

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

## AFG COMPANIES INC,

*Plaintiff,*

V.

**Civil Action No. 4:25-cv-01272-O**

## GENUINE LIFETIME, LLC, et al,

888888

### *Defendants.*

## **REPORT REGARDING CONTENTS OF SCHEDULING ORDER**

Pursuant to Federal Rules of Civil Procedure 16(b) and 26, and the Court’s November 12, 2025 Order (ECF 2), Plaintiffs Automative Financial Group, Inc. and AFG Companies, Inc. (together, “**AFG**”) and Third-Party Defendant Ralph Wright Brewer III (“**Brewer**”), along with Defendants Genuine Lifetime, LLC (“**Genuine Lifetime**”) and Tyler Luck, and Defendant and Third-Party Plaintiff Travis Gates (collectively with Genuine Lifetime and Luck, “**Defendants**”), submit this Report Regarding Contents of Scheduling Order (“**Joint Report**”).

## 1. Brief Statement of claims and defenses.

## AFG's Claims Against Gates

AFG asserts claims against Travis Gates for Misappropriation of Trade Secrets under the Texas Uniform Trade Secrets Act, Breach of Fiduciary Duty, and Tortious Interference with Existing Contracts and Prospective Business Relationships. AFG further seeks permanent injunctive relief against Travis Gates.

Travis Gates worked for AFG and its affiliated entities from April 2013 through March 2024 as a Technology Officer and Chief Creative Officer. Gates abruptly resigned in March 2024.

Prior to his resignation, Gates used his position to obtain AFG's highly confidential information, including information from AFG's third-party cyber security vendor. After his resignation, Gates downloaded this confidential information to from his work devices and retained copies of the same before completely wiping his work devices clean of all files. Gates then improperly disclosed and published AFG's confidential information in an effort to undermine AFG's ongoing and prospective business relationships.

AFG's Claims Against Genuine Lifetime and Luck

AFG asserts a breach of contract claim against Genuine Lifetime. On October 17, 2023, AFG entered into a loan agreement (the "**Loan Agreement**") wherein AFG agreed to loan Genuine Lifetime \$4 million so that Genuine Lifetime could purchase shares of Brand Engagement Network, Inc. ("**BEN**"). The Loan Agreement required Genuine Lifetime to, among other things, make the first interest payment due within thirty days after BEN's shares began trading on the NASDAQ stock exchange. The Loan Agreement further required Genuine Lifetime to pay back the principal in full, with any accrued interest, on or before the earlier of (i) one year from the date of the Loan Agreement, or (ii) thirty days following the date on which BEN shares began trading on the NASDAQ stock exchange. Genuine Lifetime was also required to pay a loan fee of \$400,000 within thirty days of BEN shares trading on the NASDAQ stock exchange.

The Loan Agreement further provided for AFG and Genuine Lifetime to enter into a security agreement (the "**Security Agreement**"). On October 17, 2023, Genuine Lifetime and AFG executed the Security Agreement as "Grantor" and "Secured Party," respectively. The Security Agreement granted AFG a lien and security interest in all the assets of Genuine Lifetime, any and all proceeds and products thereof, and any other tangible or intangible property received upon the sale or disposition thereof.

AFG also asserts a breach of contract claim against Tyler Luck. On October 17, 2023, AFG and Tyler Luck entered into a Personal Guaranty of Payment to AFG Companies, Inc. (the “**Personal Guaranty**”), whereunder Luck assumed personal liability for the amounts owed to AFG under the Loan Agreement should any portion thereof not be paid when due.

Genuine Lifetime received the \$4 million contemplated by the Loan Agreement and, on March 14, 2024, used them to purchase BEN shares. BEN’s shares began trading on the NASDAQ stock exchange on March 15, 2024. Accordingly, the amounts due under the Loan Agreement should have been paid within thirty days from March 15, 2024. To date, no payments have been made under either the Loan Agreement or the Personal Guaranty.

