UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CONSERVATION LAW FOUNDATION, INC., Plaintiff, v. SHELL OIL PRODUCTS US, SHELL OIL COMPANY, SHELL PETROLEUM, INC., SHELL TRADING (US) COMPANY, MOTIVA ENTERPRISES LLC, TRITON TERMINALING LLC, and EQUILON ENTERPRISES LLC, Defendants.	C.A. No. 1:17-cv-00396-WES-LDA

PLAINTIFF CONSERVATION LAW FOUNDATION'S REPLY
IN SUPPORT OF ITS MOTION TO COMPEL AND
OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR PROTECTIVE ORDER

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On May 28, 2021, CLF propounded Requests for Production ("Requests") seeking discovery related to its claims that Defendants have failed to prepare its bulk petroleum storage terminal (the "Terminal) for the effects of climate change in violation of the Clean Water Act ("CWA") and the Resource Conservation and Recovery Act ("RCRA"). CLF attempted to engage with Defendants throughout the meet-and-confer process, seeking specificity and clarity with respect to Defendants' objections, as Defendants' objections and responses were vague, confusing, and provided no specific information about the supposed burden of responding; nor did they explain how Defendants defined "relevance" as it pertained to CLF's claims and specific Requests.

Defendants' Opposition to CLF's Motion to Compel and Cross-Motion for Protective Order ("Cross-Motion"), ECF No. 79, further shows their lack of cooperation to ensure "the just, speedy and inexpensive determination" of this case. Fed. R. Civ. P. 1. In the eleven months since CLF served its Requests and prior to filing its Motion to Compel ("Motion"), CLF has agreed to extend the time for Defendants to respond by 90 days, agreed to rolling productions, participated in at least seven meet-and-confer meetings with Defendants, participated in two discovery conferences with the Court, and exchanged numerous correspondence. ECF 72, 4-7. However, Defendants' Cross-Motion is the first time Defendants have provided CLF with clarifying information that CLF requested in August 2021 to help discovery progress in this case.

CLF has made every effort to work with Defendants to move forward on these discovery issues without this Court's assistance, yet Defendants misrepresent the Parties' exchanges. For example, Defendants state that the Parties' February 24th meet-and-confer was unsuccessful and that CLF "refiled its motion to compel . . . with no narrowing of the issues," ECF No. 79, 7; but as Defendants' admit later in their Cross-Motion, ECF No. 79, 26, the Parties agreed to narrow the default time period, eliminating *an entire issue* the Parties had previously presented to the Court.

See ECF No. 69, 3-4 (Status Report: Section I.B. Time Period). For these reasons, and the reasons explained below, the Court should grant CLF's Motion and deny Defendants' Cross-Motion, including Defendants' request for attorneys' fees, ECF No. 79, 4.

I. Argument

CLF has met its burden of showing the relevance of the requested discovery materials. *McCormick v. Dresdale*, 2011 WL 13364595, at *1 (D.R.I. June 3, 2011). The pleadings frame the relevant discovery, and "because discovery itself is designed to help define and clarify the issues, the limits set forth in Rule 26 must be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case . . . ." *Nat'l Liab. & Fire Ins. Co. v. Carman*, 2017 WL 11477214, at *1 (D.R.I. Dec. 12, 2017) (quotation omitted). CLF has tied the relevance of its discovery requests to its claims.

"Once a showing of relevance is made, the party opposing disclosure bears the burden of showing that the requested discovery is improper." *Controlled Kinematics, Inc. v. Novanta Corp.*, 2019 WL 3082354, at *2 (D. Mass. July 15, 2019). Local Rule Cv 34(b) further requires that "[w]hen an objection is made to any request, or sub-part thereof, it shall state *with specificity* all grounds upon which the objecting party relies. Any ground not stated in an objection *shall be deemed waived*." LR Cv 34(b) (emphasis added). However, "[a] party or any person from whom discovery is sought may move for a protective order" and "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . ." Fed. R. Civ. P. 26(c)(1). "A finding of good cause must be based on a particular factual demonstration of potential harm, not on conclusory statements." *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 7 (1st Cir. 1986) (cited in ECF No. 79, 8). Defendants have not met their burden to make specific objections, nor have they demonstrated specific facts showing the potential harm in responding to CLF's requests.

