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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Finance Docket No. 36447, Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, Louisiana.

Dear Ms. Brown:

Delta Southern Railroad, Inc. (“DSRR”) files this letter to clarify the issues presented in the “Joint Reply of Lake Providence Port Commission, Southeast Arkansas Economic Development District and North Louisiana and Arkansas Railroad, Inc. to Delta Southern Railroad, Inc.’s Motion to Compel Discovery” filed on March 28, 2024 (“Joint Reply”). DSRR does so for the sole purpose of assisting the Administrative Law Judge and for judicial economy.¹

The Joint Reply does not help to clarify the issues. The Lake Providence Port Commission (“LPPC”), Southeast Arkansas Economic Development District (“SEADD”), and the North Louisiana and Arkansas Railroad, Inc. (“NLA”) (together, the “LPPC parties”) invent discovery limitations on DSRR that have no legal basis and their position on the relevant issues in this proceeding appears to be that it is relevant if and only if it helps LPPC’s case.

As a matter of process, the LPPC parties argue that what the Board and its regulations actually mean, without saying so, is that DSRR must await a procedural order before it can serve discovery on the LPPC parties. The typical procedural order in a feeder line case gives the respondent only *sixty days* to file its defense, see 49 C.F.R. § 1151.2(e), and, as DSRR has previously noted, such orders generally do not address discovery. See Reply to “Emergency Motion” at 10. If the LPPC parties’ position is correct, then DSRR’s right to discovery will be futile, as this present dispute well illustrates. DSRR served the pending discovery requests *ninety*

¹ The Board regularly accepts reply filings for completeness of the record and when it assists with administrative efficiency. *Navajo Transitional Energy Co., LLC v. BNSF Ry. Co.*, 2017 STB Lexis 218 at *6-7 (Dec. 5, 2017) (Judge McCarthy) (listing numerous instances in which reply-to-reply permitted and permitting it in the case). To the extent necessary, DSRR requests leave to file this letter.

days ago and still has not received responsive information due to the LPPC parties' obstruction and despite DSRR's diligent pursuit of remedies to enforce compliance. Thus, the LPPC parties' position that this dispute involves only a matter of when and not whether DSRR may conduct discovery is, as a practical matter, wanting. DSRR's ability to discover evidence that will be useful requires it to obtain discovery *now*, not once it is under a deadline to draft a defense to LPPC's completed application.

In pursuing the pending discovery against each of the LPPC parties, DSRR thoughtfully and purposefully filed separate motions against each of LPPC, SEAEDD, and NLA. It did so to keep clear the distinct discovery served on each party separately and to which each party has its own individual obligation properly to respond and comply. Each set of requests targets information that is relevant to DSRR's defense against the allegations made by LPPC as sole applicant in this matter and supported by NLA and SEAEDD, who are parties to this proceeding.² Indeed, the Joint Reply asserts that the INFRA grant is "relevant" to the case, yet shockingly claims that the parties should not have to produce materials related to it. Joint Reply at 14.

The fact that each party has chosen to be represented by the same counsel does not excuse each party from responding and complying with properly served discovery targeted at information in its own possession that is relevant to this proceeding. Through the meet and confer process it became clear that the LPPC parties were unwilling to respond properly to discovery and were hiding behind each other in some instances. See Correspondence with each of LPPC, NLA, and SEAEDD regarding discovery, with the respective letters attached as Exhibit C to DSRR's Motion to Compel LPPC's Discovery Responses, Exhibit C to NLA's, and Exhibit C to SEAEDD's, along with correspondence regarding the parties' meet and confer attached as Exhibit E, all of which I certify are true and correct copies. These parties continue to reply jointly to discovery as though they can piggy-back on one another, point fingers at one another, or not produce responsive documents in the hopes that another party will produce the identical document.

This latest Joint Reply to the three separate motions to compel, related to discovery served on three different parties, is just more gamesmanship by the LPPC parties to prevent DSRR from obtaining the materials needed to defend against the baseless allegations that have been made against it. Indeed, the continual obfuscation that DSRR has had to deal with is evident in the Joint Reply, which does not cite the document requests to which it is objecting, does not cite the document requests in each motion to compel to which it purports to respond, and sometimes responds for all three parties and in other instances only makes an argument on behalf of one party.³

² *Lake Providence Port Comm.—Feeder Line Application—Line of Delta South. R.R. located in East Carroll and Madison Parishes, LA.* STB Finance Docket 36447 at 4 (STB decided May, 27, 2021) (finding NLA is a party and rejecting NLA's attempts to avoid discovery).

³ The proposition that counsel should make detailed objections specific to each party on which discovery was served and as to each specific request is not novel. See e.g. *Finkelstein v. Bical*, 2023 U.S. Dist. LEXIS 222888 (E.D. N.Y. 2023) (rejecting generalized objections) (attached as **Exhibit A**); *Dicupe v. Leifeld & Co.*, 1986 U.S. Dist. LEXIS 24231 at *5 (E.D. Pa. 1986) ("According, this court expect [sic] a party objecting to discovery to make detailed, particularized objections to each interrogatory and documentary request to which--in counsel's view--a valid objection may be made."). See also *Crozer-*

Rather than conduct a thorough search of its own hard-copy documents, electronic files, email, etc., for materials related to issues that they have placed in the record, like the INFRA grant, these parties have continued to play games like filing joint responses such that at least DSRR cannot tell what each individual parties' claims are. In contrast, DSRR has complied from the moment that the Board ordered discovery related to valuation to respond in good faith to LPPC's document requests – including sending two lawyers (one in-house and one outside counsel) to Louisiana to oversee the search, producing hard-copy documents, electronic files, emails, etc., and producing more than 11,000 pages of responsive material at substantial expense to a small Class III railroad.⁴

DSRR files this letter to help clarify the issues for resolution by the ALJ. Figure 1 is a table that summarizes key points made in the Joint Reply to the extent discernable to DSRR, with DSRR's response. Objections to specific discovery requests noted in the motion to compel and not mentioned in the Joint Reply at all are waived. So too, objections raised in the Joint Reply but only by one of the LPPC parties but not others are waived by those others.⁵

Chester Med. Ctr. v. NLRB, 976 F.3d 276 (3rd Cir. 2020) (“a responding party must state whether responsive materials were withheld and link each specific objection to what was withheld”) (internal citation and quotation marks omitted); *Carbon v. Seattle Reprod. Med. Inc. PS*, 2020 U.S. Dist. LEXIS 133676 at *17-18 (W.D. Wash. 2020) (parties cannot assert objections without explaining why a particular request is outside of the scope of discovery); *Gibson v. SDCC*, 2016 U.S. Dist. LEXIS 25810 at *6 (D. Nev. 2016) (discussing that boilerplate objections are insufficient to establish that a particular discovery request is outside the scope of discovery).

