTIONS TO COMPEL DISCOVERY [ECF.NOS.276,277,294,295]

BEFORE THE HONORABLE ALKA SAGAR,
UNITED STATES MAGISTRATE JUDGE,
PRESIDING

APPEARANCES: SEE PAGE 2

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Los Angeles, California; Thursday, June 11, 2026; 10:06 a.m.

(Call to Order)

THE CLERK: Good morning, everyone. Calling Case No. cv-23-353-GW(ASx), AirDoctor, LLC versus Lonni, Inc., et al.

Beginning with plaintiff's counsel, please state your appearance for the record.

MS. SANDS: Good morning, Your Honor, Ashly Sands and Jason Drangel here and Danielle Futterman on Zoom for plaintiff.

THE COURT: Good morning.

MR. O'CONNOR: Good morning, Your Honor, Kevin O'Connor and Dandan Pan on Zoom for the defendant's counterclaims.

THE COURT: Okay. Good morning.

All right. This is the hearing on several discovery motions. The joint stipulation that was filed at Docket 77 of the defendant and counter plaintiff's motion to compel discovery and monetary and evidentiary sanctions from the plaintiff. And then -- and that was filed on April 20th, 2026 and then at Docket 295 the parties' joint stipulation regarding plaintiff's motion to compel discovery and sanctions from defendants and counter claimants and that was filed on May 14th, 2026.

And in addition at the end of the hearing on this, the Court is going to also address the motion that I think was

filed at Docket 200, which was a motion to compel that we had a hearing on I think April -- it was in April -- March, March 6th I think we had a hearing and I took that under submission. The parties filed at Docket 286 and 288 sort of competing supplementary declarations regarding that motion and the Court also wants to address that with the parties today as well.

So let's start, and you know, plaintiff requested that all these discovery motions be heard on the same -- at the same time, filed an ex parte application. I understand defendants oppose that, but the Court granted the ex parte application because the Court agrees with the plaintiff that it is more efficient to handle it all at one time and -- because some overlap and rather than handing -- handling them serially.

All right. So first, the motion that was filed at Docket 77, the joint stip, the Court has reviewed the parties' submission on that, as well as the supplementary -- let's see, grants -- I don't know if you've filed supplementary oppositions. There was just -- there were some motions that -- there were applications to file certain exhibits under seal and the Court granted those requests.

So at issue here is defendant's claim that they should be entitled to discovery from plaintiff regarding the AD 3500 replacement filters and related materials, that's one issue.

The second is, the parties disagree regarding the

scope of the affiliated related discovery that defendants are seeking from the plaintiff. And then the third issue is defendant's claim that plaintiff has refused to produce transaction level, sales data and underlying source documents.

When plaintiff filed their supplementary declaration in opposition to this motion at -- it was the declaration of Daniel Fetterman, they asserted that they had, in fact, produced discovery regarding the testing of the AD 3500 filters and that they had also produced updated profit analysis.

So my question for you, Mr. O'Connor, is that -- is the discoverability of AD 3500 related materials still at issue at this point?

MR. O'CONNOR: Yes, Your Honor. May I remain seated?

THE COURT: You can remain seated, but please speak into the microphone so that we can get a clear recording.

MR. O'CONNOR: The production that has been made by the plaintiff belatedly after the motion was filed does not moot the motion because they still continue to maintain the AD 3500 is off limits. They've produced what they choose to produce. They refuse to produce full -- fulsome records. I'll stick first with the issue of the financials.

They expect us to live with what appear to be summaries that were created literally just now, like literally. The production -- if you look at the metadata on these files, you can see they were literally created just shortly before

they sent them to us. We all know from evidence in second year law school that you can't just come into court with summaries, you have to make available to the other side the actual data that is utilized in formulating those.

And it's important to point out and I know Your Honor has read everything, but this is the second time around with this, right. We had a first time around where I went and I sat with their corporate designee, Mr. Ahouse (phonetic) who's the corporate designee on AirDoctor 3000, AirDoctor 3500 and damages and what does he say, he says they're interchangeable, that they're seeking damages for the AD 3500. And then I ask him about the financials and he says, I can't make heads or tails of these, I don't know, you're going to have to ask somebody else.

This was their corporate designee who flew out here for that and we got nowhere. And we're right back where we are. We have summaries from them that provide no information whatsoever, it's just summary -- it's just bullet point summaries of like what are the costs, expenses, and then what do we think our profits are. We're not required to accept that, respectfully.

And so the supplemental production does not moot that and they were very vehement at these meet and confers. They refuse anything AirDoctor 3500 and we showed Your Honor that their own listings currently show that the AirDoctor 3500 is

being sold as being compatible with and a replacement from the AirDoctor 3000.

So we're -- there really isn't anything that's been mooted. As for the affiliates, they refuse to -- they cagily refused to say that they're -- whether they're giving us everything that relates to those affiliates. They still stand by their prior boilerplate responses, which say they don't have to do it and they refuse to categorically say we have searched thoroughly for these records and we are producing them.

And so at a minimum on the affiliates, they should have to provide supplemental responses that say, we have searched and we have produced everything that is responsive as concerns the affiliates.

THE COURT: All right. So in terms of the affiliates, I think one of their -- one position they were taking is that the defendants have only counterclaimed against one of the three like Ideal Living entities, right. There's Ideal Living Holdings, which is the one that has been named, right, and they claim that because you haven't counterclaimed against Ideal Living Intermediate I and II that they shouldn't be required to produce discovery relating to those two entities.

But then they also say they have, in fact, produced discovery regarding all three of these Ideal Living entities. So my question is, given that, you know, you're asking for

affiliate discovery and I do think that the request is overbroad because you're not really defining the affiliates and I think that's what plaintiff's problem with this is. Can we agree that when you're seeking this discovery, it's limited to the three Ideal Living entities, Ideal Living Intermediate I, II and Ideal Living Holdings?

MR. O'CONNOR: Yes, and I think that was what was expressed during the meet and confers.

THE COURT: Okay.

MR. O'CONNOR: Those intermediate entities are identified in their organizational charts. We showed you the e-mail from plaintiff's counsel saying they have urgently had to amend to bring them in as plaintiffs, but then suddenly that went away. And then I want to point out to Your Honor, that in the record, I think it's Ms. Futterman gave a declaration that they have shared drives.

THE COURT: Right.

MR. O'CONNOR: So we don't understand why they can't just say, yes, we have searched across all of these shared drives for anything, you know, practically speaking what if all the profits went out to one of these entities? I mean, we need to know that.

THE COURT: Okay. So we're in agreement that affiliate discovery is limited to those three Ideal Living entities and what you want is some assurance from the plaintiff

that they have, in fact, searched through all of their share drives and documents and records that they can access and have control and possession of for responsive records relating to those three entities.

MR. O'CONNOR: My hesitancy is to say there are other Ideal Living and -- there's Ideal Living Management --

THE COURT: Uh-huh.

MR. O'CONNOR: -- there's Ideal Living LLC and then there's those two entities. So when you say three, I'm a little hesitant to say the three. I think it's actually four. There's two named --

THE COURT: Okay.

MR. O'CONNOR: -- and then there's Ideal Holdings.

THE COURT: That's the one that you've named.

MR. O'CONNOR: Correct. And Ideal Living Management and Ideal Living LLC, there's actually three and then you have the two intermediates as I recall, and Ms. Pan, you can please correct me if I'm wrong, but I believe it's actually five entities.

THE COURT: Okay. Ms. Pan, did you want to just clarify that? You're -- I think you're -- yeah, go ahead.

