



Proportionality Weaponized:

HOW IT HAPPENS AND WHAT CAN
PARTIES AND COURTS DO ABOUT IT

*By Phil Favro**

Consider the following scenario. You wake up after a restless night's sleep and unlock your phone to find out what awaits you today. Your calendar is busy, but there isn't anything you cannot handle. You then turn to your email and find a message from opposing counsel in a hotly contested commercial contract and fraud dispute you are litigating on behalf of the defendant.

Sent at 11:50 the night before, the message contains plaintiff's responses to your client's interrogatories and document requests. Expecting — perhaps naively — to receive something of substance from plaintiff's responses, you quickly glance them over on your phone and find they are replete with boilerplate objections. You groan, close the message, and decide you'll need an extra cup of coffee before reviewing the responses any further.

An hour later — your laptop open and plaintiff's responses displayed on a much larger screen, the full import of plaintiff's opacity begins to hit home. It's not just the meaningless and evasive nature of the responses that troubles you. What is more frustrating is the perfunctory disproportionality objections you read in response to each request. The written discovery sought basic details including supporting facts and documents regarding plaintiff's claims and the extent of its purported damages. How can requests for such foundational information be considered disproportionate to the needs of the case?

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WEAPONIZING PROPORTIONALITY

Does this seem familiar?

This scenario is playing out all over the country as parties respond to discovery with boilerplate proportionality objections in an effort to stymie legitimate efforts to obtain relevant information. The problem is not limited to discovery responses. Requesting parties routinely serve overly broad requests that are a complete non-starter for determining what information a responding party should realistically expect to produce. Indeed, far too many lawyers on each side of the “v” are abusing the concept, treating proportionality as just another “weapon[] to wage litigation” rather than using proportionality standards to approach discovery in a more meaningful way.¹

Weaponizing of proportionality is one of the most problematic developments in discovery practice over the past several years. The instant article examines this trend and explores effective practices for addressing the issues. Those practices include having parties and courts meaningfully assess each proportionality factor in connection with a discovery dispute. In addition, responding parties should meticulously substantiate production burdens through the use of metrics reflecting realistic estimates of time, manpower, and costs. Finally, requesting parties should prepare narrowly tailored requests and negotiate reasonable limits on the nature and extent of their discovery requests.

Requesting Parties: Meaningfully Evaluate Proportionality Factors

One example of counsel weaponizing proportionality involves requesting parties serving overly broad requests, refusing to reasonably narrow the ambit of those requests during a meet and confer, and then seeking judicial relief by perfunctorily arguing

the requests — as drafted — seek proportional materials. Such a position fails to substantively apply each proportionality factor to the disputed discovery requests that FRCP 26(b)(1) requires.² Magistrate Judge Elizabeth Stafford’s recent opinion in *Weidman v. Ford Motor Company* is instructive on this issue.³

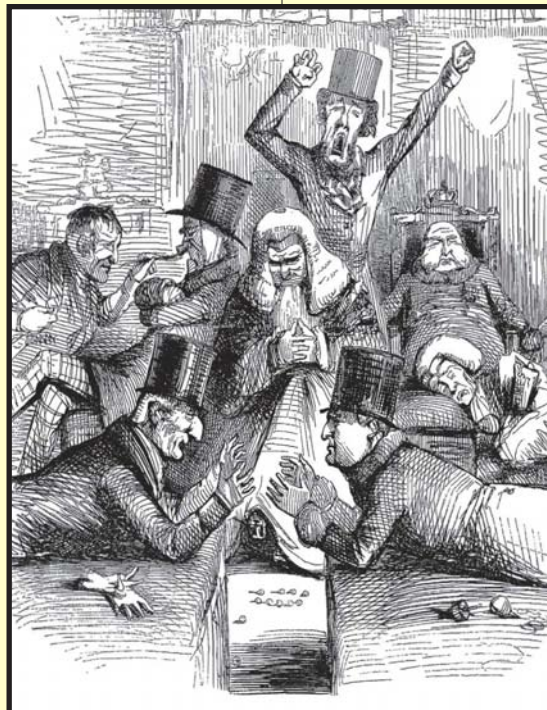
In *Weidman*, plaintiffs asked defendant Ford to run search terms against three custodians and produce documents relating to an inferred aspect of their product liability claims. In response, Ford argued the production of those documents was beyond plaintiffs’ claims. Nevertheless, Ford conducted a search for the requested

information, identified responsive documents among those it previously produced, and turned over 700 new responsive documents to plaintiffs.