#### Gates’ claims against AFG and Brewer

Gates’s petition alleges that AFG’s lawsuit was brought in retaliation for his efforts to ensure compliance with federal law. That retaliation claim, while asserted under Texas law, hinge on whether Gates’s disclosures were protected under federal statutes and regulations—namely, whether AFG had obligations under the FTC Safeguards Rule, the Gramm-Leach-Bliley Act (“GLBA”), and SEC cybersecurity disclosure rules. Gates also asserts federal claims for securities fraud under Section 10(b) of the Exchange Act and Rule 10b-5, as well as insider trading under Section 20A.

Regarding the Rule 10b-5 securities fraud claim, Gates alleges that Brewer promised to invest capital and resources into BEN, and that Gates relied on these representations by providing valuable services in exchange for a promised equity interest in the company. Meanwhile, Brewer and his affiliates were covertly divesting themselves of BEN shares and actively attempting to create a competing entity without ever filing a Schedule 13D as required by the Exchange Act.

Additionally, if Defendant Gates is removed to federal court, Defendants submit that his trial should be independent from the trial regarding Genuine Lifetime and Luck. Gates's action is based on distinct facts regarding his employment with AFG, such as trade secrets misappropriation and retaliation. His case does not share a common nucleus of operative fact with Genuine Lifetime and Luck's action.

Genuine Lifetime and Luck's Defenses

Genuine Lifetime and Luck assert the following affirmative defenses:

Genuine Lifetime and Luck assert they are not liable to Plaintiff because the Loan Agreement and other agreements described in Plaintiff's Original Petition were the product of fraud.

Genuine Lifetime and Luck assert that their performance is excused because performance was impossible or impracticable.

Genuine Lifetime and Luck assert they not liable to Plaintiff because the Loan Agreement and other agreements described in Plaintiff's Original Petition are void as against public policy.

Genuine Lifetime and Luck assert that Plaintiff failed to mitigate its damages.

Genuine Lifetime and Luck assert the defenses of contribution and comparative fault set forth in Chapters 32 and 33 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

Genuine Lifetime and Luck affirmatively plead that Plaintiff's claims are barred by the Economic Loss Doctrine.

Genuine Lifetime and Luck will show that they are entitled to a credit or offset for all monies or consideration paid to Plaintiff by virtue of any type of form of settlement agreement, if any, entered into by and between the Parties and any party herein, or any other person or entity not a party to this litigation. Furthermore, Genuine Lifetime and Luck assert the affirmative defenses

of offset, credit, payment, release and accord and satisfaction as provided in Rule 94 of the TEXAS RULES OF CIVIL PROCEDURE and Chapter 33.012 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

Genuine Lifetime and Luck deny that all conditions precedent to Plaintiff's right to recovery have occurred.

Genuine Lifetime and Luck affirmatively plead estoppel.

Genuine Lifetime and Luck submit that Plaintiff's claims are barred, in whole or in part, by its ratification.

**2. A proposed time limit to file motions for leave to join other parties.**

The parties anticipate needing several months to conduct additional discovery and determine whether new parties or pleadings are necessary. Accordingly, the parties propose that any motions to Amend Pleadings or join parties be filed on or before **May 15, 2026**.

**3. Proposed time limit to amend the pleadings.**

The parties anticipate needing several months to conduct additional discovery and determine whether amended pleadings are necessary. Accordingly, the parties propose that any motions to Amend Pleadings be filed on or before **July 20, 2026**.

**4. Proposed time limits to file various types of motions, including dispositive motions.**

The parties anticipate needing written discovery and depositions of multiple fact and expert witnesses. Accordingly, the parties propose that any non-trial related motions, including dispositive motions, be filed on or before **September 14, 2026**.

**5. Proposed time limit for initial designation of experts.**

The parties propose that any party who intends to call any expert witness to testify on a matter on which that party has the burden of proof shall serve the information required by Federal Rule of Civil Procedure 26(a)(2) on or before **July 20, 2026**.

