NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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May 23, 2025

VIA EMAIL ONLY
William J. Lyden, Esq.
LOCKE & LYDEN, P.L.L.C.
10615 Judicial Drive, Suite 502
Fairfax, VA 22030
bill@lawyer-help.com
Counsel for Plaintiff

Jay B. Myerson, Esq.
Meenakshi H. Rajan, Esq.
THE MYERSON LAW GROUP, P.C.
11860 Sunrise Valley Drive, Suite 100
Reston, VA 20191
mrajan@myersonlaw.net
Counsel for Defendant

RE: *Catherine Timm v. Todd Alan Timm*, Case No. CL-2024-12455

Dear Counsel:

This matter came before the Court on Plaintiff's Motion to Compel full and complete responses to her interrogatories and document requests[1] (such motion, the "***Motion***"). By oral argument, the parties had partially resolved the Motion. Though the Court ruled and entered an order granting the Motion, this letter is intended to more fully explain the Court's basis for

[1] For ease of reference, a discovery request to produce documents, electronically stored information, or tangible things, as referenced in Rule 4:9(a), is referred to herein as a "document request." In practice, most such requests simply ask the responding party to produce, or permit the inspection of, documents.

overruling the objections at issue and fulfill the Court's duty to appropriately guide the conduct of civil discovery.[2]

In response to each of Plaintiff's Interrogatory Nos. 2, 4, 5, 7, and 8 (the "***Disputed Interrogatory Answers***") and Document Request Nos. 9, 12 through 14, 17, and 18 (the "***Disputed Document Requests***") (together, the Disputed Interrogatory Answers and Disputed Document Requests are referred to herein as the "***Disputed Discovery Requests***"), Defendant objected "to the extent [that it] is overly broad and unduly burdensome as to time." Later, he provided substantive responses to the Disputed Discovery Requests and supplemented some of those substantive responses, without indicating whether his substantive responses were being provided subject to or in waiver of the objections. Moreover, in objecting to the Disputed Document Requests, Defendant failed to state whether any documents or other materials were being withheld on the basis of his objections.

ANALYSIS

The search for truth in litigation demands a liberal discovery process, which Virginia law provides to promote the "preparation and trial, or the settlement, of litigated disputes." *See Shenandoah Pub. House, Inc. v. Fanning*, 235 Va. 253, 260, 368 S.E.2d 253, 257 (1988) (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-36 (1984)) (internal quotation marks omitted); *Oakey v. Warren*, No. CL06-3647, 2007 Va. Cir. LEXIS 129, at *1 (Norfolk Co. July 23, 2007).

Accordingly, Virginia law provides limited grounds upon which to object to discovery and requires that a meritorious objection be: (1) timely served;[3] (2) specifically stated;[4] and (3) signed by the objecting attorney.[5] Also, if a party responding to a document request objects to an item or category of items requested, they must specify the item or category objected to and fully respond to the remainder of the request. *See* Va. Sup. Ct. R. 4:9(b)(ii). An objection to a document request must also "state whether any responsive materials are being withheld on the basis of that

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[2] That duty falls to Virginia's trial courts because civil discovery matters are rarely the subject of published appellate opinions. *See Burns v. Thiokol Chem. Corp.*, 483 F.2d 300, 304-05 (5th Cir. 1973) ("Because discovery matters are committed almost exclusively to the sound discretion of the trial Judge, appellate rulings delineating the bounds of discovery under the Rules are rare.").

[3] *See* Va. Sup. Ct. R. 4:8(d) (as to interrogatories) & 4:9(b)(ii) (as to requests for production of documents). An objection that is not timely served is waived. *See Kawar v. Bouk*, 71 Va. Cir. 295, 296 (Fairfax Co. 2006).

[4] *See* Va. Sup. Ct. R. 4:8(d) (as to interrogatories) & 4:9(b)(ii) (as to requests for production of documents). General, blanket, or boilerplate objections are prohibited. Va. Sup. Ct. R. 4:1(g). It is not sufficient to merely assert an objection without explaining how the discovery request is objectionable. *See, e.g., Massey Energy Co. v. United Mine Workers of America*, 72 Va. Cir. 54, 58 (Fairfax Co. 2006).

[5] *See* Va. Sup. Ct. R. 4:8(d) (as to interrogatories); Va. Code § 8.01-271.1 (generally).

objection." *Id.*[6] Such transparency, both as to the degree to which a party has responded to a discovery request and the specific reasons (if any) that it will not fully respond, provides a meaningful foundation for the parties to discuss resolving the discovery dispute and a basis for the trial court to rule on the dispute if it remains unresolved.

