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Plaintiff In Pro Per,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW R. WALSH

Plaintiff In Pro Per,

vs.

ROKOKO ELECTRONICS (AND DOES 1 THROUGH 50, INCLUSIVE)

Defendant

Case No.: 2:25-CV-05340-ODW-RAO

[Assigned to Hon. Otis D. Wright, II, Courtroom 5D; Hon. Rozella A. Oliver, Courtroom 590]

NOTICE OF MOTION AND MOTION TO COMPEL RESPONSES; DEEM ADMISSIONS AS ADMITTED

Hearing Date: April 22, 2026
Time: 10:00 AM

State Court Action Filed: May 12, 2025
Removal Date: June 12, 2025
Discovery Cutoff: August 10, 2026
Trial Date: March 9, 2027

Filed Concurrently with:
- Walsh Decl. re: Evidentiary Package
- Walsh Decl re: Joint Table
- Walsh Decl. re: Expert Report

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that Plaintiff Matthew R. Walsh hereby submits this **"Notice of Motion and Motion to Compel Responses; Deem**

Admissions As Admitted". This motion is submitted concurrently with the attached declarations. It may be heard on or before April 20, 2026 at 10:00AM and in Courtroom 590.

CERTIFICATION OF MEET AND CONFER

Pursuant to Local Rule 37-1, the parties met and conferred on October 30, 2025 regarding the discovery issues raised in this motion (Dkt. #86). The parties again met and conferred on December 16, 2025, during which Requests for Admission were a primary subject (Dkt. #117), and subsequently on February 12, 2026, March 4, 2026, and March 5, 2026. The Court ordered the parties to complete the joint stipulation table within seven (7) days prior to filing. Plaintiff complied and includes the completed table in accordance with Local Rule 37-2.1.

INTRODUCTION

The Court ordered the parties to complete meet-and-confer efforts by March 20, 2026. Defendant did not engage in any further meet-and-confer efforts following that directive. Plaintiff thereafter served a complete joint RFA stipulation table on Defendants, triggering the seven-day response period ordered by the Court. Rather than focusing on providing substantive responses within that

structure, Defendants served amended RFA 'responses' only after receiving Plaintiff's completed table. Those amended responses did not contain a single clear admission or denial. Instead, Defendants asserted new objections not previously raised and failed to address *any* of the identified deficiencies, preventing resolution of the issues presented. They then took those improper and untimely supplemented answers and snuck them into the table for this motion. They should be disregarded.

The summary of this motion and the Defendants in particular is:

1. won't answer admissions or interogatories substantively
2. won't provide privilege logs but claims privilege
3. produces no evidence sought
4. ignores a court order to produce native files, destroys metadata
5. edits evidentiary documents by hand
6. denies obvious binary facts, admits nothing adverse
7. makes improper objections
8. makes false statements under oath
9. manipulates, spoliates and substitutes evidence
10. provides no explanation, showing of cause or counter evidence in rebuttal
11. Does nothing to ever cure regardless of the situation

Each of these points will be thoroughly explained and evidenced in this document.

BACKGROUND

Defendant served discovery responses on or about September 30, 2025. Those responses consisted of approximately 90 pages of boilerplate objections (Dkt. #80-2). To date, Defendants have not provided substantive responses to any Requests for Admission, have not completed any compliant document production responsive to Plaintiff's requests *(only one RFP and it was wholly non-compliant (see Walsh Decl. re Evidentiary Package Ex. 4)),* and have not provided a single substantive answer to interrogatories.

Defendants have repeatedly stated that they would not produce discovery without entry of a protective order. A protective order has since been entered, no change. The Defendants prior agreed with the Court to provide substantive responses *("And then, once that (protective order) is in place—we'll be looking for it and ready to do our part—then, Ms. Ellena, I assume whatever discovery has been held off, whatever production has been held in abeyance until that was issued, can then move apace. Does that sound reasonable?*"). Defendants agreed: *("It does, Your Honor.")*. However, again, no change occurred after that agreement with the Court.