Unsatisfied, plaintiffs sought a court order compelling Ford to run the originally requested searches, arguing the information was “highly relevant” and pointing to the broad scope of discovery as justifying their demand.⁴ In response, Judge Stafford held that the searches were not proportional to the needs of the case. Judge Stafford observed that many lawyers “gloss over the operative rules requiring an assessment of proportionality,” preferring instead to focus exclusively on relevance.⁵ Indeed, the court indicated that plaintiffs in *Weidman* — like many parties — “note[d] the proportionality factors but only briefly address[ed] them.”⁶ While the searches at issue

may have yielded relevant information, Judge Stafford was unconvinced they would uncover documents beyond those Ford already produced. Because the burden on Ford to conduct such a search outweighed any likely benefit plaintiffs might obtain from the requested searches, the court denied plaintiffs’ motion.

Weidman highlights that proportionality is more than just a platitude that requesting parties can perfunctorily mention and then expect to have courts accede to their discovery requests on relevance grounds. Instead, *Weidman* teaches that requesting parties must analyze every proportionality factor — during a meet and confer and in motion practice — and establish why the requested discovery satisfies notions of proportionality and relevance.⁷ As *Weidman* makes clear, the only permissible discovery are proportional requests that are relevant to the claims or defenses.⁸





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Responding Parties: Common Sense Assessments Over Boilerplate Objections

Requesting parties are not alone in failing to handle discovery in a proportional manner. The weaponizing of proportionality is evident in discovery responses rife with boilerplate proportionality objections that responding parties are often unwilling to substantiate during a meet and confer or motion practice. Magistrate Judge Jeffrey Cole’s recent decision in *Velez v. City of Chicago* is exemplary on the prevalence of this unfortunate practice.

In *Velez*, plaintiff brought a motion to compel production of “complete files for all homicide investigations” that the Chicago Police Department conducted between 1995 and 2001 in Area Four (a section on the west side of Chicago just below the O’Hare airport).⁹ The motion also sought “Complaint Register” files for the officers assigned to Area Four during that same time. Plaintiff ostensibly requested the information to obtain evidence supporting his claims that he was wrongfully imprisoned.¹⁰ While plaintiff’s requests may not have seemed too broad, his initial demands sought these same records over a 29 year period. Judge Cole described those demands — with their unbounded scope — as “*staggeringly overbroad*” and having “no hope of being taken seriously.”¹¹

Not surprisingly, defendant City of Chicago responded in kind, indicating it would not provide substantive responses. Worse, the City subsequently refused to produce responsive records on proportionality grounds to plaintiff’s pared down requests. The court characterized the City’s boilerplate proportionality objections as a “non-starter,” particularly since discovery in actions like the plaintiff’s typically involve producing five years (not zero) of homicide and complaint files.¹² To help the City grasp this concept, the court examined and then applied the six FRCP 26(b)(1) proportionality factors to the instant dispute. In addition, Judge Cole observed that proportionality is a “common sense” principle, reasoning the City would surely have to produce some relevant information in a case involving “the unlawful incarceration of a young man and the loss of sixteen years of freedom.”¹³ All of which led to the court’s conclusion that it was proportional for the City to produce five years of homicide and complaint files.