⁴ “Discovery cannot be conducted on paper in the abstract, based on recycled, rote, and generic objections and assertions, from the sanctity of outside counsel's desk. A lawyer's obligation is to interrogate a client's documents and then cogently respond on the basis of that acquired knowledge.” *Finkelstein* at *7-8.

⁵ See e.g., *Garibay v. Caravan Realty*, 2021 U.S. Dist. LEXIS 195387 (C.D. Cal. 2021). *Garibay* sets forth a number of basic legal principles relevant in this discovery dispute. First, a party who “fails to make timely objections to a discovery request waives those objections.” *Id.* at *6-7. Second, “objections not raised in a written response to discovery may not be raised for the first time in a discovery motion.” *Id.* at *7. Third, “objections asserted in discovery responses but not raised in briefing on a discovery motion are also waived.” *Id.* at *7. See also *Campaign Legal Ctr. v. Values*, 2024 U.S. Dist. LEXIS 3192 at *26-27 (D.D.C. 2024) (“If the party opposing a motion to compel does not raise a particular argument, that argument may be deemed waived. . . Failure to include an argument when opposing a motion to compel may constitute waiver even if the objection was raised earlier in response to a request for production or an interrogatory.”). The only relevance argument raised by LPPC parties is related to the INFRA grant, which consumes hundreds of pages of the Amended Complaint and which it admits here is relevant to the case. Joint Reply at 14. All others are waived.

Figure 1 - Summary

“Yes” – argument made on that party’s behalf.

“No” – argument not made on that party’s behalf and waived.

“Unclear”—unclear on whose individual behalf such argument is made.

Issue	Joint Reply Page	LPPC	NLA	SEAEDD	Comment
Seven years of material as excessive scope.	3	Yes	Yes	Yes	Same time period sought from DSRR.
General relevance, burden of “all documents” requests	3-4	Yes	Yes	Yes	No specific argument as to any particular request. Where the subject matter of a request is specific, DSRR has requested all such relevant documents. In any event, the LPPC parties refused to negotiate on scope issues, so they cannot use that against DSRR now.
Timing of discovery and whether DSRR may conduct it now	6-9	Yes	Yes	Yes	Issue fully addressed above and in briefing of pending motions. ⁶
Adequacy of search for responsive documents and information	9-10	Yes	No	No	No discussion of any search conducted by NLA or SEAEDD.
Identity of shippers on the Line	10	Yes	No	No	LPPC points finger at NLA. No discussion by NLA or substantive objection by SEAEDD. Discussed further below.
No rail movements	12	Unclear	Unclear	Unclear	Unclear what this objection is, by which party it is made, or to which

⁶ See DSRR’s Reply to Emergency Motion, FD No. 26447 at 6-10 (filed Apr. 1, 2024) (“DSRR Reply to Emergency Motion”); DSSR’s Motion to Compel LPPC’s Discovery Responses, FD No. 26447 (filed Mar.8, 2024); DSRR’s Motion to Compel NLA’s Discovery Responses, FD No. 26447 (filed Mar. 8, 2024), DSRR’s Motion to Compel SEAEDD’s Discovery Responses, FD No. 26447 (filed Mar. 8, 2024).

Issue	Joint Reply Page	LPPC	NLA	SEAEDD	Comment
					discovery requests it applies.
Don't have to produce documents if counsel thinks another party may have produced.	12	Unclear	Unclear	Unclear	Each party has individual discovery obligations, and one party cannot excuse itself from producing responsive documents. ⁷
INFRA Grant materials	14	Unclear	Unclear	Unclear	Concedes INFRA grant is relevant, but does not want to provide further information than what LPPC has filed. ⁸ Such material clearly relevant as to an issue that consumes 100s of pages of the Amended Application and could speak clearly to the financial ability of LPPC to own and operate the Line better than DSRR. ⁹
Discovery of communications with elected officials	16	Unclear	Unclear	Unclear	The LPPC parties abandoned any privileged objection to producing

⁷ See *Finkelstein* at *3 (The fact that a party may already have the documents “does not obviate the need...to produce the responsive documents in [the other party’s] possession”); *Thomas v. City of New York*, 336 F.R.D. 1, 2-3 (E.D.N.Y. 2020) (attached as **Exhibit B**); *City Consumer Service, Inc. v. Horne*, 100 F.R.D.740 (D. Utah 1983) (“It is not usually grounds for objection that the information is equally available to the interrogator or is matter of public record.”) (citing *Petruska v. Johns-Manville*, 83 F.R.D. 32, 35 (E.D. Pa. 1979) and 8 Wright and Miller, Fed. Practice and Procedure § 2014 at 111 (1970)). That another party might produce a document (and the objecting party would not know one way or the other) is an even less legitimate objection.

⁸ The objection that Federal Railroad Administration is “carefully monitoring” the funding efforts and that such “expenditures are consistent with the terms of the Grant” is not a legitimate objection to discovery by any of the LPPC parties. Joint Reply at 14. DSRR does not have to take the LPPC parties’ word for it; it is entitled to explore the INFRA Grant that the LPPC parties concede in the Joint Reply is relevant. As noted, DSRR offered to limit the scope but each party refused to comply with the relevant requests. DSRR also offered to withdraw the relevant discovery request if LPPC filed another amended application withdrawing all references to the INFRA grant. See Joint Reply at 14.

⁹ Joint Reply at 14 (“Without question, the INFRA grant is relevant . . .”); see DSRR’s Reply to Emergency Motion filed April 1, 2024 (Verified Statement of Katherine Pollard, Exhibit F).

Issue	Joint Reply Page	LPPC	NLA	SEAEDD	Comment
regarding case, DSRR service, or LPPC ability to purchase the Line.					these materials, and refused to negotiate scope during the meet-and-confer process. The requests are clearly tied to relevant subject matter, so the LPPC parties must search for and produce all responsive documents.
NLRDD	16-18	Yes	N/A	N/A	Long tangent with little substance—NLRDD shares a common director/officer with LPPC, and NLRDD is attempting to acquire a portion of DSRR’s property. ¹⁰ Communications between the two regarding the subject matter of this case are relevant and discoverable.