MS. PAN: Your Honor, I think Mr. O'Connor has it right. In our definition, we did at least get those different named entities and we said there might be more, but to date, those named entities were identified in the definition for

affiliates.

THE COURT: Okay. So are there four entities or five?

MR. O'CONNOR: I believe it's five with the intermediates. I think it's Ideal Living Management, Ideal Living, LLC, Ideal Living Holdings, and then the two intermediates.

THE COURT: Okay. That's five, all right.

MR. O'CONNOR: That's five.

THE COURT: Let me ask plaintiff's counsel can we limit affiliate -- the request for affiliate related discovery to those five entities?

MS. SANDS: Yes, Your Honor, but I do want to clarify our position because -- which we did make clear on all of these meet and confers and this is why we said that this motion in its entirety was actually premature at the time it was filed.

So the -- yes, our issue was with the definition of affiliates, specifically because not only did it include those affiliated entities but then it also said -- but also any other entities that are under --

THE COURT: Right.

MS. SANDS: -- the common control ownership, management, or control. Or control.

THE COURT: So right, I agree that that was overbroad. I'm asking --

MS. SANDS: So that was our only issue.

THE COURT: Right.

MS. SANDS: And then we had already searched. So the issue is is that we were still in the process of searching, which we provided search terms that shared database, so that's the reason that we did not give updated responses saying that production was complete.

We have provided rolling productions in the two months that have been going on since this motion was filed and so shortly within the next, I would say week or so, we will be able to provide updated responses. In other words, no document was held back on the basis that we objected to the definition of the affiliates. There was no document at all that was held back. That shared database was queried with respect or those shared databases were queried with respect to relevant terms across all entities. So while we objected to the definition of overly broad, we did not hold back any documents.

THE COURT: Okay. And so when you make your production in a week or so, you will be able to then also state definitively that you have searched through everything that all shared databases and documents that not only are in your possession but also -- and custody, but also that you have control over to search for responsive documents relating to affiliates as defined by these five entities.

MS. SANDS: That's correct. And it would -- I mean,

honestly in practice or in the end, it would reach to other entities under the common control anyway, because it's a shared database and there's nothing that exists outside of that.

THE COURT: Okay.

MS. SANDS: And again, I will point out that documents have been produced over the last two months using that same database, so it's not -- I think that my point is just that there are still a handful of outstanding searches that are being done, so at that point when those are done, in the next week or so, we will be able to provide updated responses saying that the production is complete and everything has been searched.

THE COURT: Okay. Now --

MR. O'CONNOR: Can I just respond real --

THE COURT: Yes.

MR. O'CONNOR: -- to a real important point. But the search terms as we point out in the motion are not adequate, they refuse to include AirDoctor 3500, so that -- I'm just going to state that right now. So if they go back and do it again and they don't include AD 3500 we still have the same problem.

THE COURT: Okay. Let's talk about the AD 3500. So as I understand it, plaintiff claims that the defendant sold replacement air filters for the plaintiff's purifiers advertising that they were compatible with the replacement

filters that plaintiff was selling for its own air purifiers. But plaintiff claims that, in fact, when they tested the replacement filters that defendant was selling they did not meet the HEPA standards, and that plaintiffs have replacement filters were advertised as and that's what this sort of -- this is how this lawsuit started, right.

So the issue with the AD 3500 is that it is a -- there's an air purifier, that's the AD 3500 and then there's replacement filters for that air purifier. Did plaintiff's claim that defendants are not entitled to discovery regarding the AD 3500 filters because defendant never, in fact, sold those and defendant claims that the reason they didn't sell AD 3500 filters was because plaintiff, defendants allege, that plaintiffs improperly caused Amazon to de-list the filters that defendant was selling. And so defendants then were not able to sell filters that were compatible with the AD 3500.

But they say that they would have sold those filters, they would have sold sort of their brand of filters and advertised them as compatible with AD 3500 had they not been de-listed. Do I have that right?

MR. O'CONNOR: Yes.

THE COURT: Okay. So in response to plaintiff's claim that the AD 3500 is not something that's -- they're not obligated to produce that because it's not relevant because plaintiff didn't ever sell those, then defendant's response to

that is, well, you know, the market for AD 3500 filters is analogous to the market for AD 3000 filters, which defendant did sell their filters and say they were compatible with the AD 3000.

Then there was some discovery taken of plaintiff's 30(b)(6) witnesses who basically said, you know, the AD 3500 filter can be used in the AD 3000 purifier but the AD 3000 filter cannot be used in the AD 3500 purifier, right?

And so defendant makes this argument about, you know, it's all the same market, we're competitors in the same market, we should be entitled to the AD 3500 discovery that we're seeking on the AD 3500.

I think that plaintiff's arguments regarding the relevance of AD 3500 is -- I think they make a good point. If defendants didn't sell those filters regardless of, you know, what the reasons were, I don't see how that is relevant to any of the defendant's claims.

Plaintiffs also point out that you didn't actually plead that in your counterclaims. I guess the one issue that maybe puts a little bit of a wrinkle in that, in the Court's sort of, you know, tending to agree with the plaintiff's point on that is to the extent that their financials are intertwined, so the 3500, they haven't really been able to, you know, to the extent that they're turning over the financial records and they haven't been able to sort of differentiate between AD 3000 and

AD 3500 that for sales or costs, their expenses, their profit, that sort of seems to me that because they're not differentiating them maybe they're going to end up -- they're going to -- defendants are going to get that information anyway.

And so if you're going to get it anyway why then limit it to just financials? You should be able to get it across all of the different, you know, requests that deal with 3500 -- AD 3500.

So that's where the Court is kind of struggling with that issue. Do you want to be heard on that and then I'll hear from the plaintiff.

MR. O'CONNOR: Yes, and it's obvious to me that you've read everything and so I won't repeat everything. But Xincheng had concrete plans to sell the AD 3500. We've provided Your Honor with proof of that, it's been produced and that's very clear.

This distinction between -- the claim by the plaintiff that AD 3500 is not in the case is brand new. It just came out of the ether when we filed counterclaims. And what happened is, if you recall, Your Honor, they suddenly shifted and said we're going to withdraw Mr. Ahouse's testimony entirely, we've got an e-mail saying we're going to withdraw it, it was erroneous, he didn't know what he was talking about. And they never did that by the way.

THE COURT: He didn't know what he was talking about in terms of what?

MR. O'CONNOR: Because he testified that -- because previous to being produced, the summaries of financials for the AD 3500 and 3000 and he testified that they were seeking damages related to both. And that was his testimony. He said they're interchangeable, they're seeking them for both, he thought you could -- our people were selling the AD 3500 and all that.

And then when we made counter, because when we discovered that the plaintiff in this case was actually engaging in the very exact practices they accuse our clients of, suddenly they shifted and they said, we're not going to give you anything on AD 3500. And why did they do that? Because what they did is they started -- they shifted their sales to the AD 3500 and they started marketing it as to anyone who has an Air Doctor 3000 saying, you can just buy this and you don't have to buy the AD 3000. Right? So it's a replacement for the AD 3000. That is itself displacing sales that my client could admittedly make if it hadn't been knocked out of the business.

