IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

AUDIO POD IP, LLC, Plaintiff, v. AMAZON.COM, INC., AMAZON.COM LLC, and AMAZON WEB SERVICES, INC., Defendants.	Lead Case No. 3:24-cv-00406-RCY **JURY TRIAL DEMANDED**

MEMORANDUM IN SUPPORT OF
PLAINTIFF AUDIO POD IP, LLC'S MOTION TO COMPEL DEFENDANTS TO
PRODUCE CERTAIN DOCUMENTS AND DISCOVERY RESPONSES

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I. INTRODUCTION

A. Amazon's Discovery Failures

Amazon's disregard of its discovery obligations is more than intentional; it appears to be standard operating procedure. Undersigned counsel witnessed it firsthand in another dispute. Beginning early on in this case, it sought to prevent Amazon from following the same path. For example, Audio Pod included detailed instructions—referring to many of the cases cited in this Opening Brief—in its first sets of Interrogatories. Audio Pod provided those on November 29, 2024. Audio Pod's counsel also notified Amazon of its fear via e-mail in December 2024:

> [W]e fear [Amazon's objections] will constitute the same set of voluminous, rote objections (e.g., objecting to every noun as ambiguous) that Amazon has served in the past.

See Section II *supra.*

Three and a half months—and a lot of time, money, and effort—later, Audio Pod's fear has been realized. Audio Pod spent the majority of the intervening months attempting to overcome Amazon's pushback on just about every discovery and procedural issue in this case. The end result is that "egregiously, . . . <u>more than ninety days after discovery had been served</u> -- Defendant ha[s] failed to answer some of the discovery and had provided what appears to be evasive or incomplete answers to many questions or requests." *See Cappetta v. GC Servs. Ltd. P'ship*, No. 3:08CV288, 2008 U.S. Dist. LEXIS 103902, at *18 (E.D. Va. Dec. 24, 2008) (emphasis added).

Amazon refused to answer about 86% percent of Audio Pod's Interrogatories. That number jumps higher if Amazon later argues that it has not waived any dispute over the smallest salable patent practicing unit (by not responding to the applicable Interrogatories). The answers Amazon chose to provide relate almost exclusively to its own defenses. *See* Ex. 16 (portions highlighted orange). And even then, its responses demonstrate that it has withheld the details.

To date, Amazon has not produced a single non-confidential document. Neither Amazon's responses to Audio Pod's request for the production of documents and things ("RFPs"), nor its final 51-word response to Audio Pod's request for a "detailed proposal" (provided on March 8) provides any useful indication of what documents it will produce, or in response to which RFPs. So far, Amazon has dumped a large set of publicly available documents on Audio Pod. Many are indecipherable source code documents (for publicly available software development kits, or "SDK"s). They are not organized in any useful manner—often missing URLs showing from where, online, Amazon obtained them.

Amazon provided hundreds of pages of rote objections. For example, Amazon objected to just about every material noun in every request as ambiguous. And many of its objections were specious. For example, Amazon repeatedly objected to requests by citing the need for a protective or ESI order to be entered in the case. But even so, Amazon did not produce a single document or word in supplemental response once those orders were entered. Dkts. 59-62 (Feb. 10, 2025). Surely, if those objections had been legitimate, at least one document/word would have been ready to go once those orders were entered.

Further, after lengthy and prolonged meet/confers, Amazon agreed to provide supplemental information in response to the Interrogatories. It refused to identify or confirm which specific Interrogatories it would supplement. Audio Pod, however, attempted to determine to which Interrogatories those responses might relate. Audio Pod excludes such Interrogatories from this motion to compel. It, however, reserves its rights with regard to those Interrogatories following Amazon's supplementation.

As to the RFPs, Amazon's March 8 proposal is not helpful. It does not address any specific RFP. Amazon merely states that obvious: that it will produce documents from its

repositories. But even there it provides no specifics. It simply identifies repositories by the name of the company that sells the software or by type (e.g., WorkDocs, https://aws.amazon.com/workdocs/). Thus, as things stand, Amazon believes it can unilaterally decide what to produce, without considering Audio Pod's RFPs.

B. Request for Relief

Audio Pod respectfully requests that this Court order Amazon to do the following within eleven (11) days of ruling on this motion to compel:

(i) order Amazon to provide a complete, accurate, narrative responses to at least Interrogatory Nos. 1-2, 4, 6-8, 14-21 in the 406 Case and Interrogatory Nos. 1, 3, 5-7, and 13-20 in the 407 Case —with citations to specific documents where needed to provide necessary detail.

(ii) order Amazon to provide responses the Audio Pod's RFPs (in both the 406 Case and the 407 Case) on an RFP-by-RFP basis identifying (a) what Amazon will produce, (b) when, on a rolling basis beginning in eleven (11) days, those documents will be produced, and (c) the specific documents it will either withhold or not seek to collect.

(iii) conditionally grant Audio Pod its costs and attorneys' fees, which will only become due if Audio Pod is forced to file a subsequent motion to compel for any reason in this case.

II. CERTIFICATE AND SUMMARY OF MEET/CONFERS

Counsel for Audio Pod met and conferred with counsel for Amazon several times via telephone (video conference), and many times via e-mail, in a good faith effort to resolve the discovery matters raised in this motion. Sprenger Decl. ¶ 5. As demonstrated below, they were not successful.

A. Executive Summary

The following is a short summary of the parties' discussions via e-mail and on the phone over the last few months (relevant citations included in Section II.B *infra*):

- In November and December 2024, Audio Pod warned Amazon against its usual delay and refusal tactics.

- Throughout January and February, the parties met and conferred regarding negotiations over Amazon's extreme positions on its motion to stay, the ESI order, protective order, source code availability, presentation of witnesses for deposition, and refusal to reasonably expand discovery limits after the cases were consolidated.

- On January 2, 2025, Amazon produced over 25,000 pages of documents. Every document was publicly available.

- On February 10, this Court entered protective and ESI orders.

- On February 21, Audio Pod sent a comprehensive e-mail detailing the parties' various positions on Amazon's deficiencies to written discovery. Audio Pod demanded a final, detailed proposal by Amazon on how it would remedy discovery by February 28, 2025.

- Amazon waited until February 25, 2025. Instead of providing a proposal, it demanded another meet/confer on March 5, 2025. Audio Pod agreed but again requested that Amazon provide a detailed proposal ahead of that meet/confer. Amazon declined.

- Nine minutes before the March 5, 2025 meet/confer, Amazon sent a short list of purported discovery failures by Audio Pod.

- The parties met and conferred on Wednesday March 5. Amazon agreed to provide a specific plan for responding to each discovery request.

- On Saturday March 8, 2025, Amazon provided a generalized proposal without addressing any specific discovery request.