The Defendants have continued to withhold meaningful discovery, including admissions, documents, and interrogatory responses as they have openly admitted they are awaiting the results of their Motion to Dismiss, which is prejudicial and

highly improper: *("Your Honor — not to sound like other lawyers who appear before you, I will say that… our client feels strongly that the motion to dismiss… should be decided before… they'll be really interested in determining… whatever may be left should be resolved").*

During this period, Plaintiff proceeded with discovery obligations despite the absence of any substantive responses from Defendants. Plaintiff produced a comprehensive evidentiary record (3,750+ pages) and prepared a ~38-page expert report as the Defendants demanded early receipt of *(see Walsh Decl. Expert Report)* without the benefit of any meaningful discovery from Defendants, including without any substantive admissions, document production, or interrogatory responses.

As a result, Plaintiff was required to commit to factual and legal positions without access to Defendant-derived evidence, while Defendants continued to provide no meaningful participation in discovery.

MEMORANDUM OF POINTS AND AUTHORITIES

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LEGAL STANDARDS

1. **Sanctions for Discovery Misconduct**

   a. Stones v. Boys Republic (C.D. Cal. 2008) – Failure to produce discovery and willful disregard of court orders justifies terminating sanctions.

   b. Computer Task Group, Inc. v. Brotby (9th Cir. 2004) – Noncompliance with discovery obligations supports severe sanctions where prejudice results.

   c. Adriana Int'l Corp. v. Thoeren (9th Cir. 1990) – Persistent violations and disobedience justify dispositive sanctions.

   d. Coker v. Goldberg & Assocs. PC, 2024 WL 263121 (S.D.N.Y. 2024) – Not providing a privilege log results in waiver of privilege objections.

2. **Boilerplate Objections Are Improper and Ineffective**

e. St. Paul Reinsurance Co. v. Commercial Financial Corp., 198 F.R.D. 508 (N.D. Iowa 2000) – Boilerplate objections are textbook improper.

f. A. Farber & Partners, Inc. v. Garber, 234 F.R.D. 186 (C.D. Cal. 2006) – Boilerplate objections are tantamount to no objection.

g. Curtis v. Costco Wholesale Corp., 807 F.3d 215 (7th Cir. 2015) – Boilerplate objections support deeming matters admitted.

h. Extended Care Clinical v. Scottsdale Ins. Co., 2021 WL 2894163 (N.D. Ill. 2021) – Boilerplate objections are routinely rejected.

i. Zambrano v. Sparkplug Capital, LLC, 2020 WL 1847396 (N.D. Ill. 2020) – Generalized objections are insufficient.

j. Am. Council of Blind of Metro. Chicago v. City of Chicago, 2021 WL 5441102 (N.D. Ill. 2021) – Unsupported "burdensome/harassing" objections are improper.

k. Dominguez v. City of Rialto (C.D. Cal. 2025) – Boilerplate objections without evidentiary support are improper.

3. **Failure to Properly Respond Results in Admissions / Waiver**

l. Moore v. Cox, 341 F. Supp. 2d 570 (E.D. Va. 2004) – Failure to admit or deny is tantamount to an admission.

m. Siser N. Am., Inc. v. Herika G. Inc., 325 F.R.D. 200 (E.D. Mich. 2018) – Boilerplate objections result in waiver.

n. Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242 (9th Cir. 1981) – Evasive or incomplete responses may be deemed admitted.

o. Auburn Sales, Inc. v. Cypros Trading & Shipping, Inc., 2016 WL 3418554 (E.D. Mich. 2016) – Boilerplate objections are equivalent to none.

p. Marchand v. Mercy Med. Ctr., 22 F.3d 933 (9th Cir. 1994) – Failure to timely respond supports deemed admissions.

2. **No Timely Issued Privilege Log Waives Objection**

a. Mezu v. Morgan State Univ., 269 F.R.D. 565, 577 (D. Md. 2010) - *"Absent consent of the adverse party, or a Court order, a privilege log … failure to do so may constitute a forfeiture of any claims of privilege."*

b. Melton Properties, LLC v. Ill. Central R. Co., 2024 WL 3015749 (N.D. Miss. June 14, 2024). - " *the failure to produce a proper privilege log generally constitutes waiver of the privilege objections*."

c. Coker v. Goldberg & Assocs. PC, 2024 WL 263121 (S.D.N.Y. 2024) – No privilege log waives privilege objection

4. **Burden of Proof for Discovery Objections**

d. Cipollone v. Liggett Group, Inc., 785 F.2d 1108 (3d Cir. 1986) – Objecting party must show specific harm.

e. Oleson v. Kmart Corp., 175 F.R.D. 560 (D. Kan. 1997) – General objections are insufficient; burden must be substantiated.

f. Josephs v. Harris Corp., 677 F.2d 985 (3d Cir. 1982) – Conclusory "burdensome" objections are invalid.

g. G–69 v. Degnan, 130 F.R.D. 326 (D.N.J. 1990) – Burden must be supported with evidence.

h. Burke v. New York City Police Dep't, 115 F.R.D. 220 (S.D.N.Y. 1987) – Party must show lack of relevance or undue burden.