DSRR elaborates on one of the issues in Figure 1, related to the LPPC parties’ explanation for why they have produced no responsive documents of communications with shippers regarding service by either DSRR or NLA. The LPPC parties assert no proper objection related to these requests, but offer an unsatisfying explanation to excuse themselves from providing a response. Joint Reply at 10.

LPPC tries to avoid discovery claiming that it did not provide the list of customers and pointing its finger at NLA. Joint Reply at 10. LPPC then claims that it responded stating that it is aware of only one shipper in the port area – APEX. Joint Reply at 11 and 12. The fact is that

¹⁰ Based on publicly available information, it appears that Karvan Powell serves as both the Vice President at NLRDD as well as a Commissioner at LPPC. *Lake Providence Port Commission Members*, Louisiana Division of Administration, <https://wwwcfprd.doa.louisiana.gov/boardsAndCommissions/viewMembers.cfm?board=116> (last visited April 2, 2024); Joe Curtis, *Commissioners Chosen for Railroad District*, Concordia Sentinel (Nov. 2, 2022) https://www.hannapub.com/concordiasentinel/news/local_state_headlines/commissioners-chosen-for-railroad-district/article_6acf57c8-5ad9-11ed-952c-df58c7b35b2c.html (spelling Karvan “Carvan”). The LPPC parties have not asserted any other specific objections to this request in the Joint Reply and all others such objections are therefore waived.

LPPC itself identified the list of shippers through its Amended Application and its previous response to DSRR to its Interrogatory No. 35 (which was served by DSRR in precisely the same posture as today in which LPPC now claims that DSRR is not permitted discovery). See Exhibit C.¹¹ That this list may have initially been compiled by NLA does not change the fact that LPPC adopted the list as its own for purposes of current or potential shippers on the Line.

But putting aside that misstatement, and even assuming LPPC is only aware of one shipper, DSRR is entitled to all documents regarding that shipper, including meeting notes, emails, transcripts, etc., related to rail transportation for APEX and NLA's well-known service failures for APEX. Instead, LPPC deflects, claiming it is "illogical" that anyone would correspond with LPPC regarding DSRR's or NLA's service. Joint Reply at 11. Whether any of the shippers "would have," *id.*, contacted LPPC or not is no answer to the discovery requests. LPPC must search for them and produce responsive documents, not argue whether something might or might not be there. See *Finkelstein*, 2023 U.S. Dist. LEXIS 222888 at *5 (holding parties cannot hide behind the statement they are "not currently aware" of responsive documents and are obligated to thoroughly search for responsive documents).

For NLA's part, there is no argument by it regarding documents related to these shippers and why it has not produced responsive documents; any specific objections are now waived. Indeed, NLA is thrown under the bus by LPPC's response – "The fact of the matter is that complaints regarding NLA's service would have been directed to NLA," Joint Reply at 11. But moreover, that is a prime example of the gamesmanship of the LPPC parties pointing the finger at each other with none of them producing documents or simply stating that they have no responsive documents.

The argument on SEAEDD's part is that the two identified customers for whom it might have documents "have not yet opened their facilities." Joint Reply at 12. That is the only objection (other than the general objections), which is not a proper objection, and all other specific objections are waived. If there are documents concerning potential customers, they are responsive and relevant to this case to the extent LPPC's Amended Application asserts the DSRR's service affected potential customers. For all we know, these customers may have documents evaluating rail service. Nevertheless, if LPPC parties are saying that LPPC (or any other supporting party) will not introduce evidence related to potential customers in this feeder line case, DSRR would be willing not to further pursue these documents.

For the reasons articulated in its briefs and as detailed herein, DSRR's motions to compel should be granted. Please contact me should you have any questions regarding this filing.

¹¹ LPPC's responses to Interrogatory 35 failed to acknowledge that LPPC had expanded the scope of the case (indeed filed a new case with the Amended Application) that made its June 2021 responses at least incomplete if applicable at all. Even if the scope of the case had been the same, DSRR has not received any documents regarding customers since June 2021 despite LPPC's ongoing obligation to supplement discovery and LPPC's new case filed in January 2023 asserting that there are customers allegedly getting inadequate service from DSRR.

Sincerely,

/s/ *Noah P. Sullivan*

Noah P. Sullivan

Attorney for: Delta Southern Railroad, Inc.

cc: All Counsel of Record
Judge Thomas McCarthy

Attachments

- A. *Finkelstein v. Bical*, 2023 U.S. Dist. LEXIS 222888 (E.D. N.Y. 2023).
- B. *Thomas v. City of New York*, 336 F.R.D. 1 (E.D.N.Y. 2020).
- C. LPPC's Response to Interrogatory No. 35 of DSRR's Second Set of Interrogatories and Requests for Production of Documents.

EXHIBIT A

Finkelstein v. Bical

United States District Court for the Eastern District of New York

December 14, 2023, Decided; December 14, 2023, Filed

23-CV-00049-LDH-SJB

Reporter

2023 U.S. Dist. LEXIS 222888 *; 2023 WL 9119575

STUART H. FINKELSTEIN, Plaintiff, -against-
LILAAHAR BICAL, Defendant.

Counsel: [*1] For Stuart H Finkelstein, Plaintiff: Stuart
H. Finkelstein, Stuart H. Finkelstein, Esq., Syosset, NY.

For Lilaahar Bical, Defendant: Michael Gould, Scott
Howard Mandel, Stevan H LaBonte, LaBonte Law
Group, PLLC, Jericho, NY.

Judges: SANKET J. BULSARA, United States
Magistrate Judge.

Opinion by: SANKET J. BULSARA

Opinion

MEMORANDUM & ORDER

BULSARA, United States Magistrate Judge:

On August 14, 2023, the Court directed Defendant to provide a complete set of discovery responses to Plaintiff in two weeks. (Order dated Aug. 14, 2023). Defendant then served written responses but failed to produce a single document. The written responses appear to run afoul of numerous long-established federal discovery rules. As the Court explained in another case:

First, with respect to the objections, "[a]n objection must state whether any responsive materials are being withheld *on the basis of that objection*." [Rule 34\(b\)\(2\)\(C\)](#). Nothing is said by [Defendant] as to whether responsive documents exist; for each objection, [Defendant] has also not indicated if any documents are being withheld on the basis of that objection.

