

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

CARVANA, LLC, an Arizona limited liability
company,

Plaintiff,

v.

JESSE WHITE, in his official capacity as the
ILLINOIS SECRETARY OF STATE,

Defendant.

Candice Adams
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 18807407
2022CH000155
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Case No.

2022CH000155

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF**

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INTRODUCTION

The Illinois Secretary of State (the “Secretary”) violated the Illinois Administrative Procedures Act (the “Act”) by summarily suspending Carvana, LLC’s (“Carvana”) Dealer Certificates of Authority and dealer plates (collectively, the “Licenses”) without first providing Carvana a hearing. *See* 5 ILCS 100/10-65(d) (requiring a party be given opportunity to be heard at hearing prior to suspension of business license). The only exception to the Act’s hearing requirement—that the Secretary has shown by a preponderance of the evidence that “the public interest, safety, or welfare *imperatively requires emergency action*”—has not been met, and cannot justify the irreparable harm the Secretary has caused Carvana. *Id.* (emphasis added).

The plain terms of the Secretary’s May 10, 2022 Order of Summary Suspension (the “Suspension Order”) demonstrate there is no emergency that imperatively requires the suspension of Carvana’s Licenses without a hearing. The Suspension Order arises out of alleged record-keeping violations and purported deficiencies in the timing and manner Carvana registered and titled vehicles sold to Illinois customers. These alleged violations create no public safety issue, and the Secretary’s hypothetical assertions to the contrary cannot justify the use of emergency powers. *See Simpson v. Brown County*, 860 F.3d 1001, 1009 (7th Cir. 2017) (interest in public health and safety insufficient to bypass contractor’s right to be heard); *see also* 5 ILCS 100/10-65(d) (requiring Secretary to make findings prior to suspending license without hearing).

Emergency action is plainly unwarranted given that: (1) the Secretary voluntarily stayed the Suspension Order for months; (2) the Secretary is allowing Carvana to deliver cars to some or potentially all customers who placed orders *after* issuing the “emergency” suspension; and (3) the Secretary has not identified in either the Suspension Order or Revocation Letter (defined below) **any** Illinois consumer whose safety has been affected by Carvana’s alleged administrative issues. That the Secretary has not identified any customer that was harmed, either before or after the

Suspension Order was stayed, demonstrates there is no justification for suspending Carvana's Licenses before Carvana has an opportunity to refute the Secretary's erroneous allegations at the statutorily-required administrative hearing.

The Secretary's pre-hearing suspension of Carvana's Licenses in violation of the Act has forced Carvana to close its two Illinois licensed dealership facilities and cease all Illinois sales. Further, news of the suspension (and the Secretary's revocation of a stay of that suspension) has been released to the press. Allowing the suspension to continue pending a hearing will exacerbate the irreparable harm to Carvana's reputation, goodwill, market share, and business operations—without any adequate remedy at law. The Court should enjoin the Secretary from enforcing the suspension until Carvana receives the hearing that Illinois law and due process require.

BACKGROUND

Carvana is an online car sales company that leverages modern technology and tools to provide an efficient and desirable customer experience, avoiding the hassle of a typical "used car dealer" experience. (Declaration of Jonathan Greer, attached as Ex. 1 ("Greer Decl."), at ¶ 5) Carvana's nationwide inventory provides customers with a vast selection of used cars to choose from. Customers purchase their vehicles online and sign purchase contracts via electronic signature. Once the customer has completed an online purchase, Carvana arranges for delivery of the vehicle. The manner of delivery depends on a variety of factors, including where the customer lives, the vehicle they choose, and where that vehicle is located. (*Id.* at ¶¶ 12-13)

Carvana operates in multiple states. In July 2017, prior to opening any physical locations in Illinois, Carvana met with the Secretary's representatives to discuss Carvana's business model and confirm that Carvana did not need an Illinois license to deliver vehicles to Illinois customers who purchased vehicles, and consummated sales, in other states. (*Id.*, ¶ 17) The Secretary's office confirmed that such sales fall outside the scope of Illinois licensing laws and could be completed

without an Illinois license. (*Id.*, ¶ 18) Carvana also inquired about the possibility of opening an Illinois Vending Machine and whether additional licenses would be required. (*Id.*) Again, the Secretary confirmed that no licenses would be required if the sales of the vehicles distributed through an Illinois Vending Machine were consummated in other states. (*Id.*)