- On Tuesday March 11, 2025, Audio Pod wrote to Amazon stating that Amazon's proposal did not comply with Audio Pod's understanding of the specifics Amazon was to provide. Audio Pod nonetheless attempted to identify the interrogatories to which Amazon's proposal related. Audio Pod stated that it considered the parties' positions provided on March 13, 2025, as "the parties' final positions."

- Amazon has not responded to Audio Pod's March 11, 2025 e-mail to address any discovery issues or update its position.

B. Detailed Summary of Party Discussions

Audio Pod cannot address, in 30 pages, all communications during these last three-to-four months with Amazon. But it will provide a sample here with the hopes of conveying to the Court the sheer amount of time and effort needed to move Amazon forward at every step.

Discovery opened in this case on November 13, 2024.

On November 29, 2024, Audio Pod served its first sets of (a) interrogatories, (b) RFPs, and (c) deposition notices. Exs. 1-4; Sprenger Decl. ¶27. Audio Pod's counsel also provided Amazon with draft protective and ESI orders. Amazon would negotiate aggressively on the protective order. That included adding new, onerous provisions at various times through mid-January 2025. Those negotiations required many back-and-forth e-mails and meet/confers. *See, e.g.*, Dkt. 77, p. 11-12 (describing Amazon's backwards negotiation tactics).

On December 6, 2024, Amazon objected to the Audio Pod's deposition notices and stated that discovery should not proceed because Amazon had filed a motion to stay. Ex. 5, p. 2.

On December 8, 2024, counsel for Audio Pod responded by stating that "There is no stay in place right now. In fact, Amazon served its initial disclosures weeks ago." Counsel asked for Amazon's basis for asserting that some discovery was stayed while other discovery was not (e.g., initial disclosures and Amazon's objections to deposition notices). Ex. 5, p. 1.

On December 12, 2024, Amazon's counsel requested a two-week extension (from December 30 to January 13) "to respond" to Audio Pod's written discovery. Audio Pod's counsel responded that day. Among other things, Audio Pod asked whether Amazon was requesting the extension of time to object to written discovery or to actually respond. Ex. 6, p. 2.

On December 13, 2024, Audio Pod's counsel offered to meet/confer on the matter. But it noted Audio Pod's fear that Amazon would not actually provide any meaningful responses—which would make both the need and usefulness of an extension meaningless:

> [I]t would confirm our suspicion that Amazon believes objections to be a mere paper exercise—detached from any substantive investigation. . . . **If Amazon does intend to provide objections when they are currently due on Monday (12/16), we fear they will constitute the same set of voluminous, rote objections (e.g., objecting to every noun as ambiguous) that Amazon has served in the past. Those, of course, are not helpful in any regard. They simply constitute a list of as many theoretical objections as one can imagine, most of which Amazon will never actually rely on**. . . . .

Ex. 6, p. 1-2 (emphasis added).

Amazon did not respond to Audio Pod's December 13, 2024 e-mail. Audio Pod offered to agree to some version of the extension on December 24, 2024. Ex. 7.

On December 16, 2024, Amazon served its objections to Audio Pod's written discovery. As Audio Pod feared, they included "the same set of voluminous, rote objections (e.g., objecting to every noun as ambiguous) that Amazon has served in the past":

Document	Pages
406 Case,[1] AMAZON DEFENDANTS' OBJECTIONS TO AUDIO POD IP, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1–86)	188
406 Case, AMAZON DEFENDANTS' OBJECTIONS TO AUDIO POD IP, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1-22)	65
406 Case, AUDIBLE DEFENDANT'S OBJECTIONS TO AUDIO POD IP, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1–86)	192
406 Case, AUDIBLE DEFENDANT'S OBJECTIONS TO AUDIO POD IP, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1-22)	66
407 Case, DEFENDANTS' OBJECTIONS TO AUDIO POD IP, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1–86)	185
407 Case, DEFENDANTS' OBJECTIONS TO AUDIO POD IP, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1-21)	59

Exs. 8-11. On December 30, 2024, Amazon served its objections and responses to Audio Pod's written discovery. The increase in pages resulted from repeating similar boilerplate responses about demanding to meet and confer before providing information:

Document	Pages
406 Case, AMAZON DEFENDANTS' OBJECTIONS AND RESPONSES TO AUDIO POD IP, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1–86)	213

[1] Case No. 3:24-cv-00407-RCY has been consolidated into lead case no. 3:24-cv-00406-RCY. Prior to consolidation, written discovery was served in the separate cases. For all purposes in this motion to compel, documents served in the former are denoted with the prefix "407 Case"; documents served in the latter are denoted with the prefix "406 Case."

Document	Pages
406 Case, AMAZON DEFENDANTS' OBJECTIONS AND RESPONSESTO AUDIO POD IP, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1-22)	73
406 Case, AUDIBLE'S OBJECTIONS AND RESPONSES TO AUDIO POD IP, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1–86)	208
406 Case, OBJECTIONS AND RESPONSES OF AUDIBLE, INC. TO AUDIO POD IP, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1-22)	70
407 Case, DEFENDANTS' OBJECTIONS AND RESPONSES TO AUDIO POD IP, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1–86)	210
407 Case, DEFENDANTS' OBJECTIONS AND RESPONSES TO AUDIO POD IP, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1-21)	91

Exs. 8-11. Taking the Amazon Defendants Objections and responses to Audio Pod's First Set of Interrogatories as an example, the complete set of information Amazon provided in response to 22 Interrogatories is included in Ex. 16. Amazon's answers to the interrogatories at issue in this Motion can be summarized as follows:

Interrogatory No.	Short Summary of Interrogatory	Short Summary of Response
406 Case, No. 1 407 Case, No. 1	Requests identity of 10 individuals with knowledge of the technical operation of the Accused Products and Amazon's communication with Audio Pod.	Two names provided
406 Case, No. 2 407 Case, *n/a*	roles of the parties	listing affiliate ownership relationships and the title of services they provide when the "roles" of each were sought for the purpose of determining responsibility for actions alleged to constitute infringing activity.
406 Case, No. 4 407 Case, No. 3	additional revenue or increase to consumer satisfaction because of features in Interrogatory 3.	listing only "one of several formats" in an evasive response that describes Amazon's invalidity defense.
406 Case, No. 6 407 Case, No. 5	Business assessments made for each new feature prior to its release including increased sales	*FRCP 33(d) recitation*