Why was it knocked out of the business? Because they sent communications to Amazon and we believe we will show in this case, they told Amazon there was a court order prohibiting our client from selling it. They say they didn't do it, and

now they say the lawyers communicated everything to Amazon and somehow Amazon got the idea there was a court order. We don't know how, we're going to figure that out. But we believe --

THE COURT: Then what about the fact that, you know, your whole claim on you were planning to sell the AD 3500, but then you couldn't. I mean it's so speculative. I mean, they have a right to sell -- they have a right to, you know, sort of upgrade the filters and they have the purifier, the 3000 purifier, the 3500 purifier, I don't see why a company wouldn't want to come out with a better filter for its 3500 purifier and then say, hey, you can also use this in the 3000 because it works, works better maybe. I don't see how that then prevents the plaintiff -- the defendants from selling replacement filters for the AD 3000. Like you're not selling replacement filters for their 3500 purifier, right?

MR. O'CONNOR: Well, we can't.

THE COURT: Well, but as in this litigation, your -- I mean, to say that well we could have if they hadn't done -- I just think it's really speculative. I mean, I kind of understand the argument. My struggle with it is if their financials are so intertwined --

MR. O'CONNOR: Uh-huh.

THE COURT: -- then why wouldn't, you know, how does that dilute their argument?

MR. O'CONNOR: Well, the financials are all

intertwined, that's why I sat in the room with their 30(b)(6) and he couldn't differentiate one from the other. If they're selling -- they are selling now to customers on Amazon saying don't bother with these competitors who are selling the AD 3000, come to this new product, that displaces the sales by those competitors. It is a direct injury.

Like this argument that they can use standing at this stage to prohibit discovery that they opened the door to for an entire year, right. And by the way, we subpoenaed Amazon. At first they objected, they said, oh, you're not entitled to AD 3500, but then they walk away from it. They waived that argument with respect to that subpoena.

And so they're kind of shifting all over the place and slamming the door shut now when it comes to searching their systems to see what kind of testing did you do on your AirDoctor, like what was the thoroughness of the testing. What were the communications about why you were moving to that model, right?

They ask -- they let me ask --

THE COURT: You're talking about the testing they did on their 3500 filters?

MR. O'CONNOR: Correct. So I asked their engineer, I asked their financial guy about the AD 3500 and they moved -- no objections, no objections whatsoever. They testified at length and now they want to slam the door shut and not provide

any documents about that. And I just don't see how they can do that.

Relevance, you know, we all know the definition of relevance, it's rather broad and to say standing somehow stands in the way, we do believe our counterclaim allege violations with respect to the AD 3500. We have attached exhibits there that show their active advertising and their active advertising is itself, we believe, our clients believe, are deceptive and unfair under the law.

THE COURT: How is their advertising of the AD 3500 filters deceptive?

MR. O'CONNOR: Because we -- our clients allege and we will show they did no serious testing for their product. The principal owner of these companies is Peter Spiegel. He has been governmental agency scrutiny, he has been the subject of a FTC order. We have a whistleblower who would testify that he engaged in all sorts of --

THE COURT: All right. Let's focus on what's in the record.

MR. O'CONNOR: They basically, as we allege in the counterclaim, they played games with the testing, they slowed it down when it suited the testing mechanisms, they slowed down, you know, because when you test these filters you can play games. And they have this outside entity they call an independent lab that is no such thing.

The lab is --

THE COURT: Okay. But explain to me what the essence of your counterclaim is against the Ideal Living entities.

MR. O'CONNOR: They're all one big conglomerate, right. So they produced some agreements between the three entities and they're all circular, they all point the finger at each other and say you own this, you own that.

THE COURT: Okay. But what is the essence of your counterclaim that relates to the AD 3500?

MR. O'CONNOR: That they have no legitimate basis to make the claims they're making about HEPA and they also have something they call Ultra HEPA which is a fiction, there's no such thing. And they're deceiving customers and they're doing exactly what the FTC had barred from Mr. Spiegel from doing in the past.

They're advertising a product without any legitimate testing and that the same time they're --

THE COURT: And that product is the 3500?

MR. O'CONNOR: Pardon me?

THE COURT: The product that they're advertising, you allege, deceptively is the 3500?

MR. O'CONNOR: Yes. Yes and --

THE COURT: But how is that hurting the defendants who don't sell that product?

MR. O'CONNOR: Because they're advertising it and

saying to the customers, if you have an AirDoctor 3000, don't buy an AirDoctor 3000 replacement filter, buy this new one that we just came out. All we did was we notched a corner out of it deliberately --

THE COURT: No, I understand that argument but they're not -- what they're saying is, if you have our, you know, previous iteration of the air purifier the 3000, now you don't have to buy the AD 3000 filter replacement for that, you can get the 3500 filter and it will fit and be compatible with your 3000 purifier. That's what they're saying, right?

MR. O'CONNOR: Correct.

THE COURT: They're not -- I mean, are they saying, don't -- I mean, are they saying like the defendant, that your clients, the filters that your clients are selling should not be bought?

MR. O'CONNOR: I don't think I need to prove that they did. I mean, if we can show that we have standing as a competitor, which we do, they admit that we're a competitor, they sued as a competitor, they sued our clients as competitors, we've sued as a competitor, they didn't move to dismiss on standing grounds and say we're not a competitor.

Here we are in discovery. They've produced financials that are intermingled that have AD 3000 and 3500 and we're supposed to not being able to drill down on any of this stuff and they refuse to do searches of their system for AD

3500 despite going for an entire year of having witnesses testify about the AD 3500.

And so here we are, it's what three weeks before the end of the fact discovery and they're at it again. They refuse to say why we're not entitled to this information and standing is just -- and respectfully, I don't see how it could be used at this stage to prohibit us from getting into the very matter that they put at issue.

THE COURT: Well, what about the argument that you are not selling the AD 3500 filter? You're not selling it so you're not a competitor in that market. They're not preventing you from selling AD 3000 filters, right? They're not preventing you from selling filters that are compatible with the AD 3000.

MR. O'CONNOR: Your Honor, the standing 30(b)(6) testimony from their witness was that they sued us for selling both 3000 and 3500. We are not selling the 3500 admittedly. We -- now at summary judgment they may be able to tell the district judge, you know, they should not be able to get profits related to this 3500 because they could never sell it, and you know, this, that and all the arguments they're making. They can make those at summary judgment, but we're not at summary judgment.

And respectfully we should have the opportunity to drill down these financials, find out what's behind them, take

the testimony. I mean, if we go into the depositions that I've been asking for, by the way, for weeks now and are they can now suddenly say you can't ask about the AD 3500 when I was told by the way because of the Ahouse situation, they said, we will make somebody available to ask those same questions to.

Now, are they saying that those are off limits when they gave us Mr. Ahouse previously? I don't think that's appropriate.

THE COURT: All right. What about the financials if you -- it seems like their financials are intertwined with the financial records relating to the AD 3000 and the 3500. So you get the financials on both, why do you need in response to all of your discovery issues, like requests, like marketing communications, all of those requests, they have said that they object to those requests as it relates to information regarding the 3500. Why do you need that? If you have the financials, why do you need everything else when you're not really a competitor in that market for 3500 filters?

MR. O'CONNOR: Well, respectfully I don't think it's been shown that we're not a competitor. I think that we could -- we would be a competitor --

THE COURT: Yeah, but they make the argument that your claim that you would have sold them or you could be or you would be or you would have, that's speculative and I don't know that that meets the standard.

I think what I'm thinking about is to rule for the -- to sort of, you know, sustain their objection to the request for information in your discovery request relating to the AD 3500 filter, but require them to give all of the financial information, not withhold financial information relating to 3500 on the grounds that it's not relevant, because it's so intertwined.

MR. O'CONNOR: I understand, but if we get to summary judgment and the Court accepts our argument that we are a competitor, then we won't have had discovery on, for instance, their communications about the move to this model.