Second, the objection that the phrase "relating to . . ." is "vague, ambiguous and overbroad," is vacuous boilerplate. [Fischer v. Forrest, No. 14-CV-1304,](#)

[2017 U.S. Dist. LEXIS 28102, 2017 WL 773694, at *3 \(S.D.N.Y. Feb. 28, 2017\)](#) ("[T]he responses [*2] to requests 1-2 stating that the requests are 'overly broad and unduly burdensome' is meaningless boilerplate. Why is it burdensome? How is it overly broad? This language tells the Court nothing."); [Mancia v. Mayflower Textile Servs. Co., 253 F.R.D. 354, 358 \(D. Md. 2008\)](#) ("[B]oilerplate objections that a request for discovery is overboard and unduly burdensome . . . persist despite a litany of decisions from courts, including this one, that such objections are improper unless based on particularized facts.") (quotations omitted) (collecting cases).

Third, the Discovery Responses begins with a long recitation of General Objections. The 2015 Amendments to the Federal Rules no longer permits global, generalized objections to each request. [Rule 34\(b\)\(2\)\(B\)](#).

[Caprate Events, LLC v. Knobloch, No. 17-CV-5907, 2018 U.S. Dist. LEXIS 227238, 2018 WL 4378167, at *2 \(E.D.N.Y. Apr. 18, 2018\)](#) (first, fourth, fifth, and sixth alterations in original). Defendant's responses are inconsistent with these basic principles of federal document discovery. See also [Wang v. Shanghai You Garden, Inc., No. 20-CV-4588, 2023 U.S. Dist. LEXIS 156949, 2023 WL 5670772, at *4 \(E.D.N.Y. Mar. 31, 2023\)](#) ("General and conclusory objections as to relevance, overbreadth, or burden are insufficient to exclude discovery of requested information." (quotations and alterations omitted)) (collecting cases); [Eiklor v. Lowe's Home Ctrs., LLC, No. 21-CV-5082, 2022 U.S. Dist. LEXIS 204283, 2022 WL 16834574, at *1 \(E.D.N.Y. Nov. 9, 2022\)](#) ("The timeworn phrases of 'overbroad', 'undue burden', 'vague' and 'ambiguous' are not a safe harbor to one seeking to avoid production. Rather, those objections—if [*3] genuine—must be supported by a degree of specificity as to *why* they might be overbroad, an undue burden, vague or ambiguous.").

In fact, Defendant repeats the same objections over and

over and over again, in response to every request. (See, e.g., Def.'s Resps. to Pl.'s First Request for Produc. dated Aug. 25, 2023 ("Def.'s Doc. Resps."), attached as Ex. C to Decl. of Stuart Finkelstein in Supp. of Letter Mot. dated Sept. 8, 2023, Dkt. No. 33). In each instance, he incorporates a long laundry list of improper general objections; fails to explain what specifically about the request is irrelevant, improper, burdensome, or vague; and fails to indicate whether the objections are being used to withhold documents.¹

There are additional, and more serious, problems. Defendant repeatedly objects to requests on the grounds that responsive documents are in the possession of Plaintiff. That fact does not obviate the need for Defendant to produce the responsive documents in his possession. See [*Thomas v. City of New York*, 336 F.R.D. 1, 2-3 \(E.D.N.Y. 2020\)](#) ("The mere existence of overlap and some duplication is insufficient to preclude the discovery sought. Furthermore, even if duplicative, obtaining the information about custodian of a text message or email yields pertinent information. That is, even if an email was produced from one witness's custodial inbox, producing the same email from another witness's inbox establishes that the second witness received the email (and helps counter any suggestion that he or she lacked knowledge of or did not receive the email in question)." (citation omitted)); e.g., [*Au New Haven, LLC v. YKK Corp.*, No. 15-CV-3411, 2023 U.S. Dist. LEXIS 49913, 2023 WL 2612204, at *11 \(S.D.N.Y. Mar. 23, 2023\)](#) ("Plaintiffs' argument that the records in the JPO were

equally [*5] accessible to Defendants and that they were thus excused from producing them is also meritless.").

And Defendant appears to engage in a form of misdirection and gamesmanship by suggesting repeatedly (and in response to virtually every single document request) that he is "not currently aware" of responsive documents. (E.g., Def.'s Doc. Resps. ¶ 2 ("Subject to the foregoing objections and the General Objections, Defendant states that it is not currently aware of any notes, memorandum, letters, statements, receipts, invoices, correspondence, agreements, contracts or any other writings or documents concerning the allegations set forth in the Complaint[.]"). Document requests are not memory tests. That a party is not aware of responsive documents does not remove its obligation to produce them. It must search for responsive documents, and then after performing a reasonable search, it can state it is not in possession of responsive documents. Mental state, awareness, or knowledge has nothing to do with the obligations under [Rule 34](#). Defendant's assertion that he is not "currently aware" of any responsive documents, which appears to have been made with the purpose of shielding documents from discovery [*6] (or justifying the failure to produce a single document), is a patently frivolous basis on which to respond to document requests. And it risks imposition of serious sanction and potential entry of default. Here is why: when a party fails to conduct a search for documents, and simply asserts that it is not aware of documents, it cannot state whether it is withholding documents on the basis of its objections, as [Rule 34](#) requires. See *supra*. As a result, neither the opposing party nor the Court knows if there are no documents responsive to the request, or instead, a few, a thousand, or a million. Faced with this ignorance, the opposing party must move to compel, and the Court must adjudicate the dispute. But it all could be a fight over nothing, because even as originally crafted (ignoring any objections), there simply may not be any documents that are responsive. That is, even though there may have been a valid reason for the opposing side to believe documents exist (and thus serve a request for them), the reality is that no documents exist. When a party behaves like Defendant has—and conducts no search at all—unnecessary costs (motion practice, decision time, not to mention the mutual agita [*7] engendered from one side believing that the other side is hiding documents, and the other reflexively defending themselves against such a charge) are imposed on the parties and the Court. As another case explains:

¹ For example, the following language was used verbatim to respond to document production requests 2, 3, 4, 5, 6, 8, 9, and 48:

Defendant objects to this Request on the grounds that it seeks documents and information which is in the possession, custody or control of Plaintiff, or that is equally available to Plaintiff. Defendant further objects to this Request on the grounds that it is overbroad, unduly burdensome, vague, ambiguous and/or fails to describe the documents or information sought with reasonable particularity. Subject to the foregoing objections and the General Objections, Defendant states that [*4] it is not currently aware of any documents reflecting communications between SHF and Bical regarding the underlying alleged representations, other than what was produced by the Plaintiff during the course of this litigation and in the December 22, 2022 letter to Bical by SHF which is attached hereto.