Interrogatory No.	Short Summary of Interrogatory	Short Summary of Response
406 Case, No. 7 407 Case, No. 6	costs in developing new features	*FRCP 33(d) recitation*
406 Case, No. 8 407 Case, No. 7	Identification of competitors and their market share on an annual basis	listing the names of six well-known companies
406 Case, No. 14 407 Case, No. 13	usage tracking of the accused instrumentality	*promise to produce documents (without specifically citing FRCP 33(d))*
406, Nos. 15-16 407, Nos. 14-15	Identification of code modules that correspond to the accused instrumentality	*promise to produce documents (without specifically citing FRCP 33(d))*
406 Case, No. 17 407 Case, No. 16 (**supporting Amazon defense**)	contentions regarding **non-infringement**	Lengthy response
406 Case, No. 18 407 Case, No. 17 (**supporting Amazon defense**)	contentions regarding **non-infringing alternatives**	Statement that Amazon has used "streaming formats other than MPEG-DASH" in the past.
406 Case, No. 19 407 Case, No. 18 (**supporting Amazon defense**)	contentions regarding **lack of damages**	boilerplate response
406 Case, No. 20 407 Case, No. 19	seeking applicable license agreements	no substantive answer
406 Case, No. 21 407 Case, No. 20 (**supporting Amazon defense**)	detailed unenforceability and invalidity contentions	lengthy list of prior art only

Almost every statement above by Amazon is directed—albeit without specifics—to supporting one of Amazon's defenses in the case. *See* parentheticals in "Interrogatory No." column.

Taking the Amazon Defendants Objections and responses to Audio Pod's First Set of RFPs in the 406 Case as an example: Amazon made about **79** separate, express, written requests to meet and confer in their responses. Amazon responded substantively along the following lines about **55** times: "Amazon Defendants are willing to meet and confer regarding the relevant time period."

On January 2, 2025, Amazon produced over 25,000 pages of documents. Every document is non-confidential. Sprenger Decl. ¶28.

On January 10, 2025, the parties meet and conferred, via video conference, on outstanding discovery issues. Prior to the meet/confer, Audio Pod made clear that "We are not required to provide further information on our need to meet and confer on requests which you have yourself requested a meet and confer." Ex. 17, p. 1-2.

On January 13, 2025, Audio Pod requested that Amazon stipulate to the agreed-upon terms of the confidentiality order so that it could produce documents in the case. Audio Pod produced 4,797 pages of documents that day. Dkt. 77, p. 11.

On January 13, 2025, Amazon's counsel contested Audio Pod's stance and refused to meet/confer without a list of topics: "We ask again that Audio Pod identify in advance the list of requests and issues to be discussed." Ex. 17, p. 1.

Between January 13, 2025 and January 28, 2025, the parties continued to correspond and meet/confer, including via video conferences, regarding the written discovery, the protective order, case schedule, and discovery limits. Sprenger Decl. ¶29.

On January 22, 2025, the parties met and conferred, via video conference, regarding disputed terms of the protective order and other issues. *Id.* ¶30.

Between January 24, 2025 and January 28, 2025, Audio Pod's counsel corresponded with Amazon's counsel to address Amazon's objections to deposition notices. For instance, Amazon objected to producing individuals that were not of a director level or higher. Ex. 18, p. 4 (citing *E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc.*, 268 F.R.D. 45, 48, 53 (E.D. Va. 2010). But when Audio Pod noticed a replacement witnesses, Amazon objected on the grounds that he was too senior (under the Apex doctrine.) Ex. 18, p. 2.

Between January 27, 2025, and February 14, Audio Pod's counsel corresponded and conferred with Amazon's counsel regarding the applicable discovery date. That dispute related directly to the 55+ objections to RFPs. Counsel for Audio Pod asked Amazon to explain how that did not constitute a "delay tactic" by Amazon. Ex. 18, p. 2-6.

Between January 31, 2025, and the present, Audio Pod's counsel has corresponded and conferred with Amazon's counsel regarding increasing written discovery limits given that two cases were consolidated. Exs. 19 and 20.

On February 1, 2025 (and December 20, 2024), Audio Pod disclosed its source code review experts. Sprenger Decl. ¶31.

Between February 2, 2025, and March 7, 2025, Audio Pod's counsel corresponded and conferred with Amazon's counsel about how to begin source code review subject to disputes over the protective order. Audio Pod proposed an "interim procedure." But Amazon demanded compliance with "impossible" terms. Ex. 21, p. 5.

On February 7, 2025, the parties met and conferred, via videoconference, about discovery limits. Ex. 20, p. 6.

Between February 11, 2025, and February 13, Audio Pod's counsel corresponded and conferred with Amazon's counsel about the number of pages to be allowed for supplemental briefing on patent eligibility issues. Ex. 22.

On February 20, 2025, the parties meet and conferred, via audio or video conference, regarding an interim procedure under the protective order by which Audio Pod could begin source code review. Sprenger Decl. ¶32.

On February 21, 2025, Audio Pod provided a detailed e-mail regarding Amazon's discovery deficiencies. Audio Pod's counsel stated that it would meet and confer with Amazon's counsel at <u>any</u> time: "We will make ourselves available at any time." Audio Pod's counsel stated the following, among other things:

> In view of the following pervasive deficiencies, Audio Pod cannot proceed under a wait-and-see approach. Please provide the following by no later than 5:00pm ET on February 28:
>
> - For 406-Interrogatory Nos. 1-4, 6-9, 11-17, 19-20, and 22 (and related Interrogatories in the 407 discovery): either provide complete, detailed, substantive answers or outline, in specific detail, what information Defendants will provide in answer to the interrogatories, and when.
>
> We have repeatedly explained what detailed information we require and why. As one example, the applicable discovery period extends at least from date of hypothetical negotiation to present. For each such time period we need to know when each new feature of the accused instrumentality was released (No. 3.), financial information and consumer response to them (No. 4), how the business assessment was made to introduce them (No. 6), the expenses incurred developing them (No. 7), sales information (No. 13-14), and a useful description of where such functions are housed in the source code (No. 15-16).
>
> Note again that we have repeatedly offered to ease the discovery burden through stipulation. But Amazon has never taken us up on it.
>
> - For all RFPs, state whether Defendants will comply with the Federal Rules and applicable law, identify specific documents responsive to each RFP pursuant to FRCP 34(b)(2)(E)(i) (*see also* RFP Instructions) (e.g., not just limited to the Amazon internal wiki), provide a date certain when they will be produced, and specifically identify documents they will not attempt to locate or produce. . . . .

Ex. 23, p. 4-8.

As noted in the above e-mail quotation, Audio Pod set a date certain of **February 28, 2025**, for Amazon to "either provide complete, detailed, substantive answers or outline, in specific detail, what information Defendants will provide in answer to the interrogatories, and when." It made a similar request with respect to RFPs. *Id.*

On February 21, 2025, Audio Pod also noted that Amazon had gone silent on discussing discovery limits. After corresponding back and forth on a daily basis, Amazon had not responded for "a week." Ex. 23, p. 4.

On February 27, 2025, Audio Pod's counsel followed up with Amazon after not hearing any response. On February 27, 2025, Amazon's counsel filed an IPR in another case. Within two hours after serving the IPR filings, Amazon then responded to three outstanding discovery e-mails from Audio Pod's counsel. Sprenger Decl. ¶33.