5. **Rule 26(e) Does Not Permit Strategic Delay**

i. Dayton Valley Investors v. Union Pacific R. Co., 2010 WL 3829219 (D. Nev.) – Supplementation must be timely, not strategic.

j. Luke v. Family Care & Urgent Med. Clinics, 323 F. App'x 496 (9th Cir. 2009) – Rule 26(e) creates a duty, not a right.

k. Carlson v. Freightliner LLC, 226 F.R.D. 343 (D. Neb. 2004) – Untimely supplementation causing prejudice may be rejected.

3. Adverse Inference

a. Zubulake V v. UBS Warburg LLC, 229 F.R.D. 422 (S.D.N.Y. 2004) - adverse inference is issued where one willfully deletes relevant data after clear duty to preserve *(note the V as there was an earlier discovery ruling with the same name)*

b. Residential Funding Corp. v. DeGeorge Financial Corp., 306 F.3d 99 (2d Cir. 2002) – An adverse inference instruction can be warranted even for ordinary negligence in failing to produce evidence, provided the breaching party had a "culpable state of mind" and the evidence was relevant.

ARGUMENT

1. **Defendants Are Sandbagging Discovery**

This Court has recognized the delays in this case and the prejudice born from those delays *("The discovery hasn't taken off… Instead, we're here after, I think, a lot of delay—which is time that the parties lose in their discovery period."*).

Defendants violated Rule 26(g)(1) and Rule 34(b)(2)(B)–(C) by issuing ~90 pages of boilerplate objections while claiming ~250 plain-English terms such as *{ "false", "attorney", "plaintiff", "warranty", "generally", "employee", "California", "default", "exhibits", "your", "authority", "counsel", "declaration", "expert", "existence", "laugh", "giggle", "intended", "evidence", "conduct", "speaking"}* are vague and ambiguous. *(full list Dkt #84)*.

Only after Plaintiff served a ~38-page expert report *(see Walsh Decl. re: Expert Report)* and a Court-ordered deficiency table, and after the Court ordered

the Defendants to simply reply to the table within 7 days: Defendants instead issued two "supplemental" responses asserting new, untimely objections.

Their responses -- due nearly six months earlier -- have sandbagged Plaintiff on core factual issues, causing substantial prejudice as discovery closes August 2026. Moreso, Defendants have already demanded rush production of, and received expert reports authored based on absolutely no discovery produced by them. This is clearly prejudicial.

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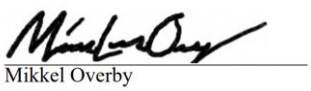
2. **The Defendants Will Not Answer Truthfully Even When The Answer Is Clear, Available and Irrefutable:**

Because Defendants have been given repeated notice across multiple 37-1's, multiple Rule 37 letters, multiple motions and therefore had exponential opportunity to cure, yet have continued to provide evasive and demonstrably inaccurate responses, **further amendment would not remedy the deficiency. This bell cannot be unrung**:

1. ADMIT this is a handwritten signature on docket 1-4.: *(either it was made using a hand or it was typed)…*



Mikkel Overby

Defense response: **DENIED**

2. ADMIT there is a typo discrepancy between these two documents *(one shows 88.6, the other shows 886)…*
   Defense response: **DENIED**

3. ADMIT Jakob Balslev is the CEO, Secretary and CFO *(his own, self-signed July 2024- July 2025 SOS document declares this (Dkt #117-11 Ex. 1, p 11) (see also Walsh Decl. Re: Evidentiary Package Ex. 6))….*
   Defense response: **DENIED**

4. ADMIT that you filed your motion to dismiss hours after the 7-3 conference on June 26, 2025, while knowing seven days were required prior to doing so… *(the record shows exactly this, and even her own declaration admits that very fact (see also Walsh Decl. Re: Evidentiary Package Ex. 7))*
   Defense response: **DENIED**

Admissions only work to narrow issues when the truth is told -- as admissions are the equivalent of sworn testimony. *Ark.-Tenn Distributing Corp. v. Breidt*, 209 F.2d 359 (3d Cir. 1954); *United States v. Lemons*, 125 F.Supp. 686 (W.D.Ark. 1954); 4 *Moore's Federal Practice* 36.08 (2d ed. 1966 Supp.). False statements undermine Rule 36 as a whole.