Velez makes clear that boilerplate objections do not satisfy notions of proportionality. While requests that seek nearly 30 years of records are clearly unreasonable, responses that refuse to disclose any responsive information — even after overly broad requests are appropriately modified — encapsulate the concept of weaponized discovery that does nothing to advance a matter toward its ultimate resolution. *Velez* teaches that responding parties must dispense with this tactic and other gamesmanship in favor of common sense, proportional responses that can help their clients reach the merits without risking discovery losses, both in terms of substance and credibility with the court.”¹⁴

The Courts: Meaningfully Apply Every FRCP 26(b)(1) Proportionality Factor

While courts are not directly culpable for weaponizing proportionality, in some instances they bear responsibility for not encouraging parties to be more proportionality-focused in their approach to discovery. In their discovery orders, some courts do not apply the proportionality factors to the dispute at hand. Their opinions may mention the FRCP 26(b)(1) factors or even indicate that certain requests are proportional or disproportionate.¹⁵ Nevertheless, many opinions do so without any analysis — much less a fulsome one — of the six proportionality factors.¹⁶ Doing so leaves the parties wondering how the court arrived at its proportionality determination and what they can do to appropriately address the issues in the future.

Like the parties, courts should meticulously apply the FRCP 26(b)(1) factors to a disputed discovery matter. Those factors are not merely suggestions to be ignored in the face of anecdotal experiences. Parties and courts are required to apply them such that parties can tailor their efforts to obtain information for their claims and defenses without engaging in “unnecessary or wasteful discovery” practices.¹⁷

Siriano v. Goodman Manufacturing Company

Magistrate Judge Elizabeth Deavers set the example in this regard with her cogent proportionality analysis in *Siriano v. Goodman Manufacturing Company*.¹⁸ Issued just after the 2015 FRCP amendments took effect, Judge Deavers concisely applied the proportionality factors to the parties’ dispute over plaintiffs’ document requests. While particularly focusing on the nature of the information requested, the parties’ relative access to the requested information, and the parties’ resources, the court succinctly examined the other factors and found they generally

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weighed in favor of requiring production. As part of its analysis, the court nonetheless acknowledged the substantial expense defendants would likely incur if forced to comply with plaintiffs’ requests as drafted. While not determinative of the issues, the anticipated discovery costs tempered the nature of the court’s order, which directed the parties to negotiate the scope of production to better ensure consistency with FRCP 26(b)(1)’s proportionality mandate.¹⁹

Siriano demonstrates the wisdom of applying every FRCP 26(b)(1) proportionality factor — not just a select few — in reaching a determination on a discovery dispute. With the factors generally favoring plaintiffs, it would have been easy to reflexively order defendants to unequivocally comply with the requests at issue. However, by carefully examining the interplay involving compliance, cost, and need (particularly implicit in proportionality factors five and six), *Siriano* placed the burden of developing a proportional and thus more limited response back on the parties, incentivizing them to act reasonably. In doing so, *Siriano* teaches that courts can help the parties reach a more effective and complete result by applying every proportionality factor to discovery disputes.

United States Equal Employment Opportunity Commission v. George Washington University

Another exemplary decision on this issue is *United States Equal Employment Opportunity Commission v. George Washington University*. Issued by Magistrate Judge Michael Harvey, *George Washington University* provides a masterful, detailed analysis of FRCP 26(b)(1)’s proportionality factors in connection with its order denying plaintiff’s requested discovery.²⁰

Plaintiff Equal Employment Opportunity Commission (“EEOC”) sought to compel the production of emails from three of defendant

George Washington University’s (“GW”) custodians to support its Title VII and Equal Pay Act claims. EEOC’s requests sought a wide range of emails over approximately two years for two of the custodians and seven years for the third custodian. GW objected to the requests as being overly broad, unduly burdensome, disproportionate, and seeking irrelevant information. During the parties’ extensive meet and confer, GW agreed to produce many of the requested emails and offered multiple alternative production approaches rather than turning over the entire contents of the custodians’ respective email accounts. EEOC rejected all of GW’s compromise efforts and generally maintained that all of the requested emails must be turned over.