I. A GENERAL OBJECTION ASSERTED "TO THE EXTENT" THAT IT APPLIES IS IMPROPER AND GENERALLY DEEMED TO BE WAIVED.

A general objection lodged "to the extent" that it applies, without elaboration, asserts a mere hypothetical or contingent possibility. *See, e.g., Swackhammer v. Sprint Corp. PCS*, 225 F.R.D. 658, 661 (D. Kan. 2004). Such an objection is "tantamount to asserting no objection at all" and is generally deemed to be waived. *Johnson v. Kraft Foods North America, Inc.*, 236 F.R.D. 535, 538 (D. Kan.2006).[7]

However, an objection raised "to the extent" that a discovery request seeks certain information or documents may be sustained, provided that the responding party has stated the objection with specificity, explaining how the objection applies to the request and the prejudice that would result if the responding party were required to fully respond. *See Heller v. City of Dallas*, 303 F.R.D. 466, 486 (N.D. Tex. 2014) (holding that "a party may properly raise and preserve an objection to production of documents in response to a specific document request or interrogatory by objecting 'to the extent' that the requests seeks privileged materials or work product, so long as the responding party also provides" a proper privilege log). Of course, if the objection applies only to part of a document request, the responding party is required to fully respond to the remainder of the request. *See* Va. Sup. Ct. R. 4:9(b)(ii).

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[6] In 2019, Rule 4:9(b)(ii) was amended to add that "[a]n objection [to a document request] must state whether any responsive materials are being withheld on the basis of that objection." That sentence now appears in the middle of the 261 words constituting Rule 4:9(b)(ii); it is easy to miss but is important, nonetheless.

[7] *See also Childers v. Rent-A-Car E., Inc.*, No. 21-960, 2024 U.S. Dist. LEXIS 41841, at *19 (E.D. La. Mar. 11, 2024); *Dobbs v. Travelers Prop. Cas. Co. of Am.*, No. 5:23CV25, 2023 U.S. Dist. LEXIS 234894, at *3 (N.D.W. Va. June 21, 2023) (citation omitted); *Reynolds v. Blann Tractor Co.*, No. 1:18-CV-387, 2019 U.S. Dist. LEXIS 245219, at *9 (E.D. Tex. Sep. 26, 2019); *Hanwha Azdel, Inc. v. C & D Zodiac, Inc.*, No. 12-cv-00023, 2013 U.S. Dist. LEXIS 96690, 2013 WL 3660562, at *5 (W.D. Va. July 11, 2013); *Sonnino v. Univ. of Kan. Hosp. Auth., Inc.*, 221 F.R.D. 661, 666-67 (D. Kan. 2004).

II. RESPONDING TO A DISCOVERY REQUEST CONDITIONALLY, "SUBJECT TO" OR "NOTWITHSTANDING" OBJECTIONS, WITHOUT INDICATING WHETHER RESPONSIVE DOCUMENTS OR OTHER MATERIALS ARE BEING WITHHELD, DOES NOT PRESERVE ANY OBJECTION.

Courts disapprove of "conditional discovery responses" in which the responding party objects but produces a response "subject to" or "without waiving" those objections.[8] When documents or other materials are provided in response to a request for production of documents "subject to" or "notwithstanding" an asserted objection, without stating whether additional responsive materials are being withheld (as required by Rule 4:9(b)(ii)), the party propounding discovery and the court reviewing that discovery on a motion to compel are left to guess how and whether the asserted objection has been relied upon to limit the response.[9] This creates ambiguity, masking the degree of the responding party's compliance with its discovery obligations and

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[8] *See, e.g., Thiele v. Harbor Freight Tools USA, Inc.*, No. 24-1716, 2025 U.S. Dist. LEXIS 63790, at *8-9 (E.D. La. Apr. 3, 2025) ("it is improper for parties responding to discovery to provide responses with the caveat that they are given 'subject to and without waiving' objections"); *Burge v. Teva Pharm. Indus.*, No. 22-cv-2501-DDC-TJJ, 2025 U.S. Dist. LEXIS 24395, at *10-11 (D. Kan. Feb. 11, 2025) ("A conditional response or objection to a discovery request occurs when a party asserts objections but then provides a response 'subject to' and/or 'without waiving' the stated objections. Such conditional objections make it impossible to discern what part or nature of the documents requested the responding party intends to produce or what it may be withholding based upon one of the many privileges or objections asserted. In this district, such conditional objections often result in a finding that the responding party has waived its objections.") (citations omitted); *Miner, Ltd. v. Keck*, No. 6:19-cv-722-Orl-41TBS, 2019 U.S. Dist. LEXIS 111023, at *5 (M.D. Fla. July 3, 2019).

[9] Such a response "serves only to obscure potentially discoverable information and provides no mechanism for either [the party seeking discovery] or the Court to review [the responding party's] decisions." *Athridge v. Aetna Cas. & Sur. Co.*, 184 F.R.D. 181, 190 (D.D.C. 1998).

