

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD G. NEWMAN, JR.,  
Plaintiff,  
v.  
AECIQ,  
Defendant.

No. 2:24-cv-1204 WBS AC

ORDER

This matter is before the court on a motion to compel brought by plaintiff. ECF No. 20. This discovery motion was referred to the magistrate judge pursuant to E.D. Cal. R. 302(c)(1). The parties submitted the required joint statement. ECF No. 21. The matter was heard before the court on June 4, 2025. ECF No. 24. For the reasons set forth below, the motion to compel is GRANTED.

**I. Relevant Background**

Plaintiff filed this putative class action on April 26, 2024, alleging that defendant has violated the Telephone Consumer Protection Act (“TCPA”) by placing pre-recorded calls without consent to cellular telephone numbers. ECF No. 1 at 1. A pretrial scheduling order was issued on August 30, 2024, setting a discovery deadline of March 18, 2025. ECF No. 14. The scheduling order was modified on April 24, 2024, and the discovery deadline was re-set to June 16, 2025. ECF No. 19. The deadline for all pretrial motions is August 18, 2025. Id. A motion for class

1 certification has not yet been filed.

## 2 II. Motion to Compel

3 Plaintiff moves to compel further responses to numerous Interrogatories and Requests for  
4 Production. Although the parties attempted to meet and confer, plaintiff states that defendant has  
5 continuously failed to produce responsive documents, even after confirming productions would  
6 be made. ECF No. 21 at 3. The full contents of defendant's responses to plaintiff's  
7 interrogatories can be located at ECF No. 21-2 at 1-10, and the full contents of defendant's  
8 responses to plaintiff's requests for production can be located at ECF No. 21-2 at 11-30. The  
9 discovery at issue is organized by category in the joint statement.

### 10 A. Applicable Legal Standards

11 The scope of discovery in federal cases is governed by Federal Rule of Civil Procedure  
12 26(b)(1). The current Rule states:

13 Unless otherwise limited by court order, the scope of discovery is as  
14 follows: Parties may obtain discovery regarding any nonprivileged  
15 matter that is relevant to any party's claim or defense and  
16 proportional to the needs of the case, considering the importance of  
17 the issues at stake in the action, the amount in controversy, the  
18 parties' relative access to relevant information, the parties' resources,  
the importance of the discovery in resolving the issues, and whether  
the burden or expense of the proposed discovery outweighs its likely  
benefit. Information within this scope of discovery need not be  
admissible in evidence to be discoverable.

19 Fed. R. Civ. P. 26(b)(1). Evidence is relevant if: (a) it has any tendency to make a fact more or  
20 less probable than it would be without the evidence; and (b) the fact is of consequence in  
21 determining the action. Fed. R. Evid. 401. Relevancy to the subject matter of the litigation "has  
22 been construed broadly to encompass any matter that bears on, or that reasonably could lead to  
23 other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc.  
24 v. Sanders, 437 U.S. 340, 351 (1978). Relevance, however, does not establish discoverability; in  
25 2015, a proportionality requirement was added to Rule 26. Under the amended Rule 26,  
26 relevance alone will not justify discovery; discovery must also be proportional to the needs of the  
27 case.

1 B. Call Logs (Interrogatory No. 1; RFP Nos. 4, 7, 23)

2 Plaintiff seeks records of pre-recorded phone calls, asserting this information is relevant to  
3 demonstrating the requirements for class certification. ECF No. 21 at 3-4. Defendant states that  
4 it “stands on its objections” to this category of requests and specifically argues that the discovery  
5 is premature. Id. at 5. Defendant states that it will conduct a search after a class is certified in  
6 this case. Id.

7 The court has reviewed the objections on which defendant stands and finds them to be  
8 wholly inadequate and boilerplate. Parties responding to discovery requests must do so with  
9 specificity, which includes making particularized objections. See DIRECTV, Inc. v. Trone, 209  
10 F.R.D. 455, 458 (C.D. Cal. 2002). A responding party’s burden is not met by providing  
11 generalized or conclusory boilerplate objections. See F.T.C. v. AMG Servs., Inc., 291 F.R.D.  
12 544, 553 (D. Nev. 2013). Defendant’s objections in this case do not satisfy the requirements of  
13 federal discovery practice. For example, plaintiff’s RFP No. 23 seeks documents containing  
14 specific information about outbound calls made by defendant or its vendors. ECF No. 21-2 at 24.  
15 Defendant objects that the RFP is “not reasonably calculated to lead to the discovery of  
16 admissible evidence” and “untethered to the allegations in Plaintiff’s Class Action Complaint.”  
17 These objections seriously strain defendant’s credibility; plaintiff seeks information, in a putative  
18 class action about calls that violate the TCPA, about defendant’s outbound calls. The RFP is very  
19 obviously related to the claims in the complaint and calculated to produce admissible evidence.  
20 Defendant’s objections are non-specific, boilerplate, and nonresponsive.

21 Additionally, this discovery is not premature. To the contrary, the close of discovery fast  
22 approaches. “Generally at the pre-class certification stage, discovery in a putative class action is  
23 limited to certification issues such as the number of class members, the existence of common  
24 questions, typicality of claims, and the representative’s ability to represent the class.” Gusman v.  
25 Comcast Corp., 298 F.R.D. 592, 595 (S.D. Cal. 2014). The Supreme Court has noted, however,  
26 that the class certification decision requires “a rigorous analysis” of Rule 23(a)’s prerequisites,  
27 and “[s]uch an analysis will frequently entail overlap with the merits of the plaintiff’s underlying  
28 claim.” In this case, discovery has not been ordered phased or bifurcated, so the parties have

1 always been free to conduct discovery both as to class certification issues and as to the merits of  
2 claims and defenses. Defendant’s conclusory argument provides no legal basis whatsoever for  
3 delaying any subset of discovery until after a class is certified. The operative scheduling order  
4 does not provide for such a process. The requested discovery would not be premature even if  
5 discovery had been phased, because the questions at issue plainly go to certification. The motion  
6 to compel will be granted and defendant ordered to fully and expeditiously respond to all  
7 discovery requests at issue.