In July 2019, in advance of Carvana commencing in-state operations in Illinois, it again met with the Secretary’s representatives. (*Id.*, ¶ 21). Carvana explained during the 2019 meetings that certain Illinois customers living near a Carvana Vending Machine within Illinois or other local operations could pick up their vehicle at the Vending Machine or have it delivered to their home from Carvana’s local team members under one of Carvana’s Illinois dealer licenses. (*Id.*) Other Illinois customers who live outside of Carvana’s local delivery zones or near state borders may purchase vehicles that are sold and delivered by Carvana dealerships licensed and located in another state. (*Id.*, ¶ 15) In connection with the addition of physical operations in Illinois, Carvana obtained the Licenses at issue in this motion—two dealer licenses—one associated with its Arlington Heights Hub and another with its Oak Brook Vending Machine. (*Id.*, ¶ 22)

During the 2019 meetings, the Secretary did not suggest that out-of-state sales would somehow be subject to any Illinois licensing requirements as had been confirmed during the initial 2017 meetings. (*Id.*, ¶ 23) Indeed, the Secretary has long acknowledged that Carvana does not need Illinois Licenses to consummate sales from Carvana’s non-Illinois-based dealerships with customers in Illinois. (*Id.*) Nor does Carvana need those Licenses to effectuate delivery of cars sold from outside Illinois to Illinois customers. Carvana has complied with this requirement. (*Id.*)² And, in the five years since Carvana first met with the Secretary, there have been approximately

² Customers who live in an area of Illinois that Carvana’s distribution network does not reach, and who would like their vehicle delivered to them, may schedule delivery from a third-party, non-Carvana transportation company.

25,000 vehicles sold to Illinois consumers via out-of-state transactions without any objection from the Secretary. (*Id.*, ¶ 24)

Occasionally, beginning with challenges from the COVID-19 pandemic, delays occurred in transferring title to or completing registration for certain Carvana customers. Carvana is required to pay a fee to Illinois every time it is unable to transfer title by the deadline and has done so for every late title transfer since 2019. (*Id.*, ¶ 25) While Carvana has largely remedied these delayed title transfer issues, the Secretary has been aware for approximately three years of individualized challenges to timely transferring title and registration. (*Id.*, ¶ 27)

The Secretary Summarily Suspends Carvana’s Licenses Without A Hearing.

On or about April 27, 2022, Carvana underwent its first formal Illinois audit by the Secretary of State Police (the “Secretary Police”), an adjunct agency of the Secretary. (*Id.*, ¶30) The Secretary Police reviewed both of Carvana’s Illinois-licensed dealer locations. Carvana cooperated with the audit and provided all information requested by the Secretary Police. (*Id.*, ¶ 31). Carvana attempted to meet with the auditors, but those requests were ignored. (*Id.*, ¶ 32)

On May 10, 2022, the Secretary Police served the Suspension Order on Carvana. (*Id.*, ¶ 33 & Ex. A) The Suspension Order purports to suspend “any and all Illinois Dealer’s Certificates of Authority and all dealer plates issued to” Carvana, *effective upon delivery*, and is “*in effect pending the outcome of an administrative hearing*” conducted by the Secretary. (*Id.* at 1) (emphasis added). The Suspension Order granted Carvana no pre-suspension hearing or opportunity to be heard. The Secretary based his suspension on the following allegations:

- Carvana issued out-of-state Temporary Registration Plates (“TRPs”) to certain customers who purchased their vehicles from Carvana’s Illinois dealerships;
- Carvana failed to transfer title to certain customers within 20 days of the sale of the vehicle;
- Carvana stored certain business records at its supplemental location in Arlington Heights rather than its primary location in Oak Brook;

- Carvana affixed hard license plates to certain vehicles without assigning the plate to its customer.

(*Id.*, ¶ 35 & Ex. A at 1-2)³ Without any factual support or explanation, the Suspension Order declares that the “[t]he foregoing violations pose an immediate threat to the public welfare,” and therefore “finds that the public interest, safety, and welfare imperatively requires summary suspension.” (Greer Decl., Ex. A at 3)

The Secretary Stayed the Suspension.