A. Defendants Conflate Relevance and Proportionality, Leading to Vague, Boilerplate Proportionality Objections that are Waived

Defendants have failed to adequately state and support their burden and proportionality arguments and have therefore waived them. *See* LR Cv 34(b). Defendants' burden and proportionality objections are vague and boilerplate; they primarily and repeatedly state that CLF's requests are "overbroad, vague, ambiguous, unduly burdensome and not proportional in relation to the reasonable needs of the case because [they] seek[] information that is not relevant to the CWA and RCRA claims in this matter and/or the relief sought by Plaintiff . . . ." ECF No. 72-4 (*see, e.g.* objection to Request No. 6). As is clear from the Parties' briefing, and as the Court surmised during the two informal conferences, the Parties' interpretations of CLF's claims are quite disparate. Accordingly, a statement that certain requests are "not relevant to the CWA and RCRA claims" is unhelpful to inform CLF and this Court as to what Defendants find relevant or how CLF's requests for "irrelevant" information burden Defendants. While Defendants claim they provided specific information to support their burden claims at various points throughout the Parties' discussions, ECF No. 79, 27-29, CLF continuously sought further clarification regarding Defendants' relevance objections, including specific narrowing proposals for various requests, as far back as August 2021. *See* ECF No. 72-10, 3; Ex. A,[1] 3, Sept. 29 email (Action Items: "By Wednesday September 29, 2021, Defendants shall provide CLF [with] RFP-specific proposals for narrowing or information needed to narrow."). However, the only narrowing proposal Defendants ever sent on any issue involved the default time period.[2]

Defendants perplexingly argue that CLF never addresses proportionality in its brief, ECF

[1] Exhibits attached to this brief are referred to herein by the Exhibit name. All other exhibits and court filings referred to herein will be cited using the Electronic Court Filing Number.

[2] Defendants did respond on September 29, 2021; however, their letter simply explained why they could *not* offer narrowing proposals for Requests Nos. 12-21 and 24—all requests where Defendants stated they would not produce *any* documents. ECF No. 79-7. The letter did not mention any other requests.

No. 79, 9; however, CLF devoted an entire subsection of its Motion to Defendants' inadequate burden and proportionality arguments. *See* ECF No. 72, Section III.C.1. To the extent Defendants' argument is that CLF has the initial burden to show proportionality prior to Defendants' objections, that burden is not imposed by Rule 26 or the case law. In fact, the 2015 Advisory Committee Notes specify that the 2015 amendments to Rule 26 "restore[] the proportionality factors to their original place in defining the scope of discovery," but

> do[] not change the existing responsibilities of the court and the parties to consider proportionality, and *the change does not place on the party seeking discovery the burden of addressing all proportionality considerations. Nor is the change intended to permit the opposing party to refuse discovery simply by making a boilerplate objection that it is not proportional*.

Fed. R. Civ. P. 26 Advisory Committee Notes, 2015 Amendment (emphasis added).

Defendants now attach declarations from two employees providing *some* of the information CLF asked for in August 2021. Specifically, at a meet-and-confer on August 20, 2021, the Parties discussed the relevance of documents not specifically concerning the Terminal and agreed that Defendants would "discuss and report back on" "[w]here they are drawing the line on relevance of documents from outside the Terminal," as well as "[w]hether Defendants are willing to provide an explanation of how climate risk analysis and decisions are made at Shell facilities." *See* ECF 72-10, 3-4.[3] Over seven months later, Defendants provide the declaration of James Kent Yeates, the Lead Facility Engineer for the East Coast Equilon Terminals,[4] ECF No. 79-9, *after* CLF's Motion was filed and *after* the Court stated at the February 14th conference that CLF should not

[3] While Defendants argue that their position on relevance is "unmistakable from the parties' meet and confer correspondence," ECF No. 79, 10, none of the cited correspondence specifically states what Defendants consider to be relevant. In fact, one of the letters ambiguously avers, "if there are documents that pertain to all Shell terminals in the northeastern United States (which would necessarily include the Providence Terminal), those documents *could, in theory*, be responsive provided the documents relate to the claims in this case." ECF No. 72-7, 5 (emphasis added). This statement does not clarify where Defendants are drawing their relevance line; for example, are Defendants searching and considering responsive documents that pertain to all Shell terminals in the United States?