The Defendant while under penalty of perjury, avoided answering admissions which have demonstrably clear and irrefutable binary answers. Because of their evasiveness even with these, no further remedy nor opportunity for amendment will suffice.

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3. **Defendant Relies On Objections Removed From the FRCP, Refuses to Cure**

Defendants repeatedly rely on the outdated "reasonably calculated to lead to admissible evidence" and "subject matter involved in the action" standards, which were removed from Rule 26 in 2015 (eleven years ago). See *Sovereign Cape Cod Invs. LLC v. Eugene A. Bartow Ins. Agency, Inc.*, 2022 WL 624553, at *3 (E.D.N.Y. Mar. 3, 2022).

Defendants were placed on notice of this deficiency, yet continued to rely on these obsolete standards in subsequent discovery responses and refused to correct them, even in amended responses as recent as March 20, 2026; after multiple Rule 37 letters and this motions' table calling out this behavior was provided to the Defendants.

These standards have not existed during the entirety of Defendants' counsel's legal careers (2019 and 2023 admission dates). Their continued use—

particularly after notice—cannot be attributed to mistake and reflects a knowing reliance on inapplicable law.

This conduct has caused prejudice to Plaintiff by forcing him to respond to improper objections, resulting in unnecessary expenditure of time, resources, and effort.

As these objections are improper, they must be disregarded.

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4. **Defendants Boilerplate Objections Are Wholly Improper**

None of the boilerplate that Defendants have written is unique to them. In fact, The precise wording from Defendants objections has been expressly admonished in decisions which state "*In every respect these objections are text-book examples of what federal courts have routinely deemed to be improper objections."* (St. Paul Reinsurance Co. v. Com. Fin. Corp., 198 F.R.D. 508, 512 (N.D. Iowa 2000)) *(See Walsh Decl. re: Evidentiary Package Ex. 1)*

*"Boilerplate, generalized objections are inadequate and tantamount to not making any objection at all."); A. Farber and Partners, Inc. v. Garber, 234 F.R.D. 186, 188 (C.D. Cal. 2006). boilerplate objections are unacceptable and all but meaningless. See Curtis v. Costco Wholesale Corp., 807 F.3d 215, 219 (7th Cir. 2015)**(court did not abuse its discretion in deeming facts admitted where plaintiff "provided only boilerplate objections, such as 'relevance' and 'vague and***

ambiguous.' *"); Extended Care Clinical v. Scottsdale Ins., 2021 WL 2894163, at *2 (N.D. Ill. 2021)(collecting cases); Zambrano v. Sparkplug Capital, LLC, 2020 WL 1847396, at *1 (N.D. Ill. 2020). Am. Council of Blind of Metro. Chicago v. City of Chicago, No. 19 C 6322, 2021 WL 5441102, at *3 (N.D. Ill. Nov. 19, 2021) ("[G]eneral or boilerplate objections such as 'overly burdensome and harassing' are improper – especially when a party fails to submit any evidentiary declarations supporting such objections ...."]* quoting *(Dominguez v. City of Rialto, No. 5:23-CV-1790-**ODW**-SPX, 2025 WL 819064, at *5 (C.D. Cal. Jan. 17, 2025))*

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5. **Defendants Responses to Discovery Requests Fail as a Whole**

Despite constant communication, detailed Rule 37 letters, exhaustive meet and confers, the Defendants refuse to follow basic rules. Many of these failures by the Defendant can not be handwaved as they are threshold issues which are generally immutable. Their responses are legally noncompliant in multiple independent ways:

1. No statements whether they are withholding documents as required by Rule 34(b)(2)(C);
2. Consistently assert privilege yet have provided no privilege logs,

3. Claim Attorney-Client privilege for documents predating their relationship with the Defendant; of which those documents Counsel has never had any involvement or relation to.
4. Refusing to cure objection language outlawed from FRCP in 2015.
5. Refusal to provide any affidavits or supporting evidence for their objections as required by law and especially by this Court.
6. Claims of vague and ambiguous without explanation of how they are vague or ambiguous.