The testing they did, you know, fulsome discovery about the testing, the legitimacy of that testing. I mean --

THE COURT: But you're not in the market for that product. Like they -- you get the information regarding their communications and their testing on their -- on the filters that you -- that the defendants were selling and advertising as compatible with plaintiff's purifiers, right. That doesn't include the 3500. I just don't see how that's relevant.

MR. O'CONNOR: Because our client or let me say this, we have a claim against them for the deceptive advertising with respect to these air filters.

THE COURT: With respect to which air filters?

MR. O'CONNOR: The air filters that -- if you look at the counterclaims and you look at the attachments which have

all of their listings, we believe it -- it's both, AirDoctor 3000 and the 3500. They're displacing the filter -- and I already have the documents, some of the documents to show that this was an intentional act to displace folks who were selling replacement filters.

THE COURT: Well, I think their witness testified to that. We came up with the 3500 filter and we made it compatible with not only our 3500 purifier but also our 3000 purifier, because we wanted to shut down --

MR. O'CONNOR: Correct.

THE COURT: -- competitors who were selling filters and advertising them as compatible with our air purifiers, but those filters were not meeting our, you know, quality standards.

MR. O'CONNOR: Yes.

THE COURT: Right. They give you that, that's what their witness testified to.

MR. O'CONNOR: And you clearly have read that testimony.

THE COURT: So -- but I still don't see how it gets you to the point where you're entitled to discovery on the 3500.

MR. O'CONNOR: Because the 3500 was used to displace all of these competitors. And unless they can win -- if they want to make a partial summary judgment motion that we're not a

1 competitor with respect to the Air Doctor 3500 and a judge
2 decides we're not a competitor for that purpose, that's fine.
3 But relevance, right, to just slam the door shut in these
4 circumstances, right, when they opened the door. They gave me
5 that 30(b)(6) testimony, they gave us documents, they gave us
6 intertwined financials, that have the AD and the 3500 and the
7 3000 all put together in one big package. And we just don't
8 think it's right. And we think we're entitled to this
9 discovery. And the financials it really has to be more than
10 just a summary.
11 **THE COURT:** I agree. I agree with you on that. It
12 has to be more than a summary. Let me hear now from
13 plaintiff's counsel. Are you seeking damages for your like
14 lost sales on your 3500 filters?
15 **MS. SANDS:** No, we're not.
16 **THE COURT:** Okay. So you're only seeking damages for
17 sales that you would have made on your other filters that you
18 claim the defendants competed with you on.
19 **MS. SANDS:** Right. So we're actually only seeking
20 their profits, we're not seeking lost profits, so we're seeking
21 their profits on the AD 3000 compatible filters.
22 **THE COURT:** Only that one?
23 **MS. SANDS:** Only the AD 3000. And I -- Danielle can
24 actually -- Ms. Futterman actually can speak directly to
25 Mr. O'Connor's claim that the financials are intertwined

because I don't believe that he understands that properly. They're not intertwined. Danielle, if you wanted to just respond to that point, unless you have --

THE COURT: Yeah, in a moment. So what about the argument that Mr. or the proposition that Mr. O'Connor just made which is, you know, why don't you just seek -- well, let me ask you this. If they are, in fact, competitors with the plaintiff on the AD 3500 because, you know, but for the delisting they would have sold -- they had a plan to sell the filters that were compatible with the AD 3500 and they were going to go ahead, and you know, produce those and sell them, but they were delisted. Putting aside the arguments regarding the, you know, the impropriety of the delisting, we don't need to get to that at this point, but if they are, in fact, competitors, then you would agree that they would be entitled to the discovery.

MS. SANDS: Yes.

THE COURT: Yes.

MS. SANDS: Yes, but I don't agree that they are competitors and I can also respond on that point if you want to discuss that.

THE COURT: So what about Mr. O'Connor's proposal that maybe you seek partial summary judgment on that issue so we can just --

MS. SANDS: We actually have an intent to do that,

but obviously --

THE COURT: Okay.

MS. SANDS: -- we were trying to work out these discovery issues --

THE COURT: Right.

MS. SANDS: -- before we proceed with that, but --

THE COURT: Okay.

MS. SANDS: -- we do actually have an intent to do that.

THE COURT: All right. Let me hear from Ms. Futterman now on the financials.

MS. FUTTERMAN: Sure, Your Honor. So early on, I don’t recall exactly in response -- what this document was in response to, but we did provide a spreadsheet that includes sales for the AD 3000 and sales for the AD 3500. We have never sought damages for the 3500 as Ms. Sands just mentioned.

Recently we --

THE COURT: What about Mr. Ahouse's testimony that --

MS. FUTTERMAN: Yes, I was -- okay. So Mr. Ahouse's testimony we provided the relevant excerpts as Exhibit I to Ms. Sands' declaration. It was Docket 277, Exhibit I.

Now, interestingly, Mr. Ahouse didn't just testify that he believed that this lawsuit was about the 3000 and 3500. Mr. Ahouse testified that -- and we are all in agreement that this was incorrect of him. He testified that -- this is -- I'm

reading from line 18 that he believed that the lawsuit was about the 3000, 3500, 5000, 5500 and so on. He listed every single model of AirDoctor filter that AirDoctor sells.

Now, again we're all in agreement that that is not correct. We are not seeking damages for all of those filters, but what's interesting is that the defendants never sought discovery on any other filter model, only on the 3500 citing to Mr. Ahouse's testimony.

So if they believed Mr. Ahouse, then they would have sought discovery on every single model filter, not just the 3500. And there's just one other point that I want to make.

In the second -- the counterclaim plaintiff's second amended counterclaims which is Docket 248 at paragraph 56 it specifically says, counterclaim plaintiffs wish to continue selling the delisted products. It does not -- there is -- we have read this amended counterclaim upwards, backwards, inside and out, there is no reference whatsoever to the 3500.

So Mr. O'Connor's correct, when they raise it for the first time it was based on representations of counsel. We never received anything whatsoever, any sort of indication from the counterclaim plaintiffs that they had any intention of selling the 3500 filters. And to clarify the issue, we served requests for admissions on them and they admitted that they never sold the 3500 filters.

So our refusal on the discovery -- I'm sorry.

THE COURT: Hold on one second. So I mean, I don't think there's any disagreement there. Mr. O'Connor agrees they did not sell filters that were compatible with the AD 3500, like they never sold a filter that they said was compatible with the plaintiff's AD 3500 filter.

What you just said was that in their second amended counterclaim they say, we intend to continue selling the delisted products.

MS. FUTTERMAN: Correct.

THE COURT: The delisted products do not include the 3500 replacement filter; is that right?

MS. FUTTERMAN: Correct, Your Honor.

MR. O'CONNOR: Yes.

THE COURT: Is that right?

MR. O'CONNOR: It does -- Your Honor, I'm looking at Exhibit C to my counterclaims. They have the AirDoctor 3500 in it. This is all -- you know, counsel's parsing words in the counterclaim. They never moved to dismiss this counterclaim --

MS. SANDS: Your Honor --

THE COURT: Wait, wait --

MR. O'CONNOR: Let me finish.

THE COURT: -- wait, don't talk over each other. What does the counterclaim say?

MR. O'CONNOR: Well, I can pull it up. At Exhibit C specifically identifies as the unfair practices, the listing

for the 3000 and 3500. They've never moved to strike --

THE COURT: As the unfair practices?

MR. O'CONNOR: As part of -- yes. So --

THE COURT: Right. But doesn't it also say that you intended to continue selling the delisted products?

MR. O'CONNOR: Correct.