[4] Despite being the Lead Engineer for the East Coast Equilon Terminals since 2017, ECF No. 79-9, ¶ 2, Mr. Yeates was not disclosed as a person with relevant information in Defendants' initial disclosures served in November 2020.

have to take the word of Defendants' counsel about how decisions at the Terminal are made. While the declaration and Defendants' Cross-Motion chide CLF for "misunderstanding" and "mischaracterizing" the internal workings of the Shell corporate structure, ECF 79, 11, 13, ECF No. 79-9, ¶¶ 10, 20, (an understanding CLF represented to Defendants and about which CLF asked for clarification, *see* ECF No. 72-10, 3-4), the Yeates declaration is the first time CLF has had *any* detailed explanation from Defendants about Shell's corporate structure, the nature of engineering-related decision-making, specific corporate policies applicable to the Terminal, or development and implementation of these frameworks at the Terminal. ECF 79-9, ¶¶ 5-9, 10-16, 17-30, 31-35. And while Defendants' argument implies CLF should have understood these processes and procedures, to CLF's knowledge, Defendants have not produced documents relied on in the Yeates declaration, such as documents outlining, describing, or explaining the downstream business group "Trading and Supply," the Asset Integrity process, or the Hazards and Effects Management Process. CLF has only received unconsolidated documents relating to pieces of the Health, Security, Safety, Environment and Social Performance Control Framework.

The second declaration is from Clyde Earl Williams, ECF 79-10, an eDiscovery analyst employed by Defendant Shell, USA, in support of Defendants' proportionality argument (to which they devote only one paragraph). Although the declaration gives information about four searches run using search terms proposed by CLF, the terms and strings listed are not the strings CLF understood were being run in November 2021 when Defendants proposed revisions to the search strings to account for issues with its vendor. *See* ECF No. 72-8, 3; *compare* Ex. B (Nov. 2021 spreadsheet, Shell Response/Proposed Terms for Requests 7, 8, 9, 24 and 25 (breaking out search string into two parts)) *with* ECF No. 79-10, ¶ 13 (showing one search string for same Requests). Defendants led CLF to understand that three of the searches identified in the Williams declaration

could not be run and *had not* been run—hence the new proposal, ECF 72-8, 3. But even if they had, the cost of those searches is no longer relevant. On March 3, 2022, Defendants proposed a second revised set of search strings to address issues where the search program was "unable to process" searches or produced a large number of documents. ECF No. 72-9, 2. The Parties subsequently agreed i) Defendants would run the new search terms proposed, ii) CLF would withhold any concerns until it reviewed the documents produced and the Court ruled on CLF's Motion and Defendants' Cross-Motion, and iii) Defendants would provide CLF hit reports, including custodians and repositories searched, for all searches run with the new proposed search strings, as well as custodians and repositories searched for searches run using the first set of revised search strings. Ex. C, April 11 email. Accordingly, it is unclear what relevance the Williams declaration has given the Parties' agreement and the fact that the operative search terms for all the searches in the declaration have changed.

Accordingly, Defendants have waived their burden and proportionality objections.

B. Documents Concerning Defendants' Knowledge of Climate Change and Its Effects on Shell's Other Infrastructure are Relevant to CLF's Claims

The effects of climate change on Shell's other infrastructure, including any remediation efforts made to account for these changes, as well as Shell's knowledge of the causes and consequences of climate change, including climate research and projections, are relevant to CLF's claims. Five of CLF's Requests seek information concerning Shell infrastructure, including the Terminal. *See* Request Nos. 26-27 (documents related to effects of Hurricanes Sandy and Ike on Defendants' infrastructure and engineering, design, and management of terminals and other infrastructure); Request No. 10 (documents addressing climate change, including Shell's "engineering, design and management of facilities" and "corporate policy, management, or decision-making"); Request No. 17 (documents from Shell's Metocean Team, which generates