As to the above *(see Walsh Decl. re: Evidentiary Package, Ex. 3)*.

Because of these defects, their responses are invalid and unusable and must be deemed admitted.

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6. **Defendant Waived Objections**

Defendants had six months to provide substantive responses, yet chose to rely on boilerplate objections. After being ordered by the Court to respond to Plaintiff's contentions within seven days, Defendants instead served amended RFA responses **inside of that window** asserting new objections rather than providing substantive answers or corrections. This was improper.

Objections not asserted within the 30-day response period are waived. Defendants cannot revive waived objections through untimely "amended"

responses. Moreover, evasive answers and boilerplate objections are treated as no response at all further bolstering the necessity for waiver.

Even further, Defendants claims of privilege without ever providing a privilege log waives the right to claim work product protection and attorney-client privilege Rule 34 and Rule 26(b)(5)(A) which requires that a party withholding information must "describe the nature" of the items to enable other parties to assess the claim. The Defendants never provided any privilege logs for any request, despite constant urging and notice by the Plaintiff. *(see Walsh Decl. re: Evidentiary Package, Ex. 3)*

Accordingly, Defendants' objections are waived.

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7. **Boilerplate Objections Constitute Waiver, Are Tantamount To No Answer,**

Courts consistently find that Defendants boilerplate admissions result in a waiver and equal an admission *["A party's failure to admit or deny a matter is tantamount to an admission."*] (Moore v. Cox, 341 F. Supp. 2d 570, 573 (E.D. Va. 2004)); *["Boilerplate objections are legally meaningless and amount to a waiver of an objection."*] (Siser N. Am., Inc. v. Herika G. Inc., 325 F.R.D. 200, 209–10 (E.D. Mich. 2018)); even in events where the answer is simply not complete, avoidance produces an admission ["*The Ninth Circuit affirmed that when*

responses to RFAs are "evasive or incomplete," the trial court may deem the matters admitted under Rule 36(a)."] (Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1246 (9th Cir. 1981)) ; [*"The filing of boilerplate objections is tantamount to filing no objections at all."]* (Auburn Sales, Inc. v. Cypros Trading & Shipping, Inc., No. 14- 175 cv-10922, 2016 WL 3418554, at *3 (E.D. Mich. June 22, 2016)); [*"The litany of overly burdensome, oppressive, and irrelevant does not alone constitute a successful objection to a discovery request."]* (Oleson v. Kmart Corp., 175 F.R.D. 560, 565 (D. Kan. 1997)); Further, in (Marchand v. Mercy Med. Ctr., 22 F.3d 933, 936–37 (9th Cir. 191 1994)) – The Ninth Circuit again upheld deemed admissions where the responding party failed to timely serve proper responses.

Rule 26(b)(1) provides that a mere statement by a party in a federal civil action that an interrogatory or other request for discovery is *"overly broad, burdensome, oppressive and irrelevant"* is not adequate to voice a successful objection to discovery; the party resisting discovery **must show <u>specifically how</u>** each request for production is not relevant or how each question is overly broad, burdensome or oppressive. Defendants have shown nothing of the sort.

Their responses must be considered no answer at all and amount to a waiver.

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8. **The Defendants Have Failed To Provide Affidavits or Evidence For Six Months, Refused To Cure**

The Defendants refuse to submit any affidavits or evidence to substantiate their objections, which this very Court in nearly every case researched has required, thereby waiving them *("The objecting party must show specifically how each discovery request is burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden."*); Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir.1986) (holding that it is not sufficient to merely state a generalized objection, but, rather, objecting party must demonstrate that a particularized harm is likely to occur if the discovery be had by the party seeking it); Degnan, 130 F.R.D. at 331 (D.N.J.1990) (same). This very Court has agreed in other cases *["[G]eneral or boilerplate objections such as 'overly burdensome and harassing'* ***are improper – especially when a party fails to submit any evidentiary declarations supporting such objections*** *...."]* quoting *(Dominguez v. City of Rialto, No. 5:23-CV-1790-**ODW**-SPX, 2025 WL 819064, at *5 (C.D. Cal. Jan. 17, 2025))*

The Defendants responses are improper and must be disregarded and deemed admitted.