> This type of answer hides the ball. It leaves the [party seeking discovery] wondering what documents are being produced and what documents are being withheld. Furthermore, it permits the [responding party] to be the sole arbiter of that decision. Such an objection is really no objection at all as it does not address why potentially responsive documents are being withheld.

Id. See also Quarles v. McClaran, No. 22-cv-1326, 2025 U.S. Dist. LEXIS 75488, at *2 (W.D. La. Apr. 21, 2025) ("In the face of such objections, it is impossible to know whether information has been withheld and, if so, why. This is particularly true in cases like this where multiple 'general objections' are incorporated into many of the responses with no attempt to show the application of each objection to the particular request.") (citing *Weems v. Hodnett*, 2011 U.S. Dist. LEXIS 80746, 2011 WL 3100554 (W.D. La. 2011); *Kinetic Concepts, Inc. v. ConvaTec Inc.*, 268 F.R.D. 226, 248 (M.D.N.C. 2010); *Fresenius Med. Care Holding Inc. v. Baxter Int'l, Inc.*, 224 F.R.D. 644, 656 (N.D. Cal. 2004); *Miner, Ltd. v. Keck*, No. 6:19-cv-722-Orl-41TBS, 2019 U.S. Dist. LEXIS 111023, at *5 (M.D. Fla. July 3, 2019); *Mercer v. Allegheny Ludlum Corp.*, 125 F.R.D. 43, 46 (S.D.N.Y. 1989).

needlessly increasing litigation costs. Such a response is improper and insufficient to preserve any objection. *See* Va. Sup. Ct. R 4:9(b)(ii); *Biancardi v. Boland*, 114 Va. Cir. 157, 168 (Fairfax Co. 2024).[10]

III. GENERALLY, ASSERTING THAT A DISCOVERY REQUEST IS OVERLY BROAD AND UNDULY BURDENSOME, WITHOUT MORE, IS INSUFFICIENT.

A boilerplate assertion that a request is overly broad and unduly burdensome is legally insufficient if it is not accompanied by specific facts supporting that conclusion, such as the estimated time or cost to collect and review potentially responsive documents. *See Massey Energy Co.*, 72 Va. Cir. at 58 (noting the inappropriateness of objection without elaboration and that "purely *pro forma* objections can be given but little weight"); Va. Sup. Ct. R. 4:1(g). "[A] party's 'mere statement' that a request for production 'is overly broad, burdensome, oppressive and irrelevant' is 'not adequate to voice a successful objection.'" *Robinson v. Postmaster Gen.*, No. 23-3863, 2025 U.S. App. LEXIS 481, at *5 (6th Cir. Jan. 8, 2025) (citations omitted).[11] Such an objection is waived. *See, e.g., Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 364 (D. Md. 2008); *Hall v. Sullivan*, 231 F.R.D. 468, 473–74 (D.Md.2005).

Defendant's objections to the Disputed Discovery Requests are general objections, each stated in identical conclusory language and without elaboration as to the specific facts supporting the assertion that the requests are "overly broad and unduly burdensome as to time." As such, they are improper and should be overruled.

After objecting to the Disputed Document Requests, Defendant provided responsive documents without waiving the objections and without stating whether additional documents were being withheld on the basis of the objections. At oral argument, Defendant's counsel made clear that she was not authorized to withdraw any of the objections to the Disputed Discovery Requests; accordingly, the responsive documents were produced subject to those objections *but without a statement as to whether additional documents were being withheld.* Those objections should also be overruled on that basis.

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[10] In *Biancardi*, the Court reviewed, among other things, responses to document requests consisting of objections, documents produced "notwithstanding" those objections, and no statement as to whether any additional documents were being withheld on the basis of the objections. The Court held that such a response was insufficient to preserve the asserted objections but failed to appropriately highlight the importance of the failure, in those responses, to state whether additional documents were being withheld, as required by Rule 4:9(b)(ii). By this letter, the Court clarifies the conclusions reached in *Biancardi*.

[11] An objection to a request on the grounds that it is "'overly broad and unduly burdensome' is meaningless boilerplate. Why is it burdensome? How is it overly broad? This language tells the Court nothing." *Fischer v. Forrest*, 2017 U.S. Dist. LEXIS 28102, 2017 WL 773694, at *3 (S.D.N.Y. Feb. 28, 2017)

CONCLUSION

Defendant's general objections, asserting in conclusory fashion that Plaintiff's discovery requests are "overly broad and unduly burdensome as to time" asserted "to the extent" that they apply are OVERRULED. Moreover, Defendant's objections to Plaintiff's document requests, in response to which Defendant provided responsive documents without stating whether additional documents were being withheld, were not sufficiently preserved; they are OVERRULED on that basis too.

An appropriate order has been entered.

Sincerely,

[redacted] Jonathan D. Frieden
2025 05.23 13:24:17-04'00'

Jonathan D. Frieden
Judge, Fairfax County Circuit Court