climate change projections and evaluates the preparedness of Shell's existing infrastructure); Request No. 23 (documents related to "Shell's consideration of climate change in its design and engineering of terminals, refineries, and other infrastructure."). These Requests pertain to CLF's claims that Defendants have not considered climate change and its impacts on the Terminal and therefore the Terminal is unprepared for the effects of climate change, leading to potential pollutant discharges and the imminent risk of substantial harm to surrounding communities and waterbodies. Defendants have therefore violated their CWA Permit because the Stormwater Pollution Prevention Plan ("SWPPP") was not prepared in accordance with "good engineering practices" (Count 2) and it does not describe best management practices to reduce pollutant discharges likely to come from climate change, and therefore those practices are likely not implemented (Count 4). It then follows that Defendants did not "take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment" (Count 10), TAC ¶ 336, among other alleged violations.[5] *See, e.g.*, Count 1 (certification of SWPPP without disclosing information); Count 9 (failure to disclose information to regulators).

Much of the information relevant to proving CLF's claims is overlapping; information relevant to one claim cannot be neatly parsed from information relevant to another.[6] The good engineering practices standard, for instance, is relevant to many claims. While Defendants state that Count 2 is simply "a claim about the SWPPP and what is written in it" and "*not a claim about*

[5] Defendants' Appendix A supposedly outlining the elements of CLF's claims is an attempt to get around the Parties' agreed-upon page limit, as it contains additional information not included in Defendants' main brief. Accordingly, CLF will not respond to any argument in the Appendix and the Court need not consider it.

[6] While Defendants cite *Raritan Baykeeper* as an instance where the court did not allow discovery on unrelated, stayed claims, ECF No. 79, 15, the claims there could more easily be separated out by pollutant and location. 2014 WL 2965881, at *1-2 (D.N.J. July 1, 2014) (contamination of off-site river sedimentation versus onsite source areas). In addition, a main part of the reasoning behind the court's decision was that the defendant had *already produced* many of the documents sought by the plaintiff in the motion to compel. *Id.* at *3. That is far from the case here, where Defendants have only turned over three productions, one of which contained less than 100 documents.

whether or not the entire Terminal is designed and operated to a 'good engineering practices' standard," ECF No. 79, 17 (emphasis in original), a separate count, Count 22, is specifically about the maintenance and operation of the Terminal so as to *minimize the possibility* of an unplanned spill or release of hazardous waste into the surrounding waters. Count 21 also alleges an imminent and substantial endangerment based on the Terminal's failure to consider climate change in its design and operation; this necessarily includes the Terminal's waste-related operations, but also other aspects of the Terminal's design and operation—including stormwater management infrastructure and practices, to the extent not covered under the CWA—that could lead to the tanks spewing their contents into Narragansett Bay and the surrounding communities and/or other hazardous waste being mobilized into the local waters.

Documents containing information about how other Shell infrastructure handled and recovered from named storms that *also hit the Terminal*, as well as corporate policies showing engineering and design standards for climate resilience and related decision-making processes, are entirely relevant to CLF's claims. Whatever standard the Defendants apply to their facilities is relevant to determining both the good engineering practices standard, including what Defendants view as standard good engineering practices, and whether the Terminal complies with those standards. *See, e.g., City of Wilmington v. United States*, 141 Fed. Cl. 558, 563–64 (2019) (holding that the defendants' assessments of whether a charge was "reasonable" under the CWA were relevant even though the court makes the ultimate determination *de novo*). While Defendants state that impeachment is not a sufficient basis for discovery, ECF No. 79, 24 n.16, it is not solely for impeachment that CLF seeks this information. Defendants' affirmative defenses claim they have complied with the Permit and good engineering practices, ECF No. 57, 76-77 (Affirmative Defenses 5, 6, 10); how Defendants operate other facilities—including what standards they use

and how they have prepared for climate change—bears on the credibility of Defendants' assertion of compliance. The fact that the Parties will also rely on expert testimony regarding what satisfies the good engineering practices standard, ECF No. 79, 17-18, is simply a non sequitur.