THE COURT: That the delisted products would not include an AD 3500 because you never sold it.

MR. O'CONNOR: But that's one allegation out of I think a hundred allegations. So they're just parsing words to try to slam the door shut.

THE COURT: Okay. Let me finish hearing from you, Ms. Futterman.

MS. FUTTERMAN: Sure. So --

THE COURT: So on the financials, defendants claim that it is, and I'm going to refer to defendants I mean defendants and counter plaintiffs, they say that the financials are all intertwined and so if you -- the plaintiff, if they can't sort of keep that separate, you know, why wouldn't they be entitled to that discovery.

MS. FUTTERMAN: Sure, Your Honor. So one of the reasons why we wanted to utilize Your Honor's informal dispute resolutions is because we wanted to explain the situation to Your Honor. And we've explained this many times at meet and confers.

In the ordinary course of business our clients, and I mean all of them and the affiliates in the shared databases maintain all of their documents at a brand level. In order to pull any sort of financial at a filter model level, our client may engage the CFO of the company and he used their internal ERP system, which is audited annually and he was able to input the date range at issue in this lawsuit and the filter model number, the AD 3000, and that is how he produced the updated financials.

Now, I know that we're talking about the 3500 only, but the same issue applies when we get to the financial discussion. So invoices, et cetera, everything is kept at the brand level, such that reviewing an invoice or another type of document like that it's not readily ascertainable as to what filter model it relates to. Because they bill to the brand, AirDoctor.

And multiple filter model numbers or purifiers can be included in a particular invoice and they do their accounting at a brand level. So we engaged the CFO, we worked extensively with him, he was able to use the ERP system to isolate the AD 3000 sales and profits at the relevant time period and those are the updated financials that we produced about a month ago.

THE COURT: Okay. So, Mr. O'Connor, you got that discovery and your quibble with that is they should have given you that same information for the 3500.

MR. O'CONNOR: Your Honor, the -- yes. And if you look at the original production, they're all intertwined.

THE COURT: Right.

MR. O'CONNOR: And even the new production actually does have AirDoctor 3500 references in them.

THE COURT: Uh-huh.

MR. O'CONNOR: Okay. And it's not part of the record, but I'll just tell you that. The argument about Mr. Ahouse testifying incorrectly that testimony is -- it's the testimony --

THE COURT: It is the testimony. I'm sorry, Ms. Futterman, when you said we all agree that he was wrong on that, you just mean plaintiffs agree.

MS. FUTTERMAN: Yes, yes. We admitted -- we did try to work with them --

THE COURT: Like your team agree. You're not saying that Mr. O'Connor agrees.

MS. FUTTERMAN: -- and stipulate to withdraw --

THE COURT: Right.

MS. FUTTERMAN: -- it. The whole -- Mr. O'Connor is incorrect that all of his testimony was wrong, we never made that representation. Plenty of his testimony, most of his testimony were accurate. There were certain comments like that one that was incorrect.

THE COURT: Okay. I get it.

MS. FUTTERMAN: Yes, our side acknowledges that.

THE COURT: All right.

MS. SANDS: Also, Your Honor, if I can just step in on that as well. The complaint itself very clearly says that the only claim that was brought was with respect to -- like the third amended complaint, the plain language, paragraph -- I believe it's paragraph 1 of the complaint says that it's with respect to the AD 3000 only.

So, you know, respectfully Mr. Ahouse was designated for certain topics, but one of them was not the legal -- you know, what the legal claim was.

THE COURT: Okay.

MS. SANDS: So that's --

THE COURT: I understand the point.

MS. SANDS: Yes.

THE COURT: Okay. So you have produced the financials with respect -- you've isolated them with respect to the AD 3000.

MR. O'CONNOR: Your Honor, that's not true. I'm looking at what was just produced. It has AirDoctor 3500 --

MS. SANDS: Your Honor, Your Honor --

MR. O'CONNOR: I'm not through.

MS. SANDS: -- if I can step in. What he's looking at that was just produced was actually another level which is part of the -- I guess part of the issue today. They were

fighting that they wanted us to give them Amazon data, like the full back end on Amazon. And we said -- we explained just as Danielle or Ms. Futterman just explained to the Court that if we produce Amazon data, we have several other, unlike the defendants in this case, we have several other channels through which we sell our product. And so therefore, Amazon level data does not give you a full picture of what the financials are. And so we went ahead and also -- this was also become relevant when we're discussing our motion, but we also wanted to show that that can be produced for all of the back end, because we're asking for that from them and they're refusing to give it.

So what we did is we said, okay, fine, you want it, it's not going to show you anything because it is not inclusive all of our sales figures from every single channel that we sell. But here's -- and so we just produced all of the back end Amazon data, so we could do away with the argument. But it's not going to give them any visible information because it's limited to what's on Amazon.

THE COURT: And the Amazon data that you produced then would include all of the filters that were sold --

MS. SANDS: Right.

THE COURT: -- on Amazon including the 3500.

MS. SANDS: Yes.

THE COURT: Does that answer your inquiry as to why

you got that information?

MR. O'CONNOR: The production in this case is riddled with 3500 references, that's just like one thing that she points to.

THE COURT: Right.

MR. O'CONNOR: And Mr. Ahouse gave no meaningful testimony. I mean it's --

THE COURT: Okay. I understand your argument on that.

MS. FUTTERMAN: Your Honor, if I may just add one thing.

THE COURT: Yeah.

MS. FUTTERMAN: The reason -- one of the reasons why a lot of our production does include 3500 is because when we run search terms through our databases for AD 3000 sometimes it pulls in situations where AD 3000/AD 3500 are referenced. And on the error of good faith, we include them in the production. So that's why there are certain references to 3500 in our productions.

THE COURT: Okay. All right. Now, let me ask you to address defendant's request for the underlying source documents for the financials. You've produced summaries, why can't you also give them the source documents so that they are able to test the integrity of the summaries?

MS. SANDS: Your Honor, I mean I think Danielle

mostly discussed this when we were talking about the AD 3500 issue. But what we've done is we've -- I mean, documents are supposed to be produced the way they're kept obviously in the ordinary course of business.

Like we said or like Ms. Futterman mentioned, in the ordinary course of business the financials are kept on a brand level, so they don't go down to filter versus specific units or even, you know, specific products or SKUs.

The only way to give them financials that would make sense would be to query the ERP system and I'll also note that they've produced only summary spreadsheets themselves and said that that's sufficient, so we --

THE COURT: Okay, but let's just talk about --

MS. SANDS: Right.

THE COURT: Yeah.

MS. SANDS: But what we -- and our system, as Ms. Futterman also mentioned, it's annually audited by an independent accountant so what our CFO did was to query the database that exists, and there's case law that we cited to -- I don't have it, I think it was the -- sorry.

UNIDENTIFIED: U-Haul I think.

MS. SANDS: No, it's not U-Haul. There's case law that we cited to that creating a document for the purposes of litigation is completely separate from querying an existing database for the purposes of litigation. What our issue is, is

that it would entail pulling invoices and/or purchase orders across multiple brands, including brands that don't even involve air filters, because some of the same producers or some of the same materials come from, you know, the same place for multiply different brands.

So we would essentially be producing -- and it is included in a single invoice, so there's completely unrelated information in those invoices that would not give -- there would be no way for them to determine from those underlying documents what the actual profits are for our AD 3000 filters.