In response, the court examined every proportionality factor to evaluate the parties’ email dispute. Judge Harvey found that three of the standards — the importance of the issues at stake in the litigation, the parties’ resources, and the amount in controversy — supported EEOC’s position while a fourth (relative access to relevant materials) favored neither party. Nevertheless, the “hotly contested” factors on which the disputed issues would turn — the importance of the requested discovery and the burden versus benefit analysis — both favored GW.²¹ In particular, the court found that EEOC’s requests as drafted were overly broad and unnecessarily sought irrelevant information:

EEOC has thus weakened its position on this factor by insisting on such obviously overbroad discovery because, as written, *the RFPs are not designed to capture relevant, unique information*; rather, they are designed to capture great swaths of information without regard to whether that information is likely relevant and unique.²²

Balancing the overbreadth of EEOC’s requests against the well-substantiated and reasonable cost estimates GW offered to establish its production burden, the court denied EEOC’s request for all of the requested emails. Rather than sending the parties’ back to further meet and confer, Judge Harvey issued a production order reflecting certain of the parties’ compromise positions, which enabled EEOC to obtain “a plethora of relevant emails . . . while allowing GW to keep its costs down.”²²³

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Like *Siriano*, *George Washington University* confirms the importance of applying all FRCP 26(b)(1) proportionality limitations in order to understand and then resolve a dispute. Had Judge Harvey glossed over the issues, he might have viewed the dispute through a distorted prism of only a few of the factors (such as GW's resources) and ordered it to comply with the requests as drafted. Instead, the court examined every factor and developed a resolution that struck an appropriate balance for the parties. In so doing, *George Washington University* shows courts how to use proportionality to effectively address and resolve disputed discovery issues.²⁴

METICULOUSLY SUBSTANTIATE PRODUCTION BENEFITS AND BURDENS

While parties and courts should apply all of the proportionality standards, *George Washington University* makes clear that the final two factors—the importance of the requested discovery and balancing discovery burdens against its burdens — are often the most important and determinative of the issues. Under the subjective balancing test created by those factors, responding parties must supply hard information substantiating claimed burdens.²⁵ In addition, requesting parties should identify the benefits of — why they need — the discovery they seek.²⁶ Unless the parties respectively meet those prerequisites, it will be impossible for either the parties (during a meet and confer) or the court (in motion practice) to appropriately balance the issues.

Responding Parties Must Provide Metrics

To perform this balancing analysis, the parties must exchange “concrete information” substantiating their respective positions on production burdens and benefits.²⁷ Regarding the burdens, responding parties must go beyond mere guesswork to corroborate the estimated review hours and costs they will incur. Conclusory positions that rely on attorney argument or a flimsy showing from the client should be rejected.²⁸

Instead, responding parties should offer precise metrics from client representatives regarding the resources (including time, manpower, and costs) they would be forced to incur if required to comply with a discovery request. Without these metrics,

responding parties can hardly expect to establish that a request is disproportionate.²⁹ The *Duffy v. Lawrence Memorial Hospital* case is particularly instructive on this issue.³⁰

In *Duffy*, the court modified a discovery order issued less than two months beforehand that granted plaintiff's requests for various categories of emergency room patient records. In that first round of motion practice, defendant had argued that plaintiff's requests were disproportionate and unduly burdensome. The court overruled those objections, explaining that defendant failed to provide any substantive metrics to support those objections:

Defendant objects to every document request as being unduly burdensome, but provides no facts to support the objection. Neither does Defendant provide evidence of the costs it would incur in responding to the requests.³¹

Defendant's failure to share any meaningful metrics regarding the time, manpower, or costs it would incur to comply with plaintiff's requests ultimately left its arguments bereft of evidentiary support.

However, defendant rectified this problem in a second round of motion practice, offering detailed metrics substantiating its production burdens.³² Those burdens involved deploying staff to individually review 15,574 electronic patient files so as to identify certain patient visit information. Such a process would be labor intensive and cost well over \$230,000:

Defendant estimates it would take 7,787 worker hours to locate and produce responsive information for 15,574 patient records. If Defendant had ten employees working on the task, they would spend more than ninety-seven days working eight hours a day, at an estimated cost to Defendant of \$196,933.23.