**6. Proposed time limit for responsive designation of experts.**

The parties propose that any party who intends to call an expert witness to testify in response to any expert designated by a party on a matter on which that party has the burden of proof shall serve the information required by Federal Rule of Civil Procedure 26(a)(2) on or before **August 24, 2026.**

**7. Proposed time limit for objections to experts (i.e., Daubert and similar motions).**

AFG Response: AFG proposes that motions challenging expert designations or proposed expert testimony be filed on or before **October 5, 2026.**

Genuine Lifetime/Luck/Gates Response: Genuine Lifetime, Luck, and Gates propose that motions challenging expert designations or proposed expert testimony be filed on or before **October 15, 2026.**

**8. Proposed plan and schedule for discovery, a statement of the subjects on which discovery may be needed, a time limit to complete factual discovery and expert discovery, and a statement of whether discovery should be conducted in phases or limited to or focused upon particular issues.**

The parties propose that all factual and expert discovery is to be completed by **July 10, 2026**, and that all discovery requests, including written discovery and request for depositions, should be served so that responses are due and depositions taken by this deadline.

The subjects on which discovery may be needed include, but are not limited to, the following: (i) AFG's allegations, causes of action, and alleged damages; (ii) Defendant's allegations, causes of actions, and alleged damages; and (iii) the opinions of any experts.

**9. What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed.**

AFG Response: AFG and Gates entered into an Agreed Protective Order prior to removal. Likewise, AFG, Genuine Lifetime, and Luck entered into an Agreed Protective Order prior to

removal. AFG contends that these Agreed Protective Orders should remain in effect during litigation before this Court or until this Court orders otherwise.

Moreover, an Agreed Temporary Injunction was entered on June 7, 2024, which prohibits Gates from taking certain actions with regard to AFG's Confidential Information. AFG contends that the Agreed Temporary Injunction entered by the 48th District Court should remain in effect during litigation before this Court or until this Court orders otherwise.

**Genuine Lifetime/Luck/Gates Response:** Genuine Lifetime, Luck, and Gates take the position that the Fifth Circuit and District Court rules regarding protective orders supersede the protective order into which some of the Parties previously entered. Genuine Lifetime, Luck, and Gates anticipate the creation of a new protective order which complies with the directs set out by the Fifth Circuit and the Northern District of Texas.

Regarding the temporary injunction in effect, Genuine Lifetime, Luck, and Gates disagree with AFG's position. Genuine Lifetime, Luck, and Gates will be making a motion to dissolve the injunction after this Court's scheduling conference or at the otherwise earliest practicable time.

**10. Proposed means for disclosure or discovery of electronically stored information (“ESI”) and a statement of any disputes regarding the disclosure or discovery of ESI.**

**AFG Response:** AFG contends that the parties should preserve and produce ESI in accordance with the Federal Rules of Civil Procedure. AFG contends that documents, including electronically stored information, should be produced in PDF or TIFF format, except for excels, which should be produced natively. AFG further contends that documents should be produced in searchable format, if available. AFG also contends that the requesting party should also be allowed to request production of select documents in their native format (*e.g.*, Microsoft Outlook, Microsoft PowerPoint, Lotus Notes, Microsoft Excel, etc.), and that the parties should agree to cooperate with any such reasonable requests.

Genuine Lifetime/Luck/Gates Response: Genuine Lifetime, Luck, and Gates agree to preserve and produce ESI in accordance with the Federal Rules of Civil Procedure. The parties agree that all documents, including electronically stored information, will be produced in native format.

**11. Any proposals regarding the handling and protection of privileged or trial-preparation material that should be reflected in a Court Order.**

AFG Response: AFG is aware of the improper disclosure of its privileged materials to opposing counsel and has raised the same in conference. AFG anticipates, pending the appearance of new counsel for some or all of Defendants, filing motions for protection and/or disqualification based on the improper disclosure of these privileged materials.