On February 25, 2025, Amazon's counsel requested a meet/confer. Ex. 24, p. 1-2.

On February 28, 2025, Audio Pod's counsel responded. He requested that Amazon provide the following prior to the meet/confer: a "detailed, written proposal of what Amazon intends to provide and when ahead of time. If you refuse to do so, please let us know as soon as possible." Ex. 24, p. 2. Amazon did not provide any such proposal before the meet/confer. Sprenger Decl. ¶34. Also on February 28, 2025, Audio Pod's counsel responded regarding contested discovery limits. Ex. 19, p. 1-2. Audio Pod's counsel stated:

> **We will wait for Amazon's responses to our e-mail regarding written discovery. If Amazon agrees to provide useful, specific information, on a specific timeline, that will actually narrow the need for discovery, we stand ready to consider it. We expect, however, that Amazon will provide yet more excuses, obfuscation, and generalities. If so, that approach will further support our proposal below before the Court.**

Id. (bold in original).

On March 5, 2025, the parties met and conferred, via video conference, on discovery issues. Ex. 21, p. 4. Nine minutes before that meet/confer, Amazon sent a list of discovery issues to discuss regarding Audio Pod's productions. Ex. 24, p. 1. Audio Pod objected to Amazon's attempt to deflect from its own discovery obligations. *Id.* On the meet/confer, Audio Pod advised Amazon that it required that Amazon provide a specific proposal outlining how it would respond to each discovery request and when. Sprenger Decl. ¶35. The parties discussed two specific examples: (1) identifying the accused instrumentality and relevant changes to it throughout the discovery period; and (2) related financial and cost records.

On March 8, 2025, Amazon responded with a detailed proposal on the two issues discussed above. But it provided no specific proposals as to any specific interrogatories or RFPs. Ex. 21, p. 3.

On March 11, 2025, Audio Pod responded that it had "hoped Amazon would provide a proposal on an interrogatory-by-interrogatory and RFP-by-RFP basis." Ex. 21, p. 1. Audio Pod's counsel stated, "We will consider positions provided by March 13 as the parties' final positions. It has been two and a half months since Amazon's substantive responses were due." *Id.*, p. 1-2.

III. LEGAL STANDARDS

A. Refusal to Comply Is Prejudicial and Illegal

A plaintiff "certainly suffer[s] prejudice through the expense, annoyance, and delay caused by [a defendant's] failure to respond to discovery and otherwise participate in th[e] litigation." *Burnett v. Blueforce, Inc.*, No. 4:20-cv-183, 2021 U.S. Dist. LEXIS 227055, at *15 (E.D. Va. Oct. 6, 2021). For example, a "Defendant's noncompliance with its discovery obligations has rendered Plaintiff, who filed this case in December 2020, completely unable to move forward and resolve this matter." *Id.*

Participation in discovery is not fun, but it is mandatory.

> Here, Probo has egregiously failed to meet its discovery obligations in this civil action, in direct contravention of a Court Order. The Court is not impressed with Probo's excuse that the records at issue were numerous. Document-heavy "e-discovery" is part and parcel of modern litigation, and Probo's counsel with the Ice Miller law firm—which placed 143rd on the American Lawyer's 2023 Am Law 200 ranking—unquestionably possess the resources and knowledge to complete this task. . . . Quite frankly, parties before this Court routinely complete far larger document reviews in much less time than the nearly seventeen months—more than five hundred days—that have passed since Philips served Probo with its Second Set of discovery requests on February 28, 2022.

Philips N. Am. LLC v. Probo Med. LLC, No. 2:21-cv-00298, 2023 U.S. Dist. LEXIS 126028, at *7-8 (S.D. W. Va. July 21, 2023).

This "Court does not take lightly a party's failure to comply with this Court's Order or a party's general discovery obligations." *Edley v. Saul*, No. 1:19-cv-1014 (AJT/TCB), 2020 U.S. Dist. LEXIS 269599, at *10 (E.D. Va. Feb. 20, 2020). "[T]he Court has a duty to 'promote[] the administration of justice and dignity of the Courts.'" *Id.* (citing *Zaczek v. Fauquier Cty., Va.*, 764 F. Supp. 1071, 1076 (E.D. Va. 1991)).

B. ANSWERING DISCOVERY

This District does not allow parties to drag their feet in discovery. The local rules are designed specifically to prevent the exact approach Amazon has taken in this case. The rules require objections to be served before responsive answers. Local Civil Rule ("LCR") 26(C). The purpose is clear: to provide the information necessary for the parties to begin meaningfully meeting and conferring.

Audio Pod repeatedly advised Amazon that useful objections must allow it to identify at least the following three things:

1) Which documents a responding party has located or collected and will produce and which answers it will provide

2) Which documents/information a responding party will withhold behind objections.

3) Which types of documents/information the responding party refuses to investigate or seek to collect behind objections (e.g., as unduly burdensome)

The law supports that request.

Discovery objections must be helpful and specific. Local Civil Rule 26(C). Voluminous objections behind which the responding party knows it will not stand are wasteful.

1. Answers and Dates of Production Must be Provided

A party cannot respond to written discovery merely with objections. That is an implicit requirement of the federal rules and an explicit requirement of the local rules (which separate responses and objections onto different deadlines).

The Federal Rules are unequivocal:

Interrogatories: "Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." Fed. R. Civ. P. 33(b)(3).

RFPs: "An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest." *Id.* 34(2)(C); *Daedalus Blue, LLC v. Microstrategy Inc.*, No. 2:20cv551, 2021 U.S. Dist. LEXIS 267941, at *17 (E.D. Va. May 3, 2021) ("MicroStrategy does not indicate what its interpretation of the non-objectionable scope of the request might be."); *see also Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *6-7 ("Fed. R. Civ. P. 34(b)(2)(B) advisory committee's notes to 2015 amendment (noting that a response containing 'another reasonable time' must be 'specifically identified,' and, '[w]hen it is necessary to make the production in stages[,] the response should specify the beginning and end dates of the production.'") (emphasis in original).

"[W]here document requests are complex or voluminous, rolling production may be reasonable, but similarly must include a specific period for production." *Id.* at *7.

2. A Party Must Identify What Will Be Withheld

A responding party must articulate what they intend to produce despite their objections. *Id.* at *18 ("MicroStrategy follows its objection with a response that indicates it will provide any responsive documents beyond the non-objectionable scope of the request but fails to indicate whether any documents are being withheld.").

Interrogatories: "The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." Fed. R. Civ. P. 33(b)(4).

RFPs: "An objection must state whether any responsive materials are being withheld on the basis of that objection." Fed. R. Civ. P. 34(b)(2)(C).