After aggregating the information, Defendant asserts it would need to redact patients' personal confidential information . . . redaction would take ten reviewers fourteen days at a cost of \$37,259.50. The process would include a quality control attorney reviewer who would spend two hours a day, and reviewers who would review 15 documents per hour for eight hours a day.

In sum . . . producing the information relevant to RFP Nos. 40, 41, 43, and 58 would take 8,982 hours of work and cost in excess of \$230,000 if done by contract staff.³³

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By substantiating its proportionality arguments with appropriate metrics, defendant convinced the court that its initial production order created an undue burden. The court thereafter issued a modified order allowing defendant to produce a random sample of 257 patient records and observed that this would be a more proportional method for producing relevant information.

Duffy highlights the critical role that metrics play in substantiating production burdens. The defendant in *Duffy* could hardly expect to support arguments regarding undue burden and disproportionality without metrics. Indeed, *Duffy* initially rejected such arguments when defendant failed to support them with actual information. However, by disclosing metrics with reasonable estimates of time, manpower, and costs, *Duffy* issued a common sense production order more consistent with proportionality limitations.³⁴

In like manner, responding parties should offer detailed metrics during the meet and confer process and in motion practice in order to substantiate their production burdens. Moreover, courts should insist on the disclosure of such information. Without the benefit of metrics, courts can hardly expect to perform the required balancing, much less engage in a common sense determination of the issues.³⁵

Requesting Parties Must Demonstrate Need

In response to the yin of substantiated production burdens, requesting parties must describe the yang, i.e., the importance of the sought after discovery. Even though FRCP 26(b)(1) defines this factor in terms of “importance,” it is more aptly described as “need;” the requesting party must show why it needs the information that the discovery targets.³⁶ If the requesting party cannot clearly demonstrate a need for the information, courts should deny their requests. *Weidman* and *George Washington University* exemplify this point.

In *Weidman*, the court denied plaintiffs’ motion because they failed to specify a need for the requested discovery. While the sought-after information may have been relevant, plaintiffs were unable to convince the court that the searches they requested would turn over anything of substance beyond what Ford had

already produced. And in *George Washington University*, EEOC could not substantiate a need for *all* of the information it requested given the overbreadth of its requests. Indeed, EEOC even acknowledged that certain of its requests would require the production of “a lot of ‘junk’ that would be irrelevant to this case.” That the requests would gather “junk” rather than relevant information “weakened” EEOC’s position on need and ultimately helped tipped the scales in favor of GW.

In contrast, *Siriano* found that plaintiffs demonstrated a clear need for their requested discovery. Plaintiffs established that the information they sought was “directly related” to their claims, had yet to be produced in discovery, and was unlikely to be available from nonparties to the litigation. Similarly, in *Oxbow Carbon & Minerals LLC v. Union Pacific Railroad Co.*, the court held that the records defendants requested from plaintiffs’ chief executive officer were “relevant and unique,” confirming the discovery had “merit” and was not “a coercion tactic.”³⁷ Balanced against the anticipated production costs, along with the damages sought from defendants, the Oxbow court ordered plaintiffs to turn over the documents.

Beyond emphasizing need, these cases spotlight the importance of serving narrowly tailored requests that reasonably target relevant information. While requesting parties should avoid “robotically recycled” requests that are patently overbroad,³⁸ requests may sometimes be understandably broad at the outset of discovery before the parties have focused down to the critical issues. In those instances, requesting parties should be amenable to negotiating reasonable limits during a meet and confer with responding parties. Either way, requesting parties should avoid seeking judicial relief on vastly overbroad requests.