It would be unduly burdensome to go and pull all of those underlying documents which actually won't give them any better information. We've also offered for the past year their CFO to speak on this issue. Beyond that, I feel -- I don't know what else -- you know, we can't be -- you know, we can't produce things that don't exist and it doesn't make sense to go through the --

THE COURT: So did you create those summaries for production in response to the request for discovery? I mean, were those --

MS. SANDS: So it wasn't created. Again, and I think again the case law supports this, that creating a document is a distinct obviously act from querying a database that exists in the ordinary course of business. So we did not -- we produced documents, yes, that were queried from the database that exists

in the ordinary course to get it down to a granular enough level so that it actually shows profits.

And also frankly, if we were hiding profits, we certainly wouldn't have produced what we produced because it shows millions of dollars in profits. We're not -- the client is not hiding anything. They did the best -- they gave the information in the best way that they can to actually isolate the products that are at issue in the case. They're not entitled to every -- to discovery and documents that cover multiple brands across multiple product categories. They're entitled to information about the profits for the product that actually at issue in the case.

THE COURT: So why can't you submit -- provide the defendants with a declaration that details, you know, what the source -- how you compiled the summaries that you did produce, what records you accessed, and from what database or sources and how that was then used to prepare the summaries that you did produce. And then in terms of being able to -- you know, some indication by someone who did this as to how accurate that was and whether any checks were done, like quality control to ensure that the numbers on the summaries do, in fact, reflect the document -- the numbers on the source documents from which they were derived?

And then if defendants, after receiving that request, maybe your CFO or whatever can sit down with their expert and

give them and show them, look, these are the invoices. Here's a sampling of the invoices that we had to pull to get this data and as you can see on this invoice, it's not just the AD 3000, you know, it's ten other products. And so it's -- you know, we can turn over all these invoices but it's not going to help you to determine what the -- you know, what the profit was on that filter is. Can you do that?

MS. SANDS: Yes, Your Honor. I mean again we have offered the CFO to walk through that also in a deposition, but I don't see why he can't also make a declaration.

But I just -- so I just want to be clear about what you want in that declaration. So just the steps that he -- what system they keep it in, the steps that he took, what goes into that system --

THE COURT: Right.

MS. SANDS: -- and then what the output was from that.

THE COURT: And then something with respect to testing the accuracy of the numbers.

MS. SANDS: So that --

THE COURT: The summary.

MS. SANDS: So again, the accuracy of those numbers would be by the independent accountant, so annually it's -- that whole system is audited by an independent accountant. I'm not sure if --

THE COURT: Well, but does the independent accountant audit whether the numbers that are in the system are in fact reflective of the source documents which would be the invoices? They probably do a sampling --

MS. SANDS: Right.

THE COURT: -- to determine whether --

MS. SANDS: I'll have to look into that further. I'm not a hundred percent sure, but I can look into that and either submit something to you or --

THE COURT: All right. Given what Ms. Sands has said about the manner in which these records were turned over, would that sort of satisfy the defendant's need to be able to have something that would assure them on the accuracy of the summary financial information that has been provided?

MR. O'CONNOR: I think what Your Honor laid out would be very helpful; however, there's some basic information like, you know, Mr. Ahouse couldn't identify any suppliers, he couldn't identify how things are imported, what's paid for them, that sort of thing. And so counsel --

THE COURT: Well, have you arranged to take the deposition of their CFO?

MR. O'CONNOR: I've noticed the depos of the folks, but everything was put on hold to --

THE COURT: Right.

MR. O'CONNOR: -- note these issues so --

THE COURT: Right.

MR. O'CONNOR: -- it would be helpful to have that in writing and be sworn to, that this was done, and tell us where we can find it, put it together. But basic information and you know, names of the suppliers, you know, advertising spent, things like -- somewhere -- because what happened last time is we got in the room, we had all these acronyms used in these documents even the 30(b)(6) didn't know what they meant. And I just don't want that to happen again.

THE COURT: Okay. All right. So on the defendant's motion to compel plaintiff's that was filed at 277 -- 278, the Court is going to deny discovery with respect to the AD 3500 related materials, except as to when that is sort of intertwined with the discovery that is produced regarding the AD 3000 so you don't have to extract it, but if it's already there because in your search it comes up as AD 3000/AD 3500 but plaintiffs are not required to do separate searches for the AD 3500 related materials.

With respect to the request for the affiliated related discovery the Court grants that request, but that will be limited to the five Ideal Living entities. And with respect to the financial, the request for the underlying source documents for the sales data that defendants -- that plaintiffs have produced, the Court is going to order plaintiffs to have their CFO or their person who is familiar with the -- is it the

ERP system?

MS. SANDS: Yes. Yes, Your Honor.

THE COURT: To provide a detailed declaration that sets forth how the numbers that were on the summaries were derived from what sources and not only from where that information resides, where it's kept in the ordinary course of business and how it was accessed to compile the summary and the financials that were disclosed. And then to have either the same person or the independent auditor explain to the extent that they -- when they do their annual audits, how they verify the accuracy of the numbers.

And then after defendant receives that, if they so request, plaintiffs are to make that CFO available, if not for a deposition, for sort of a meeting and you can, you know, come up with a confidentiality agreement with respect to what's disclosed there. But to meet with the defendant's counterpart to explain how this information was compiled and to provide samples of the source documents to support the assertion that plaintiffs have made here, that you know, giving all these invoices would not be helpful because they are not confined to the AD 3000 filter.

Okay. That takes care of the defendant's motion. Now we move to the plaintiff's motion that was filed at 295. They -- plaintiffs move to compel defendants to produce Amazon sales data, transaction level financial data and then the

communications that defendants had with Amazon and their customers regarding their advertising and their sort of back end seller central data.

And defendant challenges first the fact that plaintiff made this motion without a meaningful meet and confer and maintains that notwithstanding that, that they have conducted, you know, multiple good faith searches and produced everything in their custody, possession and control and they're not withholding anything.

The plaintiffs say well they were able to get the information that they requested from defendant directly by subpoenaing Amazon, but they had to pay for it, so they only sought from Amazon a subset of what they believe they are entitled to because of the cost.

And defendant in response to that claim that they did not have access to the data that Amazon produced to the plaintiff because -- and there's some dispute about whether defendants actually, you know, went into the system and put in the time frame that the parties agree is the relevant time period, I think it was 2021 to what, 2024 -- 20 --

MS. SANDS: Yes, Your Honor, it's 2021 to 2024.

THE COURT: Right. So plaintiffs claim that defendants only put in 2023 and 2024 and they came up with nothing and, in fact, they, you know, didn't ask for the whole time period. And defendants respond and say that they were not

able to access going back to 2021 and that they also, you know, plaintiffs get -- got a declaration or a letter from outside counsel at Amazon who said that, you know, this information that Amazon produced to the plaintiff was equally available to the defendant if they asked for it or, you know, tried to get it, because as a seller they have full access to their seller, you know, the back end seller central data. But defendants dispute that and say that when they tried to get that information they were told that it wasn't available.

Defendants have offered their ERP system to be available for inspection by plaintiff's experts, so that plaintiffs can sort of have some comfort in knowing that defendants actually did do their due diligence, produced everything that they were able to access.

And then there's also the issue of Xincheng documents that there was the issue with the redactions. I think that's been resolved because defendants have, in fact, produced the unredacted documents. And so the Court appreciates the parties resolving that dispute because it would have involved the Court looking at the redacted documents.

All right. So that's where we are with the plaintiff's motion to compel. What is -- let me ask you, Mr. O'Connor, have you now produced everything in your possession, custody, control and what about the plaintiff's argument that, you know, this information, you know, Amazon had

it and if the plaintiffs were able to get it from a subpoena, why couldn't the defendants have attempted to get the same information? Why did it have to get to the point where they had to subpoena the third party to get it?