3. Illegitimate Objections Are Waived

Refusing to investigate responses to discovery requests is a dangerous game. If a party does not provide a specific, legitimate refusal to do so, its objections should be waived.

The "failure to make specific legitimate objections to particular interrogatories or requests for production within the time allowed may result in a court deeming any objections ***waived***." *Brown v. Experian Info. Sols., Inc.*, No. 3:16cv670, 2017 U.S. Dist. LEXIS 234931, at *4 (E.D. Va. Apr. 17, 2017) (cleaned up) (citations and brackets omitted) (emphasis added); *see also Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *15-16 (rejecting objections).

Relatedly, "the practice of providing answers 'subject to' objections is confusing and misleading." *Brown*, 2017 U.S. Dist. LEXIS 234931, at *4 (citing *Turnage v. Clarity Servs., Inc.*, No. 3:14cv760, 2015 U.S. Dist. LEXIS 106553, 2015 WL 5092695, at *2 (E.D. Va. July 22, 2015) (quoting *Sherwin-Williams Co. v. JB Collision Servs., Inc.*, Nos. 13cv1946, 13cv1947, 2014 U.S. Dist. LEXIS 93368, 2014 WL 3388871, at *2 (S.D. Cal. July 9, 2014)); *see also Brown*, 2017 U.S. Dist. LEXIS 234931, at *4 ("[T]he court notes that defendant has made a

number of discovery responses 'subject to' various objections. This amounts to no answer at all, for it says, essentially, 'here is some information, but there could be more that you are not getting.'") (citing *JA Henderson*, *v. First Advantage Background Servs., Corp.*, No. 3:14cv221 (E.D. Va. 2014), ECF No. 66, at 1-2)) (internal emphasis added); *Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *17-18 ("Second, MicroStrategy does not indicate what its interpretation of the non-objectionable scope of the request might be. It offers some reasons that the request might be 'broad, vague,' 'not relevant... and not proportional,' because 'the term 'Accused Technologies' is unlimited in time and geographic scope and fails to identify specific functionalities of the MicroStrategy platform,' but MicroStrategy fails to suggest what it believes the appropriate time, geographic limit, and specific functionalities might be, as required by Rule 34(b).").

C. Rule 33(d)

"As indicated by the advisory notes to Rule 33, a responding party abuses the process by directing an interrogating party to a mass of records, without specifying by category and location the relevant documents." *Scott Hutchison Enters. v. Cranberry Pipeline Corp.*, 318 F.R.D. 44, 52 (S.D.W. Va. 2016), *vacated in part, by agreement, on other grounds,* 2017 U.S. Dist. LEXIS 238290, at *1 (Mar. 17, 2017).

If a responding party elects to avail itself of the procedure for answering Interrogatories authorized by FRCP 33(d), it "must (1) affirm that the information sought by the interrogatory in fact is available in the specified records, (2) be able to demonstrate that answering the interrogatory in the traditional manner would impose a burden on it, (3) establish that the burden of compiling information is substantially the same for the inquiring and responding parties, and (4) specify which records contain the information sought by the interrogatory." *Brown*, 2017 U.S. Dist. LEXIS 234931, at *7 (citations omitted).

D. Vague and Incomplete Responses Are Not Answers

"Under Federal Rule of Civil Procedure 37, a motion to compel is proper when a party fails to answer an interrogatory, and an evasive or incomplete answer must be treated as a failure to answer." *Newmarket Corp. v. Innospec Inc.*, No. 3:10cv503, 2011 U.S. Dist. LEXIS 35505, at *9 (E.D. Va. Apr. 1, 2011)).

E. Scope of Discovery

Pursuant to Federal Rule of Civil Procedure 26(b)(1), "[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). Courts broadly construe Rule 26 "to include any information if there is 'any possibility' it may be relevant to any claim or defense." *Spendlove v. RapidCourt, LLC*, No. 3:18-cv-856, 2019 U.S. Dist. LEXIS 220392, at *15 (E.D. Va. Dec. 23, 2019). "[A] request for discovery should be allowed 'unless it is clear that the information sought can have no possible bearing' on the claim or defense of a party." *See Johnson v. Kraft Foods N. Am., Inc.*, 236 F.R.D. 535, 541 (D. Kan. 2006). "When the discovery sought appears relevant on its face, the party resisting the discovery has the burden to establish that the requested discovery does not come within the scope of relevance as defined under Rule 26(b)(1) or is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure." *Id.*

With respect to production of documents, Rule 34 governs. Rule 34 requires responses to "either state that inspection and related activities will be permitted as requested or state with specificity the ground for objecting to the rest, including the reasons." Fed. R. Civ. P. 34(b)(2)(B).

IV. ARGUMENT

A. Amazon Should be Compelled to Provide Complete, Accurate, Narrative Responses to Interrogatories (Interrogatory Nos. 1-2, 4, 6-8, 14-21)

1. Improper Recitation of Rule 33(d) (Interrogatory Nos. 6-7 and 14-16)

Amazon responded to Interrogatory Nos. 6-7 and 14-16[2] by simply referencing (or relying on) Rule 33(d). One such example follows:

> Subject to and without waiving the foregoing objections, Amazon Defendants respond as follows: Pursuant to Federal Rule of Civil Procedure 33(d), Amazon Defendants will produce documents from which non-objectionable information responsive to this interrogatory may be derived or ascertained after a sufficient protective order is in place, to the extent such information exists and is located after a reasonably diligent search.

Ex. 12, p. 18 (No. 6). That is an empty recitation. It does not attempt to comply with the federal and local rules/precedent. It lacks every one of the four requirements. *See* Section III.C, *supra*. For example, Amazon must "establish that the burden of compiling information is substantially the same for the inquiring and responding parties." *Brown*, 2017 U.S. Dist. LEXIS 234931, at *7 (citations omitted). It is unlikely that burden is the same when it comes to an issue as uniquely within Amazon's knowledge as business assessments it made for including each new feature or improvement in the accused products and services.

Amazon's response also references no "documentation from which [Audio Pod] might locate the answers sought." *Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *11. Thus, this instance

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[2] The numbers in this brief are taken from the Interrogatories served in the 406 Case. The subject matter is similar in the 407 Case, except that there is no interrogatory similar to No. 2 in the 406 Case. Thus, starting with Interrogatory No. 3, the numbers in the 407 Case trail by (are lower in number by) 1.

Interrogatory Nos. 15-16 do not expressly recite Rule 33(d), but they provide no response other than stating source code will be produced.

is more egregious than in *Daedalus*. There the respondent had produced "some documents." That was still insufficient. *Id.* Amazon has produced none.