Less than three weeks after issuing the Suspension, and after discussions with Carvana representatives, the Secretary reversed course. On May 26, 2022, in lieu of proceeding with an administrative hearing, Carvana and the Secretary agreed to the entry of an order, in which the Secretary stayed enforcement of the suspension while Carvana agreed to “continue to negotiate with the Secretary of State in good faith to resolve all outstanding issues related to the suspension of the Respondent’s Certificate of Authority” (the “Stay Order”). (Greer Decl., ¶ 42 & Ex. B) The Stay Order included a provision that permitted the Secretary to lift the stay upon a determination that Carvana was failing to abide by the provisions of the Stay Order. Carvana also agreed to pay a substantial penalty (\$250,000) if it failed to comply with the Stay Order. The Stay Order ensured that Carvana could continue to sell vehicles under its Illinois Licenses while working with the Secretary to process paperwork and address the issues raised in the Suspension Order. Between May 27 and July 17, 2022, Carvana processed over 900 additional sales pursuant to its Illinois Licenses at its Arlington Heights Hub and its Oak Brook Vending Machine. (Greer Decl., ¶ 44) Carvana has not received a *single* customer complaint concerning the issues outlined in the Suspension Order for any of these sales. (*Id.*, ¶ 45)

³ The Suspension says nothing about, and is not based on, any sales activity concerning Illinois customers serviced by out-of-state Carvana licensed dealers.

The Secretary Revoked The Stay And Reinstated The Summary Suspension Of Carvana's Licenses In Violation Of The Act And Without An Adequate Investigation or Factual Basis.

On July 18, 2022, the Secretary unilaterally revoked the Stay Order and declared that, effective immediately, Carvana's Licenses were suspended. (*Id.*, ¶ 47 & Ex. C) Like the original Suspension Order, the Secretary's stated reasons for revoking the Stay Order were all predicated on Carvana's alleged administrative deficiencies:

- “(1) The issuance of Temporary Registration Plates of another state to Illinois residents in violation of the Stay Agreement.
- (2) The issuance of Temporary Registration Plates without going through a licensed remitter as required by the Stay Agreement.
- (3) Failure to process title and registration paperwork through the Secretary of State upon sale of a vehicle to Illinois Customers.”

(Decl., Ex. C) The Secretary did not assert, let alone find, that these alleged administrative deficiencies created any public safety risk. Nor did the Secretary conclude that any hypothetical safety risk was so significant as to “imperatively require[] emergency action” prior to a hearing.

The Secretary did not make findings and it is unclear whether the Secretary performed any investigation prior to reinstating the Suspension Order. During a July 18 telephone call with Carvana, the Secretary admitted that the stay was revoked due to the receipt of three customer complaints, which the Secretary had not himself independently investigated. (Greer Decl., ¶ 50) Carvana investigated the three complaints and determined that the sales were not even subject to the Suspension or Stay Orders because they were consummated by out-of-state Carvana dealerships. (*Id.*, ¶ 51). In short, aside from posing no risk to public safety, the three sales that underlie the Secretary's termination of the Stay Order involve out-of-state transactions that the Secretary has consistently acknowledged are not subject to Illinois licensing requirements.

Reinstatement Of The Suspension Order Irreparably Harmed Carvana.

The Secretary's Revocation Letter has forced Carvana to close its Oak Brook Vending

Machine and Arlington Heights Hub, ceasing all Illinois sales. (*Id.*, ¶ 53) As of July 18, 2022, there are nearly 500 Carvana customers who have purchased vehicles and are awaiting delivery of those vehicles. (*Id.*, ¶ 54) The Secretary has advised Carvana that it may proceed with only some of these previously-scheduled deliveries, while suggesting publicly that it can proceed with others, clearly demonstrating that there is no imminent risk to the citizens of Illinois posed by Carvana’s business operations. (*Id.*, ¶ 55) Nevertheless, absent action by the Court, no new Illinois customers will be able to purchase vehicles from Carvana until the administrative hearing is complete. (*Id.*, ¶¶ 53, 58) At present, a status hearing is currently set for August 30, 2022. (*Id.*, ¶ 46)

Carvana has filed a complaint against the Secretary asserting that the Secretary’s immediate suspension of Carvana’s Licenses without a hearing (1) violates the Act’s “emergency” requirement for imposing such an immediate suspension; (2) constitutes “arbitrary and capricious” agency action; and (3) violates Carvana’s due process rights under the U.S. Constitution.