MR. O'CONNOR: Sure. I've tried to pull up the letter from the lawyer for Amazon to see just how equivocal or unequivocal he was on that point. It's a hearsay letter from an attorney who says, here's the general policies, and here's how generally people can access their data. It is not what plaintiffs make it out to be, that it is somehow an unequivocal statement that this data is, in fact, available to our clients, it is not.

And also that letter came to us literally I think it was like shortly after they filed their motion. Put that to the side. The clients did the searches that we've described. The searches were, as we've been told, very complete, very thorough.

What they point to as being available on the Amazon side is like I saw an Excel spreadsheet, but what they don't say to the Court is, hey, look at this, look at this, look at this within the Excel spreadsheet and it's so highly probative or relevant and why don't they have it. Like they don't point that out to Your Honor because we went through it. I didn't see anything in there that has anything to do with this case.

Our clients have said they've produced everything

they have. I don't know what else we could do, short of perhaps some kind of a limited declaration along the lines. Well ours -- I think theirs is more detailed, but we can certainly give a declaration from the client that says, here's the steps I took, this is where I looked, and this is what I found.

THE COURT: Okay. Let me hear from you, Ms. Sands, what's your response to that? They -- you know, I think they have a point there, the defendants, and I say, look, you know, if we can't access the information from Amazon and you're able to subpoena it, I don't know that they're required to get -- if they have to actually, you know, ask Amazon for the information as opposed to getting it from their, you know, internal sources I don't know that they should be required to do it. And, in fact, you were able to get it from Amazon and so you have it.

What about Mr. O'Connor's proposal that the defendants provide a declaration that sets forth what they -- how they searched for the documents that were requested, where those documents were located, how they compiled them and then some, you know, statement that they have, in fact, produced everything that they have possession, custody and control?

You made some reference in the motion to the Amazon saying, well there's 6,000 plus e-mails or communications out there that Amazon didn't produce, but I think defendants also point out well, of course, because they were selling their

products on Amazon and, you know, of course there's going to be communications. But what you're interested in is customer reviews and complaints regarding their sales of filters they claimed were compatible with the AD 3000, right?

MS. SANDS: It's not limited to that, but I'm actually going to let Ms. Futterman answer on this.

THE COURT: Okay.

MS. FUTTERMAN: So, Your Honor, there's a problem with what they're saying. They produced certain limited documents from Amazon's back end, including the two delisting notices when their listings were taken down. And they also -- I think one or two of the defendants produced ad word data from Amazon's back end.

So documents are accessible to them and Amazon -- one of the documents Amazon produced to us is a very large spreadsheet that I think Ms. Pan attached to her declaration. And it had 6,774 lines of e-mail communications. Those e-mail communications, as Amazon represented them to us, only relate to the Amazon -- the products at issue, Amazon calls it ASNs (phonetic), it's like a SKU. So they only relate to the SKUs at issue in this lawsuit and it's very difficult to read them because it's in spreadsheet form when it's supposed to be an e-mail.

But on -- based on our review of them and they're attached to Ms. Pan's declaration, you can actually see if you

look there, even though it's hard to follow, there are appeals that they filed relevant -- responsive to the delistings, so they are directly responsive to documents that we sought in this litigation and they didn't produce them.

And, you know, just recently they asked us for the same documents that they're saying they can't produce for our AD 3000 product which has not been available for sale for a couple of years now. And our client had no problem going on Amazon's back end and pulling the exact same documents and we just served them with about 2,000 pages of documents a couple of days ago from Amazon's back end. We had no issue pulling it.

And anecdotally we have cases all the time against Amazon sellers where products are taken down, and we have never in ten years ever had a seller say that they can't pull these sorts of documents, let alone three sellers who are claiming that they're completely unrelated, but yet all three of them can only produce the exact same document. It's just not -- it can't be a coincidence, Your Honor.

THE COURT: Okay. Mr. O'Connor, what's your response to that?

MR. O'CONNOR: Well, I'll address the last point. So counsel is saying to Your Honor well, AirDoctor stopped selling the AirDoctor 3000 a few years ago, and therefore that they don't have a problem with this, somehow our clients shouldn't

have a problem. AirDoctor's been on Amazon from the beginning to the end, right, so they've never been delisted, shut out, which our clients have. So that's a completely different scenario.

Again, we are lawyers. Ms. Pan, myself, the lawyers we're being told searches were done and they were thorough, if they want a declaration, I think that's the way to resolve it. I don't know how else to resolve it, because we're being told that they searched and they can't find it.

And as far as -- you know, what's really odd in my estimation is, what did it cost to have counsel come here today and to file all these motions? It had to be easily over $3,000, right, and yet that's what you're being told. That it cost them $3,000 to get this stuff and they deferred because they'd rather go to court and burden the Court with hundreds of thousands of pages of materials. We don't have it, according to our clients, and we'll give you a declaration on that.

THE COURT: All right. I'm going to order then defendant's -- plaintiff's motion is granted in part. Defendants are ordered to produce a detailed declaration regarding the search that they conducted for responsive documents explaining what, if any, attempts they made to access their records of their sales on Amazon and the results of -- and whether those attempts were successful and to what extent if they know that the fact that they were delisted prevented

them from accessing their records. Okay?

Let's talk about timing on what the Court has ordered the parties to produce. I think you had said at the beginning that you were going to produce something within a week. Can we say that you can comply with the discovery rulings from today within ten days? Would that be enough? Because I know you have discovery cut off is coming up, right, three weeks from now?

MS. SANDS: Yes, Your Honor.

THE COURT: Is ten days something that's workable?

MS. SANDS: Yes, Your Honor.

THE COURT: Workable for the declarations?

MR. O'CONNOR: Yes, Your Honor.

THE COURT: I'll issue a written order either today or tomorrow that will set forth what needs to be produced so you're clear.

Now, I want to go back to the motion that was filed I think at Docket 200. And this was -- all right. Oh, wait a minute, there it is.

So the issue that the Court -- you know, the way that we left the last hearing was that there was this issue of whether the defendants had, in fact, told this company SPG, is that right, the independent testing company?

MS. SANDS: Oh, Your Honor, SGS.

THE COURT: SGS whether they could destroy these

sample filters that they had tested and plaintiff claimed, you know, here's some communications that, you know, were made to SGS saying, first saying hold on to them, and then saying, no, we don't need them, and plaintiffs argued that, you know, that was a deliberate attempt to prevent the plaintiff from getting the actual filter that was tested by this third party so that the plaintiff could then, you know, verify the nature of that testing and whether, in fact, it was that filter or an upgraded -- whether that was the filter whether defendants were selling or whether it was sort of an upgrade filter that they had sent to the testing company.

And then defendants had said, no, this communication to this SGS saying we don't need this filter it didn't -- it wasn't in reference to the AD -- it wasn't in reference to the filter that was at issue in this case, it had to do with another filter.

So we kind of left it at that because plaintiffs were saying they were going to, I think the Court suggested well why haven't you taken the deposition of anybody at SGS. And then the -- I think Ms. Futterman filed a declaration on May 6th in connection with that motion, basically saying that -- let's see, they had taken the deposition of SGS Daniel Nedry (phonetic) regarding SGS' testing and he had stated that, in fact, you know, defendants specifically if they had not -- if they had requested that the sample be retained, SGS would have

kept that sample, even if they had said, you know, we don't need that sample but then changed their mind before any destruction it would not have been a problem to go and pull that and keep it.