CONCLUSION

Chief Justice John Roberts declared several years ago that lawyers did not get involved in the legal profession simply to “wear[] down opponents with creatively burdensome discovery requests or evad[e] legitimate requests through dilatory tactics.”³⁹ While the Chief Justice is undoubtedly correct, many lawyers have adopted such practices that — no matter how well intentioned — have weaponized proportionality and accordingly misuse the discovery process.⁴⁰ Counsel should instead adopt a more effective way forward that uses proportionality to guide both formal efforts and negotiations on appropriate limits for discovery. Courts can assist in this process by drawing on and applying proportionality to reach common sense resolutions to discovery disputes.

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Notes:

¹ *Calcor Space Facility, Inc. v. Superior Court*, 61 Cal. Rptr. 2d 567, 570-71 (Ct. App. 1997) (urging courts to aggressively curb “cancerous” discovery abuses, curtail “promiscuous” discovery and insist that “discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation”).

² See FED. R. CIV. P. 26 advisory committee’s note to 2015 amendment (directing the parties and the court to consider all proportionality factors in connection with disputed discovery issues).

³ *Weidman v. Ford Motor Co.*, No. 18-cv-12719, 2021 WL 2349400 (E.D. Mich. June 9, 2021).

⁴ *Id.* at *2.

⁵ *Id.*

⁶ *Id.*

⁷ See *Oxbow Carbon & Minerals LLC v. Union Pacific R.R. Co.*, 322 F.R.D. 1 (D.D.C. 2017) (ordering the production of documents from plaintiffs’ CEO on proportionality grounds after carefully analyzing every proportionality factor).

⁸ FED. R. CIV. P. 26 26(b)(1) advisory committee’s note to 2015 amendment (“Proportional discovery relevant to any party’s claim or defense suffices.”).

⁹ *Velez v. City of Chicago*, No. 18 C 8144, 2021 WL 1978364 (N.D. Ill. May 17, 2021).

¹⁰ *Id.* at *1-2.

¹¹ *Id.* at *1.

¹² *Id.* at *4.

¹³ *Id.*

¹⁴ See *Hall v. Marriott Int’l, Inc.*, No. 3:19-cv-01715-JLS-AHG, 2021 WL 1906464 (S.D. Cal. May 12, 2021) (rejecting defendant’s proportionality objections and imposing sanctions on defendant for construing plaintiff’s requests “in an unreasonable manner to try to make it seem like obtaining the information – which appears to be readily available in regularly collected accounting data – would require herculean efforts.”).

¹⁵ See, e.g., *Southern California Housing Rights Center, Inc. v. TPG (Metropolitan), LLC*, No. CV 20-3056, 2021 WL 2883179 (S.D. Cal. July 12, 2021) (citing to the proportionality factors and finding certain information plaintiffs requested “relevant and proportional to the needs of the case” without analyzing the factors themselves).

¹⁶ See, e.g., *Tracie Frank v. Heartland Rehabilitation Hospital, LLC*, No. 20-2496, 2021 WL 2913559 (D. Kan. July 12, 2021) (citing proportionality standards and then ordering defendant to produce relevant, responsive information without discussing the application of the standards).

¹⁷ Chief Justice John G. Roberts, *2015 Year-End Report on the Federal Judiciary*, SUPREME COURT OF THE UNITED STATES at 6-7; see also *Helena Agri-Enterprises, LLC v. Great Lakes Grain, LLC*, 988 F.3d 260, 273 (6th Cir. 2021) (emphasizing the reasonable limits that proportionality standards impose on discovery and decrying discovery tactics that employ “efforts to look under every stone in an e-discovery world populated by many stones”).

¹⁸ *Siriano v. Goodman Mfg. Co.*, L.P., 2:14-cv-1131, 2015 WL 8259548, at *7 (S.D. Ohio Dec. 9, 2015).

¹⁹ *Id.* at *6-7.

²⁰ *EEOC v. George Washington Univ.*, No. 17-cv-1978, 2020 WL 3489478 (D.D.C. June 26, 2020).

²¹ *Id.* at *5.

²² *Id.* at *7 (emphasis added).

²³ *Id.* at *13.