Defendants also specifically call out CLF's supposed "misunderstanding" of how the Metocean team functions by citing to the Yeates declaration stating "[t]here is no requirement that an asset utilize the services of the Metocean team," ECF No. 79-9, ¶ 16. Even if this is true, the engineering standards the Metocean team—or other parts of the Shell corporate structure that oversees the Terminal—uses to analyze assets like the Terminal are relevant to CLF's claims even if other personnel ultimately determine how those standards are applied. Moreover, Defendants completely ignore—in both their objection and their Cross-Motion, ECF No. 79, 19—the obvious relevance of the Metocean team's climate change projections to the Terminal. *See* ECF No. 72-6, 8-10 (describing the Metocean team's regional temperature, sea level rise, and precipitation reviews). These climate change projections, which CLF understands to be a part of Shell's purported longstanding and ongoing study of climate change, *see* TAC ¶ 132, are a part of the climate change "knowledge" that is relevant to CLF's claims. Request Nos. 12-16, 19-21, and 24 are simply aiming to get at different aspects of that knowledge. *See e.g.*, Request No. 12 (documents related to Shell's participation in the research and creation of several reports and articles, including communications and shared research with U.S. government agencies and industry trade groups); Request 15 (documents related to Shell's submissions to the CDP); Request No. 19 (a copy of Shell's "A Climate of Concern" video and related documents).

Defendants argue knowledge is not an element of a CWA claim, but the Permit language clearly involves knowledge: "Where the permittee *becomes aware* that it failed to submit any relevant facts in a permit application . . . ." ECF No. 79, 22 (quoting 2019 Permit, Part II(l)7)).

Accordingly, when Defendants had knowledge about climate risks is relevant to both liability and the seriousness of the violations. 33 U.S.C. § 1319(d). Defendants also argue CLF can look "within the four corners of the application" to see whether they disclosed information to regulators, but CLF's claim is that the information is *not* there—that is the violation. Moreover, Defendants have argued in this case that climate change is "highly speculative, remote, or hypothetical," ECF No. 46-1, 14; CLF should be allowed to counter Defendants' litigation position by probing their knowledge of climate change.

Nevertheless, Defendants claim they "have agreed to produce documents related to current or imminent precipitation and flooding risks to Providence and how those risks are addressed at the Terminal, including applicable corporate policies and engineering documents, and including to the extent such risks may be discussed in the context of climate change, and regardless of whether such documents expressly refer to the Terminal," ECF No. 79, 13 (emphasis omitted); however, Defendants objected to CLF's Request No. 17 (Metocean team) as "wholly unrelated to Plaintiff's claims." ECF No. 72-4, 21. Moreover, Defendants have never explained what risks they deem "imminent;" instead, Defendants mischaracterize this Court's Order denying most of their Motion to Dismiss by stating the Order dismissed CLF's claims based on sea level rise. ECF No. 79, 5. The Order actually says: "These flawed allegations include, for example, those detailing that, by 2100, the National Oceanic and Atmospheric Administration predicts—worst-case scenario—a greater-than-eight-foot sea level increase, and it is 'virtually certain' the global mean sea level will continue to rise beyond then." ECF No. 55, 2-3. The allegation was flawed because it implied a harm occurring in the year 2100, not because it was based on sea level rise. Even with claims in the far future dismissed, Defendants have not explained how climate projections over the next few decades are not relevant in evaluating what the current risks are at the Terminal.

C. The Court Should Overrule Defendants' Objections to "Climate Change" and Related Terms

As written in their objections, Defendants' object to terms such as "climate change" and "greenhouse effect" "as vague and ambiguous because the terms . . . are undefined." ECF No. 72-4, 12-13, 24-26 (Responses to Request Nos. 10, 23, 24, 25). As CLF reads this, the objection is not about overbreadth or relevance, as Defendants argue in their Cross-Motion, ECF No. 79, 20, but about what the terms mean. This distinction is made clearer by the fact Defendants *did* include an overbreadth objection to the term "climate change" in their objection to Request No. 11, the one Request out of the five that seeks documents limited to the Terminal. Defendants could have, and should have, made overbreadth and relevance objections to these terms if that was their intent.

CLF was willing to engage on this point; however, while Defendants claim documents related to air emissions are not relevant to CLF's claims, ECF No. 79, 20, (again, not the actual basis for their objection to these terms), Defendants did not provide a suggestion to narrow the Request, nor did they provide details about what types of documents fall within this Request—relevant or otherwise—to allow CLF to offer a narrower Request.