ARGUMENT

A temporary restraining order (“TRO”) preserves the status quo pending full adjudication of a dispute. *Cty. of Boone v. Plote Construction, Inc.*, 413 Ill. Dec. 66, ¶ 28 (2d Dist. 2017). Injunctive relief is warranted where, as here, the movant shows (1) it is likely to succeed on the merits, (2) it will suffer irreparable harm if injunctive relief is not granted, and (3) its remedies at law are inadequate. *Cty. of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 638 (2d Dist. 2005).

A. Carvana Is Likely To Succeed On The Merits Of Its Statutory Claim.

Carvana must merely show that it has a “better than negligible chance of succeeding” on the merits of its claims. *Id.* Carvana meets this standard. Carvana is likely to succeed on the merits of its claim that the Secretary violated the Act by suspending Carvana’s Licenses without a hearing because the conduct forming the basis of the suspension does not pose an imminent risk to public

safety that “imperatively requires emergency action.” 5 ILCS 100/10-65(d).

1. The Alleged Violations Do Not Pose A Risk To The Public Interest, Safety, Or Welfare That Imperatively Requires Emergency Action.

The Act prohibits the Secretary from suspending Carvana’s Licenses without first holding an administrative hearing. *See* 5 ILCS 100/10-65(d). The only exception to this rule is if the Secretary shows “the public interest, safety, or welfare *imperatively requires emergency action*” before a hearing can be held. *Id.* (emphasis added). The Secretary cannot make that showing here. Courts and commentators describe this standard as requiring the agency to show an “immediate threat to public safety” to justify a pre-hearing deprivation.⁴ None of the alleged violations asserted in the Suspension Order or Revocation Letter threaten public safety or otherwise permit the Secretary to deprive Carvana of its Licenses without first holding a hearing.⁵

First, immediate suspension is not warranted based on the Secretary’s assertion that Carvana failed to transfer title to certain purchasers within twenty days as required by 625 ILCS 5/3-113(a). (Greer Decl., Ex. A) Carvana self-identified this issue and, to the best of Carvana’s knowledge, has fully resolved it with respect to those in-state purchasers. Further, the Secretary has long known about this conduct. Carvana has paid the Secretary a late fee for every late in-state title transfer since 2019. (Greer Decl., ¶ 25) The Secretary’s delays in bringing proceedings against Carvana belie his claim of an emergency. *In re JH*, 184 Vt. 293, 301 (Vt. Sup. Ct. 2008) (vacating summary suspension because department delayed action for a year); *St. Michael’s Acad., Inc. v.*

⁴ *See, e.g.*, Melissa Moody, *When Courts Do Not Protect The Public: How Administrative Agencies Should Suspend Professionals’ Licenses On An Emergency Basis*, 10 Fla. Coastal L. Rev. 551, 555-56 (2009); *In re Myer*, No. 140-2-07Wncv, 2009 WL 1606908 (Vt. Super. Ct. Jan. 31, 2008) (summarizing cases as requiring a showing of “imminent danger” to justify summary suspension of professional license).

⁵ Nothing in the Stay Order authorizes the Secretary to violate Carvana’s statutorily and constitutionally protected rights to due process. Nor did Carvana agree to the suspension of its Licenses without a hearing in the event the Secretary revoked the stay.

State, Dep't of Child. & Fams., 965 So. 2d 169, 172 (Fla. Dist. Ct. App. 2007) (“time gap between a number of the incidents and the order undercuts the immediacy of the alleged danger”).⁶

Second, the Secretary alleges Carvana issued out-of-state TRPs to vehicles purchased in Illinois from Carvana’s Illinois dealerships. That practice cannot serve as the basis for a pre-hearing emergency suspension because it was *legal* until the law was amended on January 13, 2022, and the Suspension Order relies only on pre-amendment conduct. *See* 92 Ill. Adm. Code § 1010.421(i)(11). Further, Carvana ceased issuing out-of-state TRPs in February 2022, before the Suspension Order. (Greer Decl., ¶ 36). Carvana’s former practice cannot pose a current threat requiring emergency action. *Daube v. Dep’t of Health*, 897 So.2d 493, 495 (Fla. Ct. App. 2005).