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9. **Defendants' Supplemental Amended Answers Should Be Stricken**

For all the reasons above and insofar that Defendants Rule 26(e) duty to supplement is not a "get out of jail free card," nor does it permit indefinite delay. **Supplementation is not a second bite at the apple to object; supplementation is for correction or addition of information only.** Further, the rule requires supplementation "in a timely manner" once a party learns its responses are materially incomplete or incorrect. Defendants were repeatedly placed on notice of deficiencies through Rule 37-1 conferences, correspondence, and motions beginning in September 2025 and continuing through March 2026. On January 31, 2026 (Dkt. #144), Plaintiff provided a comprehensive breakdown of Defendants' inaccurate and evasive responses, supported by Defendant-derived admissions showing that each request not only required, but welcomed a direct admission or denial. The supplemental responses do not serve the narrow purpose of Rule 26(e) as **they do not correct inaccuracies or add information** not otherwise available at any other time.

Dayton Valley Investors v. Union Pacific R. Co., 2010 WL 3829219 (D. Nev.) (citation omitted); see also Advisory Comm. Notes to 1993 Amendments *("Supplementations need not be made as each new item of information is learned but **should be made at appropriate intervals during the discovery period**, and with special promptness as the trial date approaches")*. Awareness brought no supplementation from the Defendant, Rokoko Electronics.

Defendants therefore had continuous knowledge of the inaccuracies, yet failed to timely supplement in violation of Rule 26(e). This failure caused clear prejudice, forcing Plaintiff to expend substantial time and resources while preparing and being forced to submit expert materials without narrowed or corrected discovery.

Courts may consider improper conduct and lack of reasonable explanation in evaluating untimely discovery behavior. *Carlson v. Freightliner LLC*, 226 F.R.D. 343, 361 (D. Neb. 2004). *"[R]ule 26(e) creates a duty to supplement, not a right."* See Luke v. Family Care and Urgent Medical Clinics, 323 Fed. Appx. 496, 500 (9th Cir. 2009).

Defendants' [supplemental objections] are procedurally improper, untimely and prejudicial and should be stricken and an OSC issued.

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10. **Defense Has Shown No Burden or Good Cause For The Above**

The party resisting production bears the burden of establishing lack of relevancy or undue burden. Oleson v. Kmart Corp., 175 F.R.D. 560, 565 (D.Kan.1997) *("The objecting party has the burden to substantiate its objections.")* (citing Peat, Marwick, Mitchell & Co. v. West, 748 F.2d 540 (10th Cir.1984), cert. dismissed, 469 U.S. 1199, 105 S.Ct. 983, 83 L.Ed.2d 984 (1985));

accord G–69 v. Degnan, 130 F.R.D. 326, 331 (D.N.J.1990); Flora v. Hamilton, 81 F.R.D. 576, 578 (M.D.N.C.1978).

The party must demonstrate to the court (*"that the requested documents either do not come within the broad scope of relevance defined pursuant to Fed.R.Civ.P. 26(b)(1) or else are of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure...."*) Burke v. New York City Police Department, 115 F.R.D. 220, 224 (S.D.N.Y.1987).

Further, the ("*mere statement by a party ... 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection."*) *512 Josephs v. Harris Corp., 677 F.2d 985, 992 (3d Cir.1982) (quoting Roesberg v. Johns–Manville Corp., 85 F.R.D. 292, 296–97 (E.D.Pa.1980)); see also Oleson, 175 F.R.D. 560, 565 *("The litany of overly burdensome, oppressive, and irrelevant does not alone constitute a successful objection to a discovery request."*) (citation omitted*). ["On the contrary, the party resisting discovery '**must show specifically how**... each interrogatory [or request for production] is not relevant or how each question is overly broad, burdensome or oppressive.' "]* Id. at 992 (quoting Roesberg, 85 F.R.D. at 296–97); see also Oleson, 175 F.R.D. 560, 565;

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11. **Adverse Inference Is Appropriate In Granting Relief**

Under Rule 37(e)(2), an adverse inference is warranted where evidence is destroyed, lost, or not produced and the circumstances support an inference of intent to deprive another party of its use in litigation. *(See Akiona v. United States; Glover v. BIC Corp)* **That standard is satisfied here.**