(Def.'s Doc. Resps. ¶¶ 2, 3, 4, 5, 6, 8, 9, 48).

What [Defendant] cannot do under the current Rules framework is use the overbreadth objection to produce nothing at all. . . . A proper response would have been to indicate a scope of documents that [he] would produce, state that other documents exist, but would be withheld on the basis of the burden of collecting and producing those documents. Then, if [Plaintiff] thought it appropriate, he could move to compel that which is being withheld. And such a process would help [Defendant], because [he] would not have been forced to say [he] offered reasonable compromises that [Plaintiff] simply did not accept. Rather [he] could produce documents pursuant to that reasonable interpretation, and present that good faith compliance to the Court in response to the motion to compel.

CapRate Events, 2018 U.S. Dist. LEXIS 227238, 2018 WL 4378167, at *2 (internal citation omitted). Discovery cannot be conducted on paper in the abstract, based on recycled, rote, and generic objections and assertions, from the sanctity of outside counsel's desk. A lawyer's obligation [*8] is to interrogate a client's documents and then cogently respond on the basis of that acquired knowledge. Defendant has frustrated this process at every turn.

In sum, Defendant's non-compliant responses violate this Court's order on the original motion to compel. (And the failure to produce a single responsive document leads the Court to infer that there has been an intentional side-stepping of the Court's clear directive). "Objections in these terms are inappropriate. This Court is unlikely to tolerate them again." Fowler v. Vary, No. 20-CV-9586, 2022 U.S. Dist. LEXIS 142084, 2022 WL 3211638, at *15 (S.D.N.Y. Aug. 9, 2022)

Compounding his folly, Defendant failed to file any response to Plaintiff's motion to compel until September 27, and then only submitting an untimely, unsigned letter that fails in any way to address any of the points in Plaintiff's motion (except to refer to it as "rubbish" and address the timing of mediation). (Resp. in Opp'n to Third Mot. for Discovery dated Sept. 27, 2023, Dkt. No. 37 at 2).² Plaintiff filed a proper motion, and Defendant failed to respond in any meaningful way. The Court grants the motion to compel and strikes Defendant's

non-compliant responses. *E.g., UMG Recordings, Inc. v. Grande Commc'ns Networks, LLC, No. A-17-CA-365, 2017 WL 8939954, at *2 (W.D. Tex. Oct. 27, 2017)* ("The not-so-recent 2015 amendments to the discovery rules expressly disallowed general objections, [*9] requiring instead that responses be individualized, and 'state with specificity the grounds for objecting to [each] request.' Fed. R. Civ. P. 34(b)(2)(B)). Because Defendants' general objections fail to do so, they are ineffectual, and the Court thus STRIKES the General Objections." (alteration in original)).

Defendant must by **January 4, 2024**, do the following:

1. Provide revised written responses to Plaintiff's document requests that are compliant with the Federal Rules. Should Defendant file responses inconsistent with Rule 34 and this Order, he risks the Court's entry of adverse inference and default. Defendant should familiarize himself with Rule 34 before he submits a revised response, because further opportunities to provide Rule-compliant responses will not be granted. If no responsive documents exist in response to a request, the response should so state.
2. Provide a declaration from a person with knowledge of the efforts undertaken to search for and produce responsive documents. The declaration should indicate the locations searched and indicate when and how the search was performed. The obligation to conduct a search extends not only to paper documents but emails and other electronic sources of information.
3. Produce [*10] no later than **January 11, 2024**, documents responsive to the requests. To the extent that there are responsive documents, and Defendant believes that they are irrelevant or privileged and wishes to withhold them on those bases or any other objection, he may no longer do so unilaterally. He has forfeited that right by not complying with Rule 34 or the Court's order in the first instance. He may only withhold such documents if he files a motion for a protective order with the Court seeking to avoid such production.

As noted, a failure to comply with this Order may result in sanctions, including adverse inferences or entry of default.

Separately, Defendant should provide a status report on his efforts to reschedule mediation by **December 21, 2023**.

²Any response to Plaintiff's motion to compel was due by September 13, 2023. See Individual Practices of Magistrate Judge Sanket J. Bulsara, IV.B.

SO ORDERED.

/s/ Sanket J. Bulsara December 14, 2023

SANKET J. BULSARA

United States Magistrate Judge

Brooklyn, New York

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EXHIBIT B

Thomas v. City of New York

United States District Court for the Eastern District of New York

September 16, 2020, Decided

19-CV-4791-NGG-SJB

Reporter

336 F.R.D. 1 *; 2020 U.S. Dist. LEXIS 170466 **; 107 Fed. R. Serv. 3d (Callaghan) 1799

SHAWN THOMAS, Plaintiff, v. THE CITY OF NEW YORK, COMMISSIONER DANIEL A. NIGRO, WILLIAM SEELIG, STEPHEN GERAGHTY, DONALD HAYDE, JOHN SPILLANE, JOHN ESPOSITO, JOSEPH CUNNINGHAM, JOSEPH DOWNEY, JAMES ELLISON, THOMAS GARDNER, EDWARD COWAN, WILLIAM BEDELL and JOHN and JANE DOE (said names being fictitious, the persons intended being those who aided and abetted the unlawful conduct of the named Defendants), Defendants.

Counsel: **[**1]** For Shawn Thomas, Plaintiff: William W. Cowles, II, Maduegbuna Cooper LLP, New York, NY.

For The City of New York, William Seelig, Stephen Geraghty, Donald Hayde, John Spillane, Joseph Cunningham, Joseph Downey, James Ellison, Commissioner Daniel A Nigro, John Esposito, Thomas Gardner, Edward Cowan, William Bedell, Defendants: Peter William Bocker, LEAD ATTORNEY, NYC Law Department, New York, NY; Linda Margareta Mindrutiu, New York City Law Department, New York, NY.