Indeed, the disputed Interrogatories at issue require much more. They necessitate a narrative response, with reference to specific portions of specific documents where additional details are needed. They seek the distillation and collection of information in a manner only Amazon has the information to accomplish. *Nat'l Fire Ins. Co. v. Jose Trucking Corp.*, 264 F.R.D. 233, 238 (W.D.N.C. 2010) ("answers to interrogatories must be responsive, full, complete and unevasive. The answering party cannot limit his answers to matters within his own knowledge and ignore information immediately available to him or under his control.").

National Fire is instructive here. Just as in that case, the interrogatories at issue require a full and complete narrative response:

> A fair reading of [each] Interrogatory [at issue] is that it requests a succinct narrative of the process by which the [object or event] was formed [or occurred]. This connotes a basic timeline of events and the identification of the individuals who participated in the relevant communications and negotiations. The narrative would presumably include references to key documents that capture the granular details of [] formation, and those documents can simply be identified in the interrogatory answer. [Amazon's] narrative, because it is sworn, should certainly be accurate, but [Amazon] is not required to write the equivalent of War and Peace, nor does it need to provide granular details that [Audio Pod's] experienced counsel certainly know they will elicit more effectively by reviewing the documents . . . and taking depositions.

Brink's Co. v. Chubb European Grp., 2021 U.S. Dist. LEXIS 218259, at *23 (E.D. Va. Feb. 24, 2021) adopted at Dkt. 65.

The Interrogatories at issue each cover a range of time or subject matter. Audio Pod is not seeking to have every single detail stated within the narrative. It is only asking that Amazon etch out the contours of the required information. That will allow discovery in this case to proceed in a much more targeted fashion. It will prevent Amazon, Audio Pod, this Court, and <u>the Jury</u> from having to pour over endless amounts of documents, and redundant sets of source code, to retrace

Amazon's business and developmental steps for very product and service at issue over the time period in this case (e.g., 2012 – trial). Amazon knows the products and services at issue in this case. It knows how the services are delivered over various networks. It knows how its products and services were developed over time and the business cases for creating and bringing them to market. It tracks usage of the services and knows how it has changed over time. It knows the source code that runs the core functions and how it changed over time. In short, it knows the answers to each of the dispute Interrogatories.

Amazon should be compelled to provide full, narrative answers to Interrogatories, with citations to specific documents where needed to provide necessary detail, within 10 days of this Court's resolution of this motion. *Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *11-12.

2. Other Non-Responsive Answers (Interrogatory Nos. 1-2, 4, 8, 17-21)

Amazon should also be compelled to provide complete, accurate, narrative responses to Interrogatory Nos. 1-2, 4, 8, and 17-21 along the lines addressed in Section IV.B.1. In this regard, "an evasive or incomplete [interrogatory] answer must be treated as a failure to answer." *Newmarket*, 2011 U.S. Dist. LEXIS 35505, at *9; Fed. R. Civ. P. 37(a)(3)(B), (a)(4).

a) Evasive or Incomplete Answers (Interrogatory Nos. 1-2, 4, 8, 20)

Amazon responded to Interrogatory Nos. 1-2, 4, 8, and 20 with short, incomplete responses. They were clearly designed as a paper exercise—sufficient only for Amazon to be able to assert that it responded.

One need only compare the lengths of responses Amazon offered to Interrogatories related to Audio Pod's case in chief (each between 50-100 words) with those related to Amazon's defenses (approximately 1,823 words in response to interrogatories seeking non-infringement positions). *See* Ex. 16 (portions highlighted orange relate to Amazon's defenses).

In terms of the responses, Amazon provided the following:

No. 1 names of two individuals (instead of the 5-10 requested).

No. 2 no usable information regarding the roles of the parties (e.g., that would support its divided infringement disclosure in response to No. 17).

No. 4 no response other than to reference affirmative defenses of invalidity and prior use.

No. 8 no information as to market share; nothing that could be used by a damages expert.

No. 20 no information regarding applicable licenses.

Amazon's responses to at least Interrogatory Nos. 2, 3, 4, and 18 demonstrate that Amazon is actively withholding specific, responsive information to each of the Interrogatories at issue in this motion. That includes referencing "several formats for delivering streaming media" that Amazon used going back to at least "2009." Ex. 16, p. 1, 11 (Interrogatory Nos. 3, 18). Amazon made an affirmative decision to withhold information related to those "several" other formats and that dates on, or products in, which they were used. Amazon also references a website in response to Interrogatory No. 3. It states that "Amazon has used <u>parts of</u> MPEG-DASH as <u>one of several formats</u> for delivering streamlining media since at least 2018 . . . ." *Id.* (citing) (emphasis added). Amazon thus admits that they know of other formats (down to the level of distinct <u>parts</u> of other formats) dates during which they were used, and products and services in which they were used. It admits that it has a theory of how each meets every limitation of the asserted claims—as it references invalidity and prior use defenses ("years before any of the asserted patents in this case.") Ex. 16, p. 2. Amazon has refused to disclose any such information.

Amazon refused to answer Interrogatory No. 20 on the grounds that it was premature. That is a baseless objection. It is also logistically backwards. Expert testimony is not needed to

identify licenses that are related to the accused technology, especially patent license agreements. The universe of such agreements is likely limited. They need to be produced so that experts can determine which are relevant to which facts of consequence

All the above constitutes information that Amazon had at the beginning of this case. It is business information related to the products and services it sells. The lack of response almost four months after being notified of the request can only mean Amazon never conducted a diligent search.

b) Self-Serving Contention Interrogatories Lacking Detail (Interrogatory Nos. 17-19, 21)

Amazon provided the most text in response to contention interrogatories related to its defenses. Those were Interrogatory Nos. 17-19 and 21. But, even then, the answers appear to have been designed simply to try to avoid waiving defenses; they provide no detail. For example:

No. 17	summary non-infringement allegations without an element-by-element response, despite having Audio Pod's contentions for over 2 months ago (Jan. 13, 2025).
No. 18	curt statement that provides far more questions than answers, including about "other" "streaming formats," which Amazon does not identify.
No. 19	no usable information regarding lack of damages.
No. 21	simple list of prior art. No invalidity contentions have been provided, even though Audio Pod served infringement contentions over two months ago.

Such "cursory" answers are insufficient. *See, e.g.*, *Smith v. Trawler Capt. Alfred, Inc.*, No. 2:12-cv-2866-DCN, 2014 U.S. Dist. LEXIS 65488, at *6 (D.S.C May 13, 2024).

And the one-sidedness of Amazon's discovery approach is again demonstrated by example. In its response to Interrogatory No. 17, Amazon hinted at a joint infringement defense: "Plaintiff's complaint relies on actions that are performed by different actors in different locations and at different times, such that they cannot constitute a single unified method as the

claims require." Ex. 12, p. 53 (Resp. to No. 17); Ex. 13, p. 51 (Resp. to No. 16). That is an affirmative statement of a defense. And Amazon is withholding the facts underlying it. That refusal is compounded by Amazon's refusal to answer Interrogatory No. 2 in the 406 Case (as to the roles of the various Defendant entities in connection with the allegations in the Complaint). In short, Amazon represents that it has investigated the roles of the parties sufficiently enough to represent that it has a joint infringement defense. But it refuses to produce that information.