Third, the Secretary’s allegation that Carvana affixed hard license plates to vehicles without assigning the plate to its customer is false.⁷ But even if Carvana did engage in these practices, they would not pose any danger to the “public interest, safety, or welfare” such that Carvana’s Licenses can be suspended without a hearing. The Secretary speculates about hypothetical burdens on law enforcement, but does not identify any actual impacts to law enforcement that have occurred during the three years Carvana has sold nearly 40,000 vehicles to residents of Illinois, between sales by Illinois-licensed dealerships and non-Illinois dealerships.

⁶ This issue is not unique to Carvana. Based on public records obtained through open records requests, late title transfer fees were assessed on hundreds of thousands of transactions in Illinois between February 2019 and December 2021. (Greer Decl., ¶ 28) Of these hundreds of thousands of transactions, Carvana constitutes a fraction of 1 percent of that industry-wide number, despite being one of the largest sellers of used cars to Illinois residents (*Id.*)

⁷ Carvana recorded each hard license plate as “pending” in the LEADS electronic database, consistent with Illinois law and industry practice, and as confirmed to Carvana by the third-party licensed vendor utilized by Carvana for such purpose. (Greer Decl., ¶37) Carvana’s own investigations have been unable to locate any occurrences of this alleged violation, and the Suspension Order does not provide VINs for vehicles allegedly at issue. (*Id.*, ¶ 38)

“General conclusory predictions of harm are not sufficient to support the issuance of an emergency suspension order.” *Bio-Med Plus, Inc. v. State*, 915 So. 2d 669, 673 (Fla. Dist. Ct. App. 2005).

Fourth, the Secretary has conceded in discussions that Carvana’s practice of storing certain records at its supplemental location in Arlington Heights rather than its primary location in Oak Brook does not warrant a pre-hearing suspension of Carvana’s Licenses.⁸ (Greer Decl., ¶ 40)

The unsubstantiated assertions in the Revocation Letter likewise relate entirely to administrative issues that do not implicate public safety. Further, the complaints giving rise to the Revocation Letter implicate only Carvana’s out-of-state dealer’s licenses, which the Secretary has long acknowledged are not subject to Illinois licensing requirements and, therefore, not subject to the original Suspension Order or Stay Order. These transactions cannot support the Secretary’s unilateral revocation of the Stay Order.⁹

Courts have often reversed summary suspensions involving conduct more egregious than that alleged here. *See, e.g., Bio-Med*, 915 So. 2d at 672-73 (reversing suspension of prescription drug distributor who sold adulterated drugs where suspension order did not contain detailed allegations of harm); *St. Michael’s*, 965 So. 2d at 172 (suspension of daycare license reversed where children found with bite marks on arm and a child wandered into the street where order based on conclusory assertion of facts and did not demonstrate activity was likely to continue).

2. The Secretary’s Own Conduct Demonstrates There Is No Emergency.

For many years prior to the Suspension Order, the Secretary was aware of, and collected

⁸ Also, Carvana fully complied with Illinois law on its record-keeping obligations. Carvana must store all records at its primary facility only **if** the primary facility is located within one mile of the supplemental facility. 92 Ill. Adm. Code § 1020.10(b). Carvana’s primary Oak Brook facility is more than one mile from its supplemental Arlington Heights facility.

⁹ Although **not** before the Court on this Motion, the Constitution’s Commerce Clause necessarily bars the Secretary’s attempts to regulate Carvana’s out-of-state conduct.

fees for, delayed title transfers. (Greer Decl., ¶ 27) In addition, only three weeks after the Suspension Order was entered, the Secretary reversed course, agreed to a stay, and allowed Carvana to sell vehicles under its Illinois Licenses. (*Id.*, ¶ 42) Indeed, the Secretary was aware that in the months during which the stay was in place, Carvana sold over 900 vehicles under its Illinois Licenses. (*Id.*, ¶ 44) Even now, after improperly revoking the Stay Order and summarily suspending Carvana’s Licenses, the Secretary has allowed Carvana to complete some if not all of the approximately 500 additional sales under its Illinois Licenses. (*Id.*, ¶¶ 54-55) Thus, the Secretary’s repeated decision to allow Carvana to proceed with its business while the Secretary pursued alleged deficiencies in Carvana’s administrative practices (prior to the July 18, 2022 Revocation Letter) demonstrates the lack of any “imperative” need to protect public safety.