Judges: SANKET J. BULSARA, United States Magistrate Judge.

Opinion by: SANKET J. BULSARA

Opinion

[*1] ORDER

BULSARA, United States Magistrate Judge:

Plaintiff has filed a motion to compel certain electronic discovery from Defendants. (Mot. to Compel dated Aug. 20, 2020 ("Mot."), Dkt. No. 43). For the reasons explained below, the motion to compel is granted.

Plaintiff seeks (in "Phase 2 ESI" discovery) documents (including text messages, GroupMe messages, and emails) from five custodians, all defendants: Captain

Gardner, Lieutenant Cowan, Lieutenant Bedall, Chief of Special Operations Esposito, and FDNY Commissioner Nigro. Defendants agreed to collect ESI from Nigro according to agreed-upon search terms and time frames and have collected emails from Gardner and **[**2]** text messages from Cowan. (Opp. to Mot. dated Aug. 20, 2020 ("Opp."), Dkt. No. 44, at 2). **[*2]** They oppose any additional production request, including any collection from Esposito or Bedall, further collection from the other custodians, and any collection of GroupMe messages. (*Id.* at 2, 5-6).

Neither party addresses the standards or burdens for ESI production correctly; some review is required. Under [Rule 26](#), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." [Fed. R. Civ. P. 26\(b\)\(1\)](#). If relevant and proportional, then the party that objects to the discovery must establish that the request should be denied. See [N. Shore-Long Island Jewish Health Sys., Inc. v. MultiPlan, Inc.](#), 325 F.R.D. 36, 48 (E.D.N.Y. 2018) ("Once the requesting party has made a *prima facie* showing of relevance, 'it is up to the responding party to justify curtailing discovery.'" (quoting [Fireman's Fund Ins. Co. v. Great Am. Ins. Co.](#), 284 F.R.D. 132, 134 (S.D.N.Y. 2012))); see also [Certain Underwriters at Lloyd's v. Nat'l R.R. Passenger Corp.](#), No. 14-CV-4717, 2016 U.S. Dist. LEXIS 64088, 2016 WL 2858815, at *3 (E.D.N.Y. May 16, 2016) ("[T]he party resisting discovery has the burden of showing undue burden or expense." (quoting [State Farm Mut. Auto. Ins. Co. v. Fayda](#), No. 14-CV-9792, 2015 U.S. Dist. LEXIS 162164, 2015 WL 7871037, at *2 (S.D.N.Y. Dec. 3, 2015))). With respect to ESI, to avoid production in response to a "motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost." [Fed. R. Civ. P. 26\(b\)\(2\)\(B\)](#).

Defendants have **[**3]** failed to rebut Plaintiff's showing that the discovery sought is relevant and proportional, or that the discovery is not reasonably accessible because of undue burden or cost. According to Defendants,

having collected emails from Gardner, text messages from Cowan, and ESI from Nigro; and conducted certain unidentified interviews, collecting additional ESI from Gardner, Bedall, and Esposito would "yield no unique or non-duplicative information." (Opp. at 2). There are several flaws in Defendants' analysis of their discovery obligations.

As for Gardner, Cowan, and Bedall, they are all defendants in the case—and alleged to have conspired to retaliate against Plaintiff. As such, there is no plausible argument that the information sought from their files is irrelevant under [Rule 26\(b\)](#). In other words, there is some reason to believe that they would have relevant and discoverable information in their possession. To exclude any defendant from electronic information collection entirely would be the unusual course, and all defendants have offered to support that position is their view that the information to be obtained would be duplicative or redundant. Defendants have not suggested that Cowan, Gardner, or Bedall **[**4]** are not involved, but contend instead that the information sought is the same information that will or has already been produced. Yet, Defendants offer not a modicum of proof for this position (such as email exhibits showing that all parties were copied on the relevant emails) or plausible explanation (such as a factual proffer that, given their roles as supervisors, these defendants always emailed with each other about all employees). "The mere fact that many documents have already been produced is not sufficient to establish that there are no other relevant materials to be found." [Family Wireless #1, LLC v. Auto. Techs., Inc., No. 15-CV-1310, 2016 U.S. Dist. LEXIS 65885, at *7 \(D. Conn. May 19, 2016\)](#); [Bagley v. Yale Univ., 307 F.R.D. 59, 66 \(D. Conn. 2015\)](#) ("The sense of irritated resignation conveyed by the familiar aphorism—"it's like looking for a needle in a haystack"—does not exclude the possibility that there may actually be a needle (or two or three) somewhere in the haystack, and sharp needles at that. Plaintiff is presumptively entitled to search for them."). In any event, for Defendants to prevail on limiting discovery because of duplication, they must show that such the resulting information is "unreasonably cumulative or duplicative." [Rule 26\(b\)\(1\)\(C\)\(i\)](#). The mere existence of overlap and some duplication is insufficient to preclude the discovery **[**5]** sought. *E.g.*, [Kenyon v. Simon & Schuster, Inc., No. 16-MISC-327, 2016 U.S. Dist. LEXIS 140917, at *17-18 \(S.D.N.Y. Oct. 11, 2016\)](#) ("The Court is not persuaded that simply because a subset of documents—i.e., communications with **[*3]** Clare—may also be available from Clare, Kenyon's requests are unreasonably duplicative or cumulative. S&S . . .

likely has the lion's share of documents responsive to Kenyon's requests. [Rule 26\(b\)\(2\)\(C\)\(i\)](#) does not require requests to be circumscribed pens sharing no common ground. It requires only that the overlap not be 'unreasonable.'). Furthermore, even if duplicative, obtaining the information about custodian of a text message or email yields pertinent information. That is, even if an email was produced from one witness's custodial inbox, producing the same email from another witness's inbox establishes that the second witness received the email (and helps counter any suggestion that he or she lacked knowledge of or did not receive the email in question).

Nor have Defendants established that ESI is inaccessible. See [Fed. R. Civ. P. 26\(b\)\(1\)\(B\)](#). That is,

[t]he producing party is relieved of the initial obligation to produce information from these sources only if they are properly identified as "inaccessible." This does not mean that the responding party must describe **[**6]** with great specificity what information is available from these sources; providing that specificity might sometimes entail undertaking the burdensome efforts that the rule seeks to defer or avoid. But the identification must provide details on the burdens and costs that would result from providing the discovery, and on the likelihood of finding responsive information on the identified sources.