²⁴ See *Lamaute v. Power*, --- F.R.D. ---, 2021 WL 1978971 (D.D.C. May 18, 2021). (applying each proportionality factor and holding they weighed in favor of granting aspects of plaintiff’s requested discovery but with limitations on the scope of the documents defendant would be required to produce).

²⁵ See The Sedona Conference, *Commentary on Proportionality in Electronic Discovery*, 18 SEDONA CONF. J. 141, 162 (2017) (discussing in Principle 4 that the “application of proportionality should be based on information rather than speculation”).

²⁶ *Id.* at 163.

²⁷ *SiteLock LLC v. GoDaddy.com LLC*, No. 19-cv-02746, 2020 WL 6135189 (D. Ariz. Oct. 19, 2020) (rejecting defendant’s grossly exaggerated production costs and decrying defendant’s failure to develop or run search terms, impose date limitations, prioritize custodians, or consider other options to obtain the “concrete information” the court requested so it could fashion a proportional solution).

²⁸ See *Garcia Ramirez v. U.S. Immigration and Customs Enforcement*, 331 F.R.D. 194 (D.D.C. 2019) (“Even though Defendants cite to these [proportionality] factors . . . The Court finds the Defendants have not articulated sufficient specific facts to support their proportionality argument.”).

²⁹ Ralph Losey, *Judge Facciola’s Successor, Judge Michael Harvey, Provides Excellent Proportionality Analysis in an Order to Compel*, E-DISCOVERY TEAM (Mar. 1, 2018), <https://e-discoveryteam.com/2018/03/01/judge-facciolas-successor-judge-michael-harvey-provides-excellent-proportionality-analysis-in-an-order-to-compel/> (“Successful arguments on motions to compel require hard evidence. To meet your burden of proof you must present credible estimates of the costs of document review. This requires . . . reliable metrics and statistics concerning the ESI that the requesting party wants the responding party to review.”).

³⁰ *Duffy v. Lawrence Memorial Hospital*, No. 2:14-cv-2256-SAC-TJJ, 2017 WL 1277808 (D. Kan. Mar. 31, 2017).

³¹ *Duffy v. Lawrence Memorial Hospital*, No. 2:14-cv-2256-SAC-TJJ, 2017 WL 495980, at *3 (D. Kan. Feb. 7, 2017).

³² *Duffy*, 2017 WL 1277808 at *1-2.

³³ *Id.* at *2.

³⁴ See also *Solo v. United Parcel Service Co.*, No. 14-cv-12719, 2017 WL 85832 (E.D. Mich. Jan. 10, 2017) (holding that it would be proportional for defendant to produce a sample of the requested shipping records rather than all of the information plaintiffs requested).

³⁵ See *Thomas v. City of New York*, 336 F.R.D. 1 (E.D.N.Y. 2020) (“Defendants’ papers are devoid of any specific analysis of the burden of the ESI production being sought by Plaintiff.”).

³⁶ See FED. R. CIV. P. 26 advisory committee’s note to 2015 amendment (“A party claiming that a request is important to resolve the issues should be able to explain the ways in which the underlying information bears on the issues as that party understands them.”).

³⁷ *Oxbow Carbon & Minerals LLC v. Union Pacific R.R. Co.*, 322 F.R.D. 1, 8-9 (D.D.C. 2017).

³⁸ *Bottoms v. Liberty Life Assurance Co. of Bos.*, No. 11-cv- 01606, 2011 WL 6181423, at *5 (D. Colo. Dec. 13, 2011) (“Counsel does not satisfy their obligations under Rule 26(g) by robotically recycling discovery requests propounded in earlier actions.”).

³⁹ Chief Justice John G. Roberts, *2015 Year-End Report on the Federal Judiciary*, SUPREME COURT OF THE UNITED STATES at 11 (Dec. 31, 2015), <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

⁴⁰ *Smash Technology, LLC v. Smash Solutions, LLC*, 335 F.R.D. 438, 440-42 (D. Utah 2020) (lamenting the misguided discovery “tradition” of serving general and boilerplate objections, along with evasive written discovery responses).