D. Defendants Have Inadequately Objected to Other Requests

Request No. 1 seeks document or record retention policies applicable to the operations and remediation efforts at the Terminal dating back to 1985. This request corresponds to CLF's Request No. 7 (environmental monitoring and analysis) and informs what types of documents CLF should expect Defendants to have kept over the years. Defendants objected based on undue burden, arguing these documents are irrelevant to CLF's CWA and RCRA claims and stating they will limit production to documents in place when a "Defendant owned, operated, or controlled the Terminal." ECF 72-4, 6. As CLF stated in its Motion, Defendants never explained the burden imposed by this limited set of documents and Defendants' limitation was unclear. ECF No. 72, 17.

Yet Defendants' Cross-Motion further muddies the waters, as they now ask the Court to apply the default time period of "January 1, 2008 to the present" to this Request. ECF No. 79, 26. Given that Defendants did not explain their initial limitation, CLF has no way of knowing how this new proposal compares. Moreover, Defendants have admitted that CLF's imminent and substantial endangerment claim dates back further than the CWA claims, *id.* at 26 n.20, although they never specify exactly how far back they believe the claim dates. And while Defendants argue for a five-year statute of limitations to CLF's CWA claims, *id.* at 26, the statute of limitations does not apply to CLF's claims alleging ongoing and continuous violations. *U.S. Pub. Interest Research Grp. v. Atl. Salmon of Me., LLC.*, 257 F. Supp. 2d. 407, 427 (D. Me. 2003) (finding the "[d]efendants' violations of the [CWA] . . . have been continuous and are still ongoing; thus no 'accrual' has occurred in this case, and the statute of limitations has not yet begun to run").

Request No. 4 seeks documents related to the management structure at the Terminal. While Defendants state that they thought there was no dispute on this issue because the Parties agreed to take an iterative approach to determine when the Request had been satisfied, ECF No. 79, 27, CLF has received no information about this Request and therefore understands Defendants to be withholding documents based on their improper objections. *See* ECF No. 72, 17-18.

Request No. 6 seeks documents related to corporate control of activities *at the Terminal*. Defendants state in their Cross-Motion that they have expressly agreed to provide documents relevant to the Terminal, ECF No. 79, 10, yet they continue to object to this Request. This Request is appropriately limited and Defendants' objection that the documents sought are "not relevant to the CWA and RCRA claims" is insufficient given the Parties' opposing views on CLF's claims. Defendants' limitation in their response to include only "the parties to this case that have owned and/or operated the Terminal" is not supported by their objection.

Request No. 7 seeks documents related to environmental monitoring, sampling, and analysis at the Terminal dating back to 1985. This information informs the likelihood of prohibited releases at the Terminal and the nature of pollutants that might be released. Defendants have acknowledged a longer timeframe is relevant to CLF's imminent and substantial endangerment claim, yet still attempt to limit the time period for this Request. ECF No. 79, 26. Once again, Defendants' objection that some documents "do not involve compliance with the Terminal's RIPDES permit or its management of waste" does not explain to CLF what Defendants believe to be relevant, preventing CLF from being able to evaluate their objection.

Request No. 22 seeks documents related to changes in the physical infrastructure of the Terminal. Defendants objected that the Request seeks documents not related to CLF's CWA and RCRA claims, but only provided one example of documents they consider to be irrelevant. ECF No. 79, 29 ("replacing the heating and air conditioning system in the Terminal's offices"). However, it is unclear if their example is a hypothetical (which would not impact their search) or an actual physical change at the Terminal (which might). Moreover, if Defendants considered climate change in replacing the heating and air conditioning system, it would be relevant to whether they considered climate change in other aspects of infrastructure modifications.

Request No. 31 seeks communications with Defendants and the State of Rhode Island and City of Providence regarding the Terminal. Defendants object that the Request seeks information not relevant to CLF's CWA and RCRA claims, ECF No. 72-4, 30, but CLF does not know what communications exist between Defendants and the two government entities and cannot parse this objection without information as to what Defendants believe *is* relevant, rather than their one example of something they believe is not relevant.