8 Arthur R. Wright & Charles Alan Miller et al., *Federal Practice & Procedure* § 2008.2 (3d ed. 2020). Defendants' papers are devoid of any specific analysis of the burden of the ESI production being sought by Plaintiff. And some of the arguments suggests the burden is minimal at best—for instance, Defendants contend that "Cowan and Bedell rarely used email," (Opp. at 2), which if true, suggests little additional time and expense would be incurred in producing their ESI. Since Defendants give no indication of the volume of responsive ESI, the Court cannot conclude that the efforts in reviewing the ESI of the additional custodians would be so burdensome so as to be "inaccessible." *E.g.*, [Black Love Resists in the Rust ex rel. Soto v. City of Buffalo, 334 F.R.D. 23, 29 \(W.D.N.Y. 2019\)](#) ("Although Defendants assert that it would be unduly burdensome for them to produce ESI because Plaintiffs' proposed search terms **[**7]** are incompatible with Defendants' email systems, they have not quantified that burden in terms of the number of documents subject to collection and review or 'the amount of time and manpower that would be reasonably required to

comply' with the requests." (quoting [*Gross v. Lunduski*, 304 F.R.D. 136, 152 \(W.D.N.Y. 2014\)](#)); [*Garcia Ramirez v. U.S. Immigr. & Customs Enft*, 331 F.R.D. 194, 198 \(D.D.C. 2019\)](#) ("Defendants have not articulated anything more than general statements that allowing discovery from the additional custodians would cause an undue burden. Defendants do not provide any evidence or specific factual allegations to support their assertion that discovery from the additional custodians would unduly add to the cost or time needed to process the necessary documents.").

It appears—though the parties' papers are unclear on this point—that Defendants have agreed to obtain a subset of ESI from particular defendants and cobbled together the information. (Opp. at 2 ("Defendants have agreed to collect emails from Commissioner Nigro Defendants have also agreed to collect emails from Captain Gardner and text messages from Lieutenant Cowan.")).¹ This kind of splicing—collecting emails from one defendant, text messages from another—with the hope that the amalgam of information is the universe of relevant discovery is an inappropriate **[**8]** collection and production methodology. It assumes that one person's documents are complete and nothing has been deleted or expunged, that reviewing duplicate information is unduly burdensome or disproportionate, and that custodian information is irrelevant.

[*4] Each assumption is flawed. Defendants have offered nothing to support their first assumption—that Nigro's emails are the complete set of emails and Cowan's text messages are the complete set texts between any of the defendants or concerning the Plaintiff's claims—other than "custodial interviews." Interviews of witnesses about the content of their electronic communications is likely to provide, at best, an incomplete picture of the content of relevant and discoverable ESI. It is one thing to ask a witness how he or she communicated—through email or text—or about their deletion practices. But it is quite another thing to rely on a witness's recollection about whether her emails represent the entire set of communications on a particular set of issues. Asking a witness to recreate and recount the content of electronic communications and describe the extent of communications on a particular

issue from memory is unlikely to provide an **[**9]** accurate accounting. It is also problematic to accept, without verifying, that the witness being asked to collect documents is involved in all the relevant conversations, as Defendants do. (Opp. at 2 ("Cowan and Bedell rarely used email, and any relevant emails concerning any of the "retaliation" allegations . . . would always include Gardner, as the direct supervisor in Squad 8.")). At this point, Plaintiff is not required to accept Defendants' characterization of the evidence. And as explained earlier, the other assumptions of Defendants—about the burden of duplicative emails and the irrelevance of custodial information—are either unsupported or without merit.

With respect to Esposito, that there are "no direct allegations against him in the Amended Complaint" does not immunize his ESI from collection. Again, Defendants do not take the position that Esposito does not have information, but that his information is duplicative. For the reasons explained above, the argument is as flawed as it is with respect to the other defendants.

Defendants remaining arguments are without merit. They contend that in the first instance it is entitled to choose which custodians to search. (Opp. at 3 ("[D]efendants **[**10]** are best situated to determine how to search and produce their own ESI.")). Such an approach is in tension with [*Rule 26*](#)—which requires production of ESI unless "the party resisting discovery shown that the information in question is not *reasonably* accessible." [*Stinson v. City of New York*, No. 10-CV-4228, 2015 U.S. Dist. LEXIS 99797, 2015 WL 4610422, at *4 \(S.D.N.Y. July 23, 2015\)](#); see *supra* at 2. But even if such presumptions are appropriate, they are rebuttable and the choice is accorded no weight when "manifestly unreasonable or the requesting party demonstrates that the resulting production is deficient." [*Mortg. Resol. Servicing v. JPMorgan Chase Bank, N.A.*, No. 15-CV-293, 2017 U.S. Dist. LEXIS 78217, at *7 \(S.D.N.Y. May 18, 2017\)](#). Unlike the cases Defendants cite, where individuals are deemed unlikely to have relevant information, here Defendants are seeking to avoid discovery of materials belonging to named defendants; concede that many of the custodians have information, but assert that the ESI must be redundant or non-unique; and have failed to demonstrate exceptional costs in reviewing allegedly redundant ESI. *E.g.*, [*id.* at *9-10](#) ("The cost of producing it would be substantial. Phil Verdelho, the Executive Director for Electronic Discovery Platform Services for Chase, has presented a detailed (and uncontradicted) analysis,

¹This is why Defendants' arguments about speculative custodians is hollow. Plaintiff seeks documents from named Defendants; Defendants effectively concede these individuals have documents, but the documents are not unique. None of the cases cited by Defendants are remotely similar to the facts presented here.

showing that the cost of restoring the additional custodians' email mailboxes and deduplicating, culling, and reviewing the data **[**11]** would likely exceed \$400,000.00.").

Defendants then say that in other districts Plaintiffs would not be permitted to discovery from other custodians—*i.e.*, there is an automatic limit. But this is not the Southern District of New York, and discovery in each case is to be tailored to the allegations and facts at issue—*analogizing to cases where the total number of custodians was fewer than those searched here is a meaningless exercise.* The issue here is whether the discovery is relevant and proportional, not whether (unlike interrogatories, which are limited to 25) Plaintiff's request exceeds a bright-line cap.