And that flies in the face of what defendants state, which is SGS just destroyed the samples in the routine course of their business and they're not responsible for it. And I know that defendants then submitted an opposition to that declaration. By the way, that declaration is filed at 286 on May 6th and on May 8th at Docket 288, defendant submitted an opposition basically saying this motion was briefed and -- before the Court and the declaration should be stricken.

I mean, I do agree that the plaintiffs should have sought Court -- leave from the Court to file that declaration, but --

MS. SANDS: Your Honor, I believe during that hearing, you actually asked us to update you with respect to that, so that was the only reason we didn't seek leave.

THE COURT: Okay.

MS. SANDS: Otherwise we would have. But in the actual transcript of the hearing, I believe you did ask for an update.

THE COURT: Okay. And then defendant say that declaration was misleading and incomplete. Oh, this relates to something else. I'm sorry, I haven't read through this, but do

you want to respond to that? I mean I think there's a problem with -- the Court was troubled by that e-mail exchange where, you know, defendant's representative said to SGS, no, you know, we don't need it, you can just -- you know, we don't need it. That was a bit troubling.

MR. O'CONNOR: Yeah. Well, I think, Your Honor, the response that I would have for you, although we did submit something to Your Honor and I don't recall exactly everything that we said, I wasn't prepared for that today. But the SGS witness, what he did also corroborate is the testing done, right, and the efficacy of that testing, the legitimacy of the testing, there's no question about that testing. That there is absolutely no prejudice that's been described or proven in this case by the other side. And, in fact, we've shown, Your Honor, they've done the same thing.

When we try to get their samples, we can't get their samples, so frankly it is not a ripe dispute in our mind respectfully. I think it's something that they would need to show some prejudice, for instance, their expert. Their expert hasn't claimed that he somehow is deterred from providing an expert opinion. I've deposed their expert, I went to -- Ms. Pan and I flew to San Francisco. At no point did I hear anything about that.

And so it is -- and I think it is akin to --

THE COURT: Did you depose their expert after this

SGS deposition was taken?

MR. O'CONNOR: After Mr. Nedry was deposed? No. That was --

THE COURT: Okay.

MR. O'CONNOR: -- I believe in September. But it was about his opinions and his opinions in the case. And as I recall, there is no opinion in this case that from their expert that they're somehow prejudiced by the lack of the actual sampling. And so --

THE COURT: You made that argument in opposition to the motion that was basically like well they have the testing, they have the underlying testing materials, why do they need the actual filter that was used for -- but they argue that, you know, they believed that the filter that defendant sent to SGS was some sort of an upgraded, you know, filter that would clearly pass HEPA, you know, filter standards and was not the same filter that plaintiff -- that defendants were selling on Amazon and claiming that it was compatible with the defendant's filter.

So they wanted the actual filter so that they could do their own testing of it and confirm SGS', you know, testing results.

MR. O'CONNOR: Mr. Nedry testified about the protocols that are taken to describe the subject of the tests, the photographs that are taken, very clear photographs of the

product. And, Ms. Pan, I'd like you to give any input you have on that last point that the Judge asked about. But my understanding is that that is a red herring. There is absolutely no issue with that sample, no suggestion that that sample isn't exactly what SGS said it was. Right? And so this idea --

THE COURT: Well, I mean, I think the issue is does that sample -- is that sample that was submitted to SGS, is that -- where did that come from?

MR. O'CONNOR: Mr. Nedry, as I recall, testified that it was shipped to his facility. There's a chain of custody --

THE COURT: No, no. But where did the defendant get the sample from? Did they get it from their warehouse or did they pull it from an Amazon seller, where did it come from?

MR. O'CONNOR: I believe that was shipped right from Amazon; am I correct, Ms. Pan?

MS. PAN: Your Honor, at the (inaudible), I remember it might have been shipped from the manufacturer to sample facility in Hong Kong, so the records might be the shipment was from Hong King, from shipment company. And also I would like to add in response to plaintiff's request for production, Lonni had already provided a sample to plaintiff for testing and plaintiff has done two tests on that and one of them is the HEPA filter standards -- HEPA standards for the filter and Lonni's product -- Lonni's (inaudible) through that test.

And also regarding whether Lonni's representative directed SGS to destroy that filter tested by SGS and we have submitted it's actually Exhibit B to Pan declaration and the Pan declaration is Docket -- sorry, it might be 288-1, it said the representative explained that when he responded to SGS e-mail he saw that the sample had already been disposed because it (inaudible) he saw the timing to calculate the choice from which the tests were done, and so that's why he said oh, go ahead because he believed he'd already been disposed. And we have submitted a deposition transcript for that portion.

And yeah, and also I understand Ms. Futterman's declaration stated that SGS allows defendants to do some, you know, to request SGS to not destroy if after Lonni's representative has already responded to that. I want to add that SGS is an (inaudible) and so Lonni's representative was not very (inaudible) or familiar with SGS. They didn't do tons of tests with the SGS, so how SGS internally operated with regarding the samples Lonni's representative would not have any idea of how long that it -- for them to process those.

THE COURT: Right.

MS. PAN: So that is (inaudible).

THE COURT: Right. But the e-mail, as I recall, was that Lonni's representative said to SGS, no, hold on to it and then later said, I think it was in August, later said we don't need it, you can go ahead and destroy it because SGS kept

1 asking, hey, we have a sample, what do we do with this, do you
2 want us to hang on to it, otherwise, you know, we'll destroy it
3 in the course. And Lonni's representative initially said, no,
4 hold on to it, but then no, you can go ahead and destroy it.
5 So I don't see how that -- when you say the SGS
6 representative that was -- that he said it was destroyed in the
7 normal course may well have been, but it was -- I think his
8 point was if they had asked to keep it, they would have kept
9 it. And the fact that Lonni's representative didn't know what
10 their internal practices were, what you just said, that sort of
11 -- I mean, whether or not they knew what the internal practices
12 of SGS were, it was clear that they did not ask for that filter
13 to be, you know, to be kept, so.
14 **MS. PAN:** Thank you, Your Honor. Actually I don't
15 quite remember if there was such e-mail records that Lonni's
16 representative to be repeatedly asking do we (inaudible) or
17 keep the samples because as far as I can remember, Lonni's
18 representative testified in the deposition that the reason he
19 said go ahead and dispose it, was because the time he replied
20 it was after two weeks of that testing, so I'm actually -- it's
21 been a long time, but I'll definitely check. But that's what
22 the representative tested (sic) during that deposition under
23 oath.
24 **THE COURT:** Yeah, I don't think it was a two week
25 time period, I thought it -- I thought SGS reached out and said

we have this, it's been -- I think it was several months, that's why they were reaching out. So I don't think that -- so anyway that -- the Court is going to take the declaration of Ms. Futterman and the opposition to that declaration into account in ruling on that motion. All right?

MR. O'CONNOR: Thank you, Your Honor.

MS. SANDS: Thank you, Your Honor.

THE COURT: All right. Is there anything -- oh, one more thing. Going forward, I know you only have a few weeks before discovery cut off, but if there are any further discovery issues you must use the informal discovery conference procedure to bring them to the Court's attention. Okay?

MS. SANDS: Yes, thank you, Your Honor.

MR. O'CONNOR: Thank you, Your Honor.

MS. FUTTERMAN: Thank you, Your Honor.

THE COURT: I'll issue a ruling, thank you.

MS. FUTTERMAN: Thank you.

(Proceedings concluded at 11:36 a.m.)

*** * * * ***

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Signed **Dated**

June 18, 2026

TONI HUDSON, TRANSCRIBER