B. Carvana Is Likely To Succeed On Its Claim That The Secretary Acted Arbitrarily and Capriciously.

“[A]gency action can be set aside if the agency exercises its discretion in an ‘arbitrary or capricious manner.’” *Greer v. Illinois Housing Dev. Authority*, 524 N.E. 2d 561, 576 (Ill. 1988). Agency action is arbitrary and capricious if the agency: (1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Id.* at 581. In addition, “sudden and unexplained changes [of policy or practice] have often been considered arbitrary.” *Id.*

Here, the Revocation Letter both “fails to consider an important aspect of the problem” and “offers an explanation for its decision which runs counter to the evidence before” the Secretary. The Revocation Letter is based on non-specific complaints. (Greer Decl., Ex. C) It also does not state that the Secretary investigated these complaints or actually gathered any evidence to support

the revocation. Indeed, Carvana's own investigation confirmed this, revealing that the three complaints the Secretary identified all involved sales consummated in other states, which have, for 5 years, not been subject to Illinois licensing requirements. In short, the Secretary's unilateral revocation of the Stay Order was necessarily arbitrary and capricious because he: (a) undertook revocation of the Stay Order pursuant to an inadequate investigation; (b) predicated his decision on transactions not subject to the Stay Order in the first instance; and/or (c) is suddenly, without any prior notice, disavowing his prior representations to Carvana and now contending that out-of-state transactions are subject to Illinois licensing requirements, despite allowing nearly 25,000 such transactions to proceed without objection over the prior 5 years.

C. Carvana Is Likely To Succeed On Its Due Process Claim.

The Secretary's suspension of Carvana's Licenses without a hearing not only violated the Act, but also Carvana's right to due process. "The basic rights guaranteed by constitutional due process are notice of the intended adverse government action and an opportunity to be heard in response," at a minimum. *Simpson*, 860 F.3d at 1006 (citing *Goldberg v. Kelly*, 397 U.S. 254 (1970)). The Constitution requires these procedural safeguards "*before* one is deprived of liberty or property." *Id.* "When a deprivation is irreversible—as is the case with a license suspension that can at best be shortened but cannot be undone—the requirement of some kind of hearing before a final deprivation takes effect is all the more important." *Mackey v. Montrym*, 443 U.S. 1, 21 (1979).

All three factors considered by courts when determining if a plaintiff received sufficient due process favor Carvana: (1) the private interest impacted by the government action; (2) the risk of erroneously depriving plaintiff of the interest and the probable value of substitute or additional procedural safeguards; and (3) the state's interest in avoiding fiscal and administrative burden of any substitute or additional procedural safeguard. *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

Carvana's Interest. Illinois courts have recognized that "a threatened business interest is

an identifiable right subject to due process which may be protected by injunctive relief.” *Becker v. Ill. Real Estate Admin. & Disciplinary Bd.*, 884 F.2d 955, 958 (7th Cir. 1989). Likewise, a license to conduct business constitutes a property interest protected by Due Process. *Alsherbini v. Village of Worth*, No. 10-6781, 2011 U.S. Dist. LEXIS 35266, at *8-9 (N.D. Ill. Mar. 31, 2011).

Carvana has devoted significant time and resources in obtaining its Licenses, building or leasing facilities in Illinois, and earning customer goodwill and a positive reputation. Carvana currently employs approximately 100 Illinoisans and has begun construction on a new Inspection Center in University Park, Illinois, which will employ approximately 1,000 more Illinoisans. (Greer Decl., ¶ 56) The Secretary’s Suspension Order jeopardizes the continued employment of Carvana’s Illinois employees and the viability of the Inspection Center. *Simpson*, 860 F.3d at 1008 (the “weight of the private interest in continued employment cannot be gainsaid”). Injunctive relief is needed to preserve and protect Carvana’s right to do business as an Illinois licensed dealer. *Id.* at 1010; *Baloun v. Williams*, No. 00-7584, 2002 U.S. Dist. LEXIS 20663, at *16 (N.D. Ill. Oct. 25, 2002) (failure to provide hearing before revocation of real estate license violates due process).