B. Amazon Has Not Responded to Any RFP

Amazon's responses to Audio Pod's RFPs constitute voluminous repeated, boilerplate, form-over-function text. Its response to the RFPs in the 406 Case, for example, is **213 pages** long. There is no justification for such lengthy objections.

Amazon was required to have articulated what it intended to produce despite its objections. *Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *18 ("MicroStrategy follows its objection with a response that indicates it will provide any responsive documents beyond the non-objectionable scope of the request, but fails to indicate whether any documents are being withheld. This, however, is contrary to the plain language of Rule 34(b)(2)(C) ('An objection must state whether any responsive materials are being withheld on the basis of that objection.')."); *id.* at *17 ("***MicroStrategy does not indicate what its interpretation of the non-objectionable scope of the request might be***."); *see also id.* at *6-7 ("Fed. R. Civ. P. 34(b)(2)(B) advisory committee's notes to 2015 amendment (noting that a response containing 'another reasonable time' must be 'specifically identified,' and, '[w]hen it is necessary to make the production in stages[,] the response should specify the beginning and end dates of the production").

And "the practice of providing answers 'subject to' objections is confusing and misleading." *Brown*, 2017 U.S. Dist. LEXIS 234931, at *4 (citing *Turnage*, 2015 U.S. Dist.

LEXIS 106553, 2015 WL 5092695, at *2 (quoting *Sherwin-Williams*, 2014 U.S. Dist. LEXIS 93368, 2014 WL 3388871, at *2; *see also JA Henderson*, No. 3:14cv221 (E.D. Va. 2014), ECF No. 66, at 1-2 ("[T]he court notes that defendant has made a number of discovery responses 'subject to' various objections. ***This amounts to no answer at all***, for it says, essentially, 'here is some information, but there could be more that you are not getting.'")) (internal emphasis added); *Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *17-18 ("Second, MicroStrategy does not indicate what its interpretation of the non-objectionable scope of the request might be. It offers some reasons that the request might be 'broad, vague,' 'not relevant... and not proportional,' because 'the term 'Accused Technologies' is unlimited in time and geographic scope and fails to identify specific functionalities of the MicroStrategy platform,' ***but MicroStrategy fails to suggest what it believes the appropriate time, geographic limit, and specific functionalities might be, as required by Rule 34(b).***").

One could arguably justify lengthy, detailed objections if they were prepared in connection with actual responses in compliance with local and federal rules. Those objections and statements might be needed to parse out portions of RFPs to which a party is willing to respond, particularly identify which documents the responding party will produce, identify those it will not attempt to locate or produce, and state the basis for such objections vis-à-vis the scope of the responses to which they do not object. *See id.*

Amazon has refused (and failed) to meet any such requirement. And it provides hundreds of pages of objections, the vast majority behind which it will not ultimately stand.

Amazon made **79** separate, express, written requests to meet and confer in its responses. Audio Pod attempted to do so multiple times. But Amazon put up a false impediment each time. It demanded that Audio Pod first provide "the issues it wants to discuss for each request." Ex. 17,

p. 1. That is paradoxical: Amazon demanded the meet/confers; it did so expressly, in writing, on an RFP-by-RFP basis. And it is Amazon who is required to comply with its own discovery obligations. *See Daedalus* (quoted above); Fed. R. Civ. P. 34(b) advisory committee's notes to 2015 amendment ("[I]f the objection recognizes that some part of the request is appropriate[,] the objection should state the scope that is not overbroad." (emphasis added)).

With its objections, Amazon outright refused to produce any documents responsive to approximately 50+ RFPs based on a specious dispute regarding the relevant time period. Moreover, as explained in multiple emails and meet/confers, the time period in this case is evident—it follows the same structure as every patent case. Amazon was aware of Audio Pod, and met with Audio Pod, no later than 2007. The first Audio Pod patent application was published around that time, and the asserted patents began issuing in 2012. Further, Audio Pod communicated in writing with Amazon in 2012.

Amazon refused to answer about 22 RFPs on the grounds that they are not "capable of a response." Exs. 14-15. Amazon refused to even search for documents in response to 14 RFPs.

Amazon also refused to produce documents on the grounds that no ESI protocol or protective order was entered. In total, Amazon objected **58** times "subject to entry of a protective order" and **15** times subject to "a sufficient protective order." The same is true for the **89** instances where Amazon purportedly held documents in advance of an ESI agreement.

Both a protective order and an ESI order have been entered. Amazon has produced no further documents.

Amazon ultimately agreed to produce relevant and responsive documents with respect to only 5 RFPs. As above, these related almost exclusive to facts Amazon will carry the burden to prove. *See, e.g.*, Ex. 14, RFP Nos. 3-4 (prior art references), 7 (communications with third-

parties related to the case), 9 (documents used for defense), 11 (documents relied upon to answer interrogatories/requests).

Numerically, Amazon agreed to answer about 5/83 RFPs for which responsive documents exist. It refused to answer about 78/83 or 94%.

C. Amazon Should be Compelled to Respond to Discovery on a Request-by-Request Basis

Amazon refused to respond to written discovery on a request-by-request basis. It should be compelled to do so. As noted above, Amazon has resisted every request to participate meaningfully in discovery. In fact, it is clear Amazon never conducted any diligent search. Here is why: It can only respond superficially to discovery disputes; it cannot address specific requests. It simply lists the categories of documents Amazon is willing to produce separate and apart from any actual request. Almost four months after Audio Pod served 86 RFPs, this is the most granular response or proposal Amazon can offer on the document front:

> Amazon will supplement its production with additional technical documentation for the accused functionality of CloudFront, Amazon Music, and Prime Video within six weeks. We expect this supplementation to include documents from at least Amazon's internal wiki, Quip, and WorkDocs. We also expect this supplementation to include the financial spreadsheets described above.

Ex. 21, p. 4.

That is an unhelpful promise. It includes little more than a list of electronic document repositories Amazon uses. Its answer thus reduces to "We <u>expect</u> [no guarantee] this supplementation to include documents from [Amazon's repositories]." There is no indication of which RFPs Amazon will refuse to answer. There is no indication of the scope of any RFP within which any of the promised documents will fit. It is thus a non-answer that amounts to no answer at all. *Brown*, 2017 U.S. Dist. LEXIS 234931, at *4 ("[T]he court notes that defendant has made a number of discovery responses 'subject to' various objections. <u>This amounts to no</u>

answer at all, for it says, essentially, 'here is some information, but there could be more that you are not getting.'") (citing *JA Henderson*, No. 3:14cv221 (E.D. Va. 2014), Dkt. No. 66, at 1-2) (emphasis added)).