E. Defendants Have Waived Other Objections

Defendants waived their general objections and their objections conditionally basing

production on search terms. Local Rule Cv 34(b) is clear: "The requirement that the grounds for objecting be stated with specificity under each individual request precludes the consideration of any generic general objections." While Defendants claim CLF "ignores that each response is accompanied by a full and complete set of objections," ECF No. 79, 29, their Cross-Motion relies on objections made solely in their General Objections. For example, Defendants state numerous times that CLF's Requests seek documents that are irrelevant and overbroad because the "requests define 'Defendants' to include all corporate parents and affiliates (which number in the thousands and include overseas companies), among numerous other non-parties," *id.* at 3, 6, 27 n.21, but Defendants only made this objection in their General Objections.[7] ECF No. 72-4, 4.

Regarding conditional objections, many of Defendants' objections are generic, vague, and confusing, *see supra*, Section I.A; Adding conditional objections that Defendants will produce documents based on search terms—which are still subject to the Defendants' objections—does not help, as CLF does not know if Defendants are producing all relevant documents found using the search terms agreed upon or whether (and how) the objection is limiting their production.[8] This conditional production is especially confusing where Defendants have provided CLF with no information on which Requests they have provided documents for, whether in part or in full.[9]

[7] The Cross-Motion also ignores that the definition of "Defendants" specifically states: "This definition is not intended to impose a discovery obligation on any person who is not a party to this litigation." ECF No. 72-3, 4.

[8] This is particularly confusing because although the Parties have agreed Defendants will run certain search terms and CLF will wait to raise any concerns, *see* Ex. C, Defendants still characterize the search terms issue as a disagreement. ECF No. 79, 30.

[9] As Defendants note, there is nothing inherently wrong with conditional objections. ECF No. 79, 30. To the extent other responses contained conditional objections not mentioned in Section III.C.2 of CLF's Motion, there were a number of Requests where CLF understood the conditional objection to apply to the time period. Upon resolving the time period dispute, the confusion around the conditional objection was mostly remedied. Other Requests with conditional objections are addressed in other sections of CLF's Motion and resolution of those disputes will likely remove the confusion caused by conditional objections. The requests mentioned in Section III.C.2 of CLF's Motion are primarily ones where the conditional objection regarding search terms was the main issue.

F. Defendants' Time Period Limitation is Unclear

Defendants' proposed time period limitation as argued in their Cross-Motion is not clear when read in conjunction with their prior objections. ECF No. 79, 25-26 (Section V). In their Cross-Motion, Defendants ask the Court to apply the agreed-upon default time period to all Requests, including "numerous requests not subject to the default time period," but only mention two Requests: Request Nos. 1 and 7. *Id.* Defendants do identify three additional Requests in their Background Section, *id.* at 6 (citing Request Nos. 12, 14, and 19), but CLF understands Defendants to be objecting to producing *any* documents for these requests. If the time period is the only objection to Requests Nos. 12, 14, and 19, CLF would agree to apply the agreed-upon default time period to those Requests. Defendants also say they "have not objected to CLF's proposed discovery timeframe with respect to" Count 22 because it concerns historic contamination, *id.* at 26 n.21, yet they propose to apply the default time period to "all discovery;" it is unclear how, if at all, Defendants are distinguishing the time period for Count 22.

G. Delayed Productions

The Parties have agreed to stay productions pending a ruling from this Court on the Parties' Motion and Cross-Motion. Additionally, the Parties have agreed on a process to move forward on searching ESI. *See* Ex. C. CLF appreciates Defendants cooperation on this issue; however, given the history of delayed productions even after agreement to run search terms, CLF requests the Court order Defendants to (i) produce relevant documents on a continuing basis every two weeks and (ii) provide information as to which Requests the documents are responsive and to what degree the Requests have been answered.

II. Conclusion

For the foregoing reasons, CLF asks the Court to grant CLF's Motion and deny Defendants' Cross-Motion.

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Respectfully submitted,

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**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2022, the foregoing Reply in Support of its Motion to Compel and Opposition to Defendant's Cross-Motion for Protective Order was filed through the Court's electronic filing system ("ECF"), through which the document is available for viewing and downloading from the ECF system, and a copy of the filing will be sent electronically to all parties registered with the ECF system.

/s/ Alexandra St. Pierre
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