The Value Of A Hearing. The Secretary made critical errors in suspending Carvana’s Licenses before affording it a hearing. These errors include the scope of the Secretary’s enforcement powers over out-of-state conduct, the legality of Carvana’s actions at the time they were taken, and whether the conduct purportedly supporting the suspension was ongoing, all of which need to be substantively addressed through the administrative process.

The Burden Of A Hearing. The third factor weighs heavily in Carvana’s favor. A status conference between Carvana and the Secretary is already scheduled for August 30, 2022, and it could readily be converted to a merits hearing in which both sides could present evidence and argue their respective legal positions. Carvana does not seek any additional procedural safeguard

beyond what the Act already provides. 5 ILCS 100/10-65(d).

The Secretary does not present any “extraordinary situation” justifying his pre-hearing suspension. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993) (only “extraordinary situations” excuse “exceptions to the general rule requiring pre-deprivation notice and hearing”) (internal quotations omitted). Indeed, controlling decisions by the Supreme Court and the Seventh Circuit have required pre-deprivation hearings in the face of threats to the public welfare far more significant than those alleged here. *Bell v. Burson*, 402 U.S. 535, 542-43 (1971) (hearing required before suspension of driver’s license despite repeated involvement in car accidents); *Simpson*, 860 F.3d at 1009 (pre-deprivation hearing required for suspension of septic tank repair license). The Court should enjoin enforcement of the Suspension Order until the Secretary holds the hearing that Illinois law requires.

D. The Secretary’s Suspension Order Is Causing Carvana Irreparable Harm For Which It Has No Adequate Remedy At Law.

Carvana will suffer irreparable harm if the Court declines to stay the Secretary’s Suspension Order. As Illinois courts have long recognized, the suspension of a license poses the threat of “immediate irreparable harm.” *Schumpp v. Illinois Racing Bd.*, 73 Ill. App. 3d 412, 414 (1979). That irreparable harm is compounded where suspension results in the “loss of customers and sales and the threat of continuation of such losses” *Travelport, LP v. Am. Airlines, Inc.*, 2011 IL App (1st) 111761, ¶ 39; *Hoover v. Crippen*, 151 Ill. App. 3d 864, 867 (1987).

Irreparable harm increases each day the suspension is in place without affording Carvana the opportunity to defend itself. The Secretary’s action has already received media attention, causing injury to Carvana’s reputation.¹⁰ The Secretary’s action also poses a catastrophic threat to

¹⁰ *See, e.g.*, John Pletz, *Carvana Suspended Again In Illinois*, CRAIN’S CHICAGO BUSINESS, July 19, 2022, <https://www.chicagobusiness.com/technology/carvana-license-suspended-again-illinois>; Jacob Adelman, *Illinois Suspends Carvana’s Dealer’s License Over Late*

Carvana's business operations and the livelihoods of Carvana's employees, including giving the press and competitors the ability to exploit the Secretary's suspension and/or gain an unfair advantage to grow market share, while depriving Carvana of a chance to defend itself. Injunctive relief is therefore necessary to preserve these individuals' employment. *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. Co.*, 363 U.S. 528, 534 (1960).

Carvana also lacks an adequate remedy at law. Absent relief, Carvana is unable to operate its Illinois-licensed dealerships, and, potentially interfering with the delivery of hundreds of vehicles that have already been purchased by customers. Moreover, should the Secretary's actions be disproven (as Carvana expects), an award of damages cannot compensate Carvana for the irreparable harm to its reputation and goodwill, which it will continue to suffer absent injunctive relief. *See, e.g., First Church of Deliverance v. Holcomb*, 150 Ill. App. 3d 703 (1st Dist. 1986).

CONCLUSION

WHEREFORE, Carvana respectfully requests that this Court grant its Motion for Temporary Restraining Order and Injunctive Relief and provide Carvana with the following relief: (1) Enjoin the Secretary from suspending or revoking Carvana's Licenses pending the outcome of an administrative hearing; (2) set a hearing date on Carvana's request for preliminary injunctive relief; and (3) grant Carvana such other and further relief as this Court may deem just and proper.

Registrations and 'Improper' Tags, BARRON'S, May 13, 2022, <https://www.barrons.com/articles/illinois-suspends-carvana-dealers-license-51652475179>.

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Respectfully submitted,

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