Two final issues remain. Plaintiff seeks to obtain text messages from some of the aforementioned individuals; Defendants **[*5]** have "proposed a text message collection from . . . Cowan, who was part of all of the text messages of all three [Gardner, Bedell, and Cowan]." Again, this proffer—not sustained by any affidavit or exhibit—is based on the same flawed assumption that suggests that certain custodians should be excluded from ESI collection. Defendants attempt to avoid text message collection from these individuals because they have said there are no other text messages is unpersuasive, **[**12]** particularly when there has been no showing that there is a disproportionate burden from the additional collection and production.

Plaintiff also seeks GroupMe chats between various parties. Defendants' position—"custodial interviews reveal there was nothing relevant to this lawsuit discussed on the chat"—is a form of self-collection which is strongly disfavored. [*Herman v. City of New York*, 334 F.R.D. 377, 386 \(E.D.N.Y. 2020\)](#) ("It is not appropriate to take a client's self-collection of documents, assume it is complete, and not take steps to determine whether significant gaps exist."). That is, Defendants' counsel is relying on their clients' statements that these chats do not contain pertinent or relevant information. It is unclear why Defendants' counsel chose not to review the chats. If the contention is the chats were not preserved and there is nothing to review, then Defendants should provide a statement to that effect.

If there is no ESI from a given supervisor . . . , the City need not produce anything—after all, "a party cannot be compelled to produce that which he does not have." That basic principle does not, however,

relieve the City of its obligation to conduct a good faith search and produce what relevant ESI it does have.

[*Stinson*, 2015 U.S. Dist. LEXIS 99797, 2015 WL 4610422, at *6](#) (quoting **[**13]** [*Gropper v. David Ellis Real Estate, L.P.*, No. 13-CV-2068, 2014 U.S. Dist. LEXIS 22296, 2014 WL 642970, at *1 \(S.D.N.Y. Feb. 14, 2014\)\). Instead, Defendants claim that Plaintiff deleted his copy of the chats and that is an admission of non-relevance. But Defendants have a preservation and production obligation irrespective of whether Plaintiff complied with any obligation he had.](#)

As such, the Court grants Plaintiff's motion to compel. Thus, Defendants Esposito, Gardener, Bedell, Cowan, and Nigro are custodians whose ESI must be searched and produced, including emails and text messages; and Defendants are required to search and produce Squad 8 GroupMe chat messages.

SO ORDERED.

/s/ Sanket J. Bulsara September 16, 2020

SANKET J. BULSARA

United States Magistrate Judge

Brooklyn, New York

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EXHIBIT C

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36447

LAKE PROVIDENCE PORT COMMISSION
--FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED
IN EAST CARROLL AND MADISON PARISHES, LA

LAKE PROVIDENCE PORT COMMISSION'S RESPONSES TO
DELTA SOUTHERN RAILROAD INC.'S SECOND SET OF
INTERROGATORIES AND SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO LAKE PROVIDENCE
PORT COMMISSION

Pursuant to 49 CFR Part 1114 and other applicable rules and authority, Lake Providence Port Commission ("LPPC"), by counsel, responds as follows to Delta Southern Railroad, Inc.'s ("DSRR") Second Set of Interrogatories and Requests for Production of Documents.¹

GENERAL OBJECTIONS

1. LPPC objects to each and every Interrogatory and Request of Production of Documents ("RFP") to the extent they seek to impose obligations on LPPC greater than or inconsistent with those imposed under 49 CFR Part 1114 Subpart B. LPPC further objects to any and all definitions and or instruction to the extent they either expand upon or conflict with 49 CFR Part 1114 Subpart B.

¹ Although DSRR has titled it Requests for Documents as its "First Request," DSRR filed its "First Set Of Requests To Produce" on February 5, 2021.

means of establishing the dates of all such conversations or the subject matter discussed.

INTERROGATORY NO. 35.

Please Identify all shippers with which LPPC has communicated concerning either (i) LPPC's feeder line application, (ii) DSRR, (iii) DSRR's service over the Line, or (iv) the shipper's rail transport needs. Describe in detail and Identify the communications with each shipper identified.

Response: LPPC objects to Interrogatory 35 on the grounds that it is overly broad and unduly burdensome and beyond the scope of permissible discovery. Indeed, it is incapable of being answered with any precision. Without waiving the foregoing objectives, LPPC answers that it is in the business of assisting shippers and promoting the movement of their freight, whether by rail, barge, or truck on a non-discriminatory basis. As a result, for the past 20+ years, LPPC has been in constant contact with shippers that are looking to move their products to and from the Lake Providence Port.

Based on information that is part of the record that was developed in 2015-2016 by NLA in conjunction with DSRR's former General Manager, LPPC is aware that there are several shippers, in addition to those that have been named in response to Interrogatory 33, who are not physically located on the Line, that have previously forwarded shipments over the Line and have stated their intent and willingness to move their freight over the Line in the future. However, they were denied transportation due to DSRR's policy that caused its employees to focus on storage revenues instead of developing interchange

freight transportation service with shippers that were identified by Craig Huff and Daniel Robbins. Such shippers that have been identified in LPPC's Application include Stepan Company, Clearwater Paper Corp., Livingston Pecan and Metal, Epstein Gin & Transloading Company; Hollybrook Gin & Warehouse, Riceland Foods, Sullivan Log Yard, Anderson Trade Group, Hensley Farms (f/k/a Big River Grain), Rail Vehicle Services, Helena Chemical, Nutrien (f/k/a CPS); Terral River Services, MD Power, Simplot (f/k/a Lake Village Seed), Gavilon (f/k/a CHS); APEX, Scott Petroleum, Complex Chemical, Bayou Bioenergy, LLC and John Deere.

Documents that confirm the intent of many of the foregoing shippers have been previously provided to DSRR and its attorneys in response to DSRR's First Set of Interrogatories and First Set of Requests to Produce. LPPC incorporates its prior responses to this interrogatory by reference thereto. By way of further response, LPPC states that DSRR, after evaluating the extensive documents that were provided, advised the Board that it deemed discovery concluded. Those documents have been available for review by DSRR's counsels since June 2021 and would be burdensome for LPPC to produce duplicative or cumulative information when DSRR's attorneys have already received and reviewed them.

INTERROGATORY NO. 36.

Please provide the dates, locations, and Identify the attendees for all meetings LPPC has had with each shipper on the Line.