Genuine Lifetime/Luck/Gates Response: Genuine Lifetime, Luck, and Gates take the position that the Fifth Circuit and District Court rules regarding protective orders supersede the protective order into which some of the Parties previously entered. Genuine Lifetime, Luck, and Gates anticipate the creation of a new protective order which complies with the directs set out by the Fifth Circuit and the Northern District of Texas. Additionally, Genuine Lifetime, Luck, and Gates disagree with AFG's position regarding privileged documents. There are no such documents that are privileged on the basis identified by AFG, And to the extent any such documents were privileged, such privilege has long ago been waived.

**12. A proposed trial date, estimated number of days required for trial and whether a jury has been demanded.**

AFG Response: AFG requests a **November 2, 2026** trial date. AFG anticipates that it will take 4 weeks to present the evidence in this case. AFG further agrees with the 48th District Court's conclusion that the parties' claims should be tried in a single, consolidated trial. A jury has been demanded and the jury fee has been paid.

Genuine Lifetime/Luck/Gates Response: Genuine Lifetime, Luck, and Gates request a **January 11, 2027** trial date. The parties anticipate a one week trial for Genuine Lifetime and Luck's case, and a separate one week trial for Gates's case. Genuine Lifetime's case is a simple breach of contract matter with fraudulent inducement counterclaims. Gates's case concerns the misappropriation of trade secrets and counterclaims of employment retaliation. These matters should be tried separately.

**13. A proposed date for further settlement negotiations.**

The parties agree to mediate this case on or before **August 3, 2026**.

**14. Objections to Fed. R. Civ. P. 26(a)(1) asserted at the Scheduling Conference, and other proposed modifications to the timing, form or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made.**

The parties made the disclosures required by the Texas Rules of Civil Procedure prior to removal of this case, but have not yet made disclosures pursuant to Rule 26(a)(1). The parties agree to serve their Rule 26(a)(1) disclosures on or before **January 12, 2026**.

**15. Whether the parties will consent to trial (jury or non-jury) before a U.S. Magistrate Judge.**

The parties do not agree to conduct the trial before a magistrate judge.

**16. Whether the parties are considering mediation or arbitration to resolve this litigation and a statement of when it would be most effective (e.g., before discovery, after limited discovery, after motions are filed, etc.), and, if mediation is proposed, the name of any mediator the parties jointly recommend to mediate the case.**

The parties mediated portions of this case prior to removal, and have agreed to mediate again. The parties are in the process of conferring on a new mediator and mediation date.

**17. Any other proposals regarding scheduling and discovery that the parties believe will facilitate expeditious and orderly preparation for trial.**

None as of the filing of this Joint Report.

**18. Whether a conference with the Court is desired.**

AFG's Response: AFG does not believe a conference with the Court is needed at this time.

Genuine Lifetime/Luck/Gates Response: Genuine Lifetime, Luck, and Gates request a conference with Judge O'Connor. We believe such a conference will be beneficial to the Parties as well as the Court, given the long and complex procedural history of this case. Additionally, it will be useful for the Parties and Court to discuss the historically distinct nature of the Genuine Lifetime and Luck case and the Gates case, as these matters are premised on wholly different factual allegations and legal claims.

**19. Any other matters relevant to the status and disposition of this case including any other Orders that should be entered by the Court under R. 16(b) and (c) and 26(c).**

AFG Response: AFG maintains that this case was improperly removed and should be remanded immediately, as demonstrated in AFG's Motion for Remand and accompanying Brief in Support, filed November 21, 2025. [ECF Nos. 5, 6].

Genuine Lifetime/Luck/Gates Response: Defendants submit that removal was proper and this case should remain in the Northern District of Texas. Defendants also request a hearing on the motion to remand. Given this District's stated interest in having less-experienced lawyers argue motions, Defendants expect to have a more junior attorney argue the motion to remand, if this matter is set for oral argument.

Respectfully submitted,

By: /s/ Shauna J. Wright

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