An adverse inference is a ("*detrimental conclusion drawn by the fact-finder from a party's failure to produce evidence within its control.*") - Black's Law Dictionary

The Court previously stated: *("if at a later date … after discovery is underway and there's been a lot of back and forth… If you have concerns about spoliation… then you can come back to the court").* **That time is now.**

Plaintiff does not seek sanctions at this time, but presents a pattern from which intent may properly be inferred. As detailed in Dkt #117-11, #117-12 *(and Walsh Decl. re: Evidentiary Package, Ex. 4)* ***First,*** Defendants spoliated then failed to produce any operative agreement (2020, 2022, respectively). **Second,** they then refused production of the same, directing Plaintiff to seek it in discovery. **Third,** they then refused to produce those documents in discovery. **Fourth,** Plaintiff recovered the spoliated 2020 agreement and submitted it to the Court **Fifth,** only then did Defendant's produce. However, not real agreements, they were unpublished Danish attorney drafts, provided in non-native format (despite Court

order) with their original metadata destroyed due to ReedSmith's PDF editing tool 'Aspose.PDF'; with the metadata showing they were hand-edited by Rokoko's Counsel over 23 minutes (Ex. 6). **Sixth,** they submitted one of the never operative or published drafts with an effective date inconsistent with the relevant period, in order to prevail on a pending dispositive motion. (*Ex. 5)*

The Defendant even admits they are unsure how Plaintiff recovered the spoliated evidence *(Dkt #139, Ex. 2, 3 shows precisely how)*. They further admit the terms they put before the Court under judicial notice are entirely different and not operative:

> *("While it is unclear where Plaintiff sourced the 2020 Terms he references,* ***it is clear that they are from <u>an entirely different</u> agreement than the 2025*** *Terms Rokoko put forth in its Request for Judicial Notice" – Dkt #153).*

<u>The Court should be aware, Plaintiff stopped being a customer/user in 2024, creating an inescapable timeline problem</u>. The Defendant requested judicial notice of a document never in existence while the Plaintiff was a user. Unfortunately, they also refuse to produce evidence that Plaintiff ever agreed to any terms, ever; despite the fact that their source code was written to track and

receive that consent (see Am. Compl. Ex. 57).

> ***("REQUEST FOR PRODUCTION NO. 41.*** *Produce documents along with associated metadata sufficient to demonstrate each time in which Plaintiff has agreed to the Rokoko Studio Terms & Conditions from January 1, 2020 to January 1, 2025.*
>
> ***RESPONSE TO REQUEST FOR PRODUCTION NO. 41.*** *In addition to the General Objections set forth above, Rokoko objects that this Request is unduly burdensome and harassing insofar as it seeks the production of documents already in Plaintiff's possession, custody, or control. Rokoko further objects to this Request to the extent it calls for an improper legal conclusion. Whether Plaintiff has "agreed" to the Rokoko Studio Terms & Conditions is a legal conclusion that is not an appropriate subject for a request for production of documents. Rokoko also objects that the Request mischaracterizes the nature of consent to the Terms & Conditions. Rokoko's Standard Terms of Use provide that users agree to the Terms by registering an Account, by installing, copying, accessing, downloading or otherwise using the Software, or by using the Services. Further, users' continued use of the Services constitutes consent to any changes or updates to the Terms.Rokoko further objects to the Request to the extent it calls for the disclosure of privileged or protected information, including without limitation, information subject to the attorney-client privilege, attorney work product doctrine, or any other statutory or common-law privilege")*

Despite repeated notice, Defendants have neither produced the operative governing contracts, evidence of assent, nor provided a substantiated explanation beyond *("They are simply a separate contract from the one he was referencing.")*. Separate contract in this instance simply means 'from a different time period' as these agreements are implemented through clickwrap terms embedded within Defendants' own software installers and correspond to the year of their release (2020–2022 & 2022–2025 & 2025–present). *(See Dkt #140-2, Ex. 5 for all versions, their terms and the Defendant's website archives evidencing their release dates).*

The gravamen is this… The Defendants avoid producing adverse evidence; and have even gone out of their way multiple times to disrupt it's accessibility in this matter. Further, they refuse to take any legal positions whatsoever through admissions to narrow or clarify those issues as those too are adverse and potentially dispositive of claims. **They are hiding the ball.**