D. Amazon's Illegitimate Objections Should Be Deemed Waived

Amazon provided hundreds of pages of the exact same objections Audio Pod warned it against, in writing, on December 16, 2024: "the same set of voluminous, rote objections (e.g., objecting to every noun as ambiguous) that Amazon has served in the past." [3]

Amazon's responses are illegitimate. *See, e.g.*, *Cappetta*, 2008 U.S. Dist. LEXIS 103902, at *9-10 ("Just as with relevance objections, merely stating that a discovery request is 'overbroad' or 'unduly burdensome' will not suffice to state a proper objection."); *Barb v. Brown's Buick, Inc.*, No. 1:09cv785, 2010 U.S. Dist. LEXIS 8655, at *1 (E.D. Va. Feb. 2, 2010) ("Fed. R. Civ. P. 33 requires objections to discovery to be made with specificity. For that reason, this Court discourages the use of general objections."); *Hanwha Azdel, Inc. v. C & D Zodiac, Inc.*, No. 6:12-CV-00023, 2013 U.S. Dist. LEXIS 96690, at *17 (W.D. Va. July 11, 2013) (finding a non-party offered "a raft of 'general objections' that are rather indiscriminate and oftentimes overlapping, based on, inter alia, privilege, undue burden, overbreadth, relevancy, vagueness, reasonable availability, proprietary information, and confidentiality."); *Mills v. E. Gulf Coal Preparation Co., LLC*, 259 F.R.D. 118, 132 (S.D. W. Va. 2009) ("Objections to Rule 34 requests must be stated specifically, and boilerplate objections regurgitating words and phrases from Rule 26 are completely unacceptable.").

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[3] Amazon responded to almost every request "subject to and without waiving the foregoing objections." That response is improper. *Turnage*, 2015 U.S. Dist. LEXIS 106553, at *5 ("[T]he practice of providing answers 'subject to' objections is confusing and misleading."); *Sherwin-Williams*, 2014 U.S. Dist. LEXIS 93368, at *7.

That failure alone will be evident from the number of objections behind which Amazon actually stands in opposing this motion to compel; Audio Pod expects it will be a small fraction of those stated in Amazon's responses.

The "failure to make specific legitimate objections to particular interrogatories or requests for production within the time allowed may result in a court deeming any objections ***waived***." *Brown*, 2017 U.S. Dist. LEXIS 234931, at *4 (cleaned up) (citations and brackets omitted) (emphasis added).

E. Amazon Should Be Compelled to Respond to RFPs and Provide Dates for Rolling Productions

Audio Pod is entitled to far more than a curt proposal in response to 83 RFPs. Amazon should be compelled to answer them specifically, by stating which documents will be produced and when. "[W]here document requests are complex or voluminous, rolling production may be reasonable, but similarly must include a specific period for production." *Daedalus*, 2021 U.S. Dist. LEXIS 267941, at *7. The parties are far beyond the point where it is sufficient—not that it ever was—for Amazon to simply state that some documents will be produced and that Audio Pod should trust that they will meet some unidentified, non-objectionable scope of all RFPS.

F. Audio Pod Requests the Court Order Conditionally Require Amazon to Pay Audio Pod's Fees and Costs Incurred in Bringing this Motion

Pursuant to Federal Rule of Civil Procedure 37(a)(5)(A), Audio Pod respectfully requests this Court conditionally grant reasonable fees and costs incurring in making this motion. This Court has granted fees for similar motions in the past. *LaMonds v. Lake Ridge Parks & Recreation Ass'n*, No. 1:18-cv-00442 (AJT/TCB), 2018 U.S. Dist. LEXIS 210137, at *1 (E.D. Va. Dec. 12, 2018) (granting fees for successful motions to compel and for failure to appear at depositions ordered as a result of the motion).

Audio Pod is reticent to make a request for fees. But the time and expense it has incurred tracking Amazon down, participating in meet/confers, responding to curt requests for authority from Amazon on basic issues, and many other dilatory tactics has been expensive. This fact will prejudice its case throughout the remainder of this action. Audio Pod does not have the capital Amazon does to persist with unnecessary and multiplicative litigation efforts. *See, e.g.*, 28 U.S.C. § 1927.

But Audio Pod believes that if Amazon's tactics continue, and it is forced to move the Court to compel again in this case, that the fees necessary to bring this motion to compel should then be granted along with the fees in connection with that subsequent motion as well. Audio Pod hopes both can be avoided.

V. CONCLUSION

For the foregoing reasons, Audio Pod respectfully requests the Court order Amazon to produce the documents and discovery responses requested. Additionally, Audio Pod respectfully requests a conditional grant of its fees and costs associated with this motion.

Respectfully submitted,

Dated: March 17, 2025

By: */s/ Chandran B. Iyer*

Ronald M Daignault (*pro hac vice*)*
Chandran B. Iyer (VA Bar No. 94100)
Steven J. Reynolds (*pro hac vice*)*
Hoda Rifai-Bashjawish (*pro hac vice*)*
Kevin H. Sprenger (VA Bar No. 98588)
James J. Hatton (*pro hac vice*)*
Matthew Harkins (*pro hac vice*)*
rdaignault@daignaultiyer.com
cbiyer@daignaultiyer.com
sreynolds@diagnaultiyer.com
hrifai-bashjawish@daignaultiyer.com
ksprenger@daignaultiyer.com
jhatton@daignaultiyer.com
mharkins@daignaultiyer.com
DAIGNAULT IYER LLP
8229 Boone Boulevard, Suite 450
Vienna, VA 22182
Tel.: (202) 330-1666

Benoit Quarmby (*pro hac vice*)*
bquarmby@mololamken.com
MoloLamken LLP 430 Park Avenue, 6th Floor
New York, NY 10022
Tel. (212) 607-8157

Attorneys for Plaintiff Audio Pod IP, LLC

**Not admitted to practice in Virginia*

CERTICAFTE OF LOCAL RULE 37 CONFERENCE

Beginning on at least January 10, 2025, and continuing until March 11, 2025, Counsel for Audio Pod met and conferred with counsel for Amazon several times via telephone (video conference), and many times via e-mail, in a good faith effort to resolve the discovery matters raised in this motion. They were not successful.

/s/ Chandran B. Iyer
Chandran B. Iyer

CERTIFICATE OF SERVICE

I certify that on March 17, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

/s/ Chandran B. Iyer

Chandran B. Iyer (VA Bar No. 94100)
cbiyer@daignaultiyer.com
Daignault Iyer LLP
8229 Boone Boulevard – Suite 450
Vienna, VA 22182
Tel.: (202) 330-1666

Attorney for Plaintiff Audio Pod IP, LLC