The Court should apply an adverse inference and deem the withheld evidence unfavorable, and grant corresponding relief to prevent ongoing prejudice as well as deem these admissions as admitted. *(See Zubulake v. UBS Warburg; Residential Funding Corp. v. DeGeorge Financial Corp.)*

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CONCLUSION

This Court stated once a protective order was signed *("Then, the parties can get back on track to responding to each other's written discovery… That's what I would like to see accomplished here."*). Plaintiff has done exactly that—producing over 3,750 Bates-stamped and fully prepared pages, along with native counterparts in high resolution multipage TIFF, JPEG, PDF, and text formats, including extracted EXIF metadata, extremely detailed master indexes, privilege logs, confidential stamped documents, load files (Relativity, Concordance, OPT and a custom XML load file) along with numerous sub-indexes organized by responsive keywords in a vendor-like package so complete their own expert asked (*"There are lots of folders and files downloading now.* ***Is this a Relativity production?*** *Looks to have load files but more folders that I'm used to seeing.") (See Walsh Decl. re: Evidentiary Package Ex. 2)*. Plaintiff even built his system to issue delta updates at their request in good faith (*"**It is costly** to re-upload your entire document production into our e-discovery... Can you please just produce only the new documents")*. In stark contrast, the Defendants have provided absolutely nothing they have been asked for and have refused to comply with Court orders including one which allowed Plaintiff to receive native files.

Defendants must not be permitted to control the flow of evidence relative to it's adversity nor game discovery and the FRCP by sandbagging and obstructing discovery. **Any consequences imposed are simply the cause and effect of their own willful decisions**. (*"litigants, such as the … Defendants, often find themselves continually crawling out of a discovery hole of their own making")* quoting H&H Global Concepts, Inc. v. Slevin, Case No. 19-cv-2120 (S.D.N.Y. May 2, 2019). The Court should not aid them in doing so and relief must be justifiably applied. (*"[I]t is not a judge's job to assist one advocate at another's expense.") Fednav Int'l Ltd. v. Cont'l Ins. Co.*, 624 F.3d 834, 842 (7th Cir. 2010).

For the reasons stated herein, the Court should sustain Plaintiff Walsh's Motion to Compel; Deem Admitted in its entirety thereby granting it in full.

PRAYER FOR RELIEF

The Plaintiff respectfully requests that the Court:

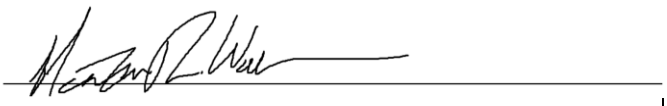
- STRIKE the Defendants two improper supplemental RFA responses.
- ORDER that Defendant has waived objections to the RFA's in question.

- ORDER that the Defendants have waived work product across all discovery requests to date and attorney-client privilege objections *(as they refused to provide any privilege log or statements of withholding.) (26(b)(5), Rule 37(b)(2), Coker v. Goldberg & Assocs, Mezu v. Morgan State, Bautech USA v Evolve Equip.)*
- DEEM Defendants admissions as admitted without further delay to discovery - **OR, in the alternative -** Compel the Defendants to answer all admissions without objection within 7 days and schedule a prompt follow-up IDC after Plaintiff review.
- ORDER Defendants to show cause why they should not be sanctioned for continuing to rely on outdated FRCP objections, refusal to cure, refusal to correct and refusal to comply with their Rule 26 duties for all the reasons listed herein.
- ORDER Defendants to show case within 7 days, whether they can controvert Plaintiff's contentions regarding spoliation and adverse inference; otherwise adverse inference or more severe sanctions may be implemented.
- ORDER an IDC for singular and final resolution of the remaining discovery issues regarding RFP's and Interogatories within 14 days if possible

- Scheduling Note: *(both sides have already prepared joint tables, Plaintiff's table references only two reiterated/referenced arguments applied to all of Defendant's boilerplate complaints; Defendant only has about five discovery requests they wish to compel)*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this March 26, 2026, in Santa Clarita, California.



Matthew R. Walsh
Plaintiff In Pro Per

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff appearing in pro per, certifies that this brief contains 3,914 words, which complies with the word limit of L.R. 11-6.2.