8 C. Vendors (Interrog. Nos. 1, 2, 3, 4 and RFP No. 4, 17, 19, 20, 21, 36)

9 With these discovery requests, plaintiff seeks the identity of, as well as documents and  
10 communications regarding, the lead vendor, dialing platform provider, and third party marketer  
11 involved in the calls to plaintiff. ECF No. 21 at 6. Defendant responds, “Subject to and without  
12 waiving its objections, as it relates to those requests which seek information specifically  
13 regarding any ‘lead vendor, dialing platform provider, and third party marketer involved in the  
14 calls to Plaintiff,’ Defendant will supplement its response(s) to the appropriate request(s).” Id.  
15 Defendant raises no specific objections to these discovery requests and as stated above, the  
16 boilerplate objections are insufficient. The motion to compel will be granted and defendant  
17 ordered to fully and expeditiously respond to all discovery requests at issue.

18 D. Complaints/DNC requests (Interrog. Nos. 1, 7 and RFP Nos. 23, 28)

19 With these discovery requests, plaintiff seeks documents and information regarding  
20 complaints and DNC requests arising from telemarketing calls by defendant. ECF No. 21 at 7.  
21 Defendant states that “Subject to and without waiving its objections, Defendant is willing to meet  
22 and confer with counsel to identify whether the parties can agree to a limited time and scope for  
23 Defendant to conduct a search for whether any such documents exist.” Id. This noncommittal  
24 response is meaningless in light of the closely approaching discovery deadline. The motion to  
25 compel will be granted and defendant ordered to fully and expeditiously respond to all discovery  
26 requests at issue.

27 E. Consent (Interrog. Nos. 8, 9 and RFP Nos. 8-16)

28 Through this discovery plaintiff seeks any records defendant contends supports its consent

1 defense for its calls to potential class members. Plaintiff asserts that to the extent defendant  
2 claims it has consent to make the calls at issue, plaintiff is entitled to documents evidencing this  
3 defense. ECF No. 21 at 8. Defendant responds that it stands on its objections, and “[s]ubject to  
4 and without waiving its objections, Defendant is willing to meet and confer with counsel to  
5 identify whether the parties can agree to a limited time and scope for Defendant to conduct a  
6 search for whether any such documents exist.” *Id.* Again, this noncommittal response is  
7 meaningless in light of the closely approaching discovery deadline. The motion to compel will be  
8 granted and defendant ordered to fully and expeditiously respond to all discovery requests at  
9 issue.

10 F. Policies and Procedures (Interrog. No. 10 and RFP Nos. 5, 27)

11 Through these discovery requests, plaintiff seeks policies and procedures from defendant  
12 related to telemarketing. *Id.* at 9. Defendant responds that it stands on its objections, and  
13 “[s]ubject to and without waiving its objections, Defendants will produce any documents in its  
14 possession which may be responsive to this category of requests.” The court construes this vague  
15 and noncommittal response as a non-opposition. The motion to compel will be granted and  
16 defendant ordered to fully and expeditiously respond to all discovery requests at issue.

17 G. Documents Related to Plaintiff (RFP No. 3)

18 Plaintiff seeks production of documents related to plaintiff or his telephone number, which  
19 he contends defendant already promised to produce. ECF No. 21 at 9. Defendant again writes  
20 that it stands on its objections but without waiving objections, will produce responsive  
21 documents. Once again, the court construes this as a non-opposition. The motion to compel will  
22 be granted and defendant ordered to fully and expeditiously respond to the discovery request at  
23 issue.

24 H. Recordings (RFP Nos. 4, 18)

25 Plaintiff seeks exemplars of any recorded messages that have been transmitted during  
26 calls. ECF No. 21 at 10. Plaintiff asserts the discovery goes to commonality and typicality for  
27 class certification purposes. Defendant writes that it stands on its objections but without waiving  
28 objections, will produce responsive documents that “relate to Plaintiff” but does not provide any

1 argument with respect to limiting the scope of production to plaintiff. The court is not persuaded  
2 that any such limitation is justified. The motion to compel will be granted and defendant ordered  
3 to fully and expeditiously respond to the discovery request at issue.

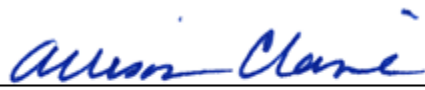
4 **III. Conclusion**

5 Plaintiff's motion to compel (ECF No. 20) is GRANTED in full and defendant is  
6 ORDERED to fully respond to each interrogatory and requests for production at issue no later  
7 than June 13, 2025. The court emphasizes that defendant may not withhold any responsive  
8 documents for any reason (including relevance) except on the basis of privilege or work product  
9 doctrine, and any documents withheld on those bases must be adequately documented in a  
10 privilege log. Failure to timely respond to discovery requests may result in sanctions.

11 Further, Fed. R. Civ. P. 34(a)(5)(A) states that if a motion to compel is granted, the court  
12 must, after giving the opposing party an opportunity to be heard, award reasonable expenses to  
13 the prevailing party, including attorney's fees, unless certain circumstances make such an award  
14 unjust. Plaintiff's counsel did not include a fee or costs requests in her motion. Should she wish  
15 to file a motion for fees and costs, she may do so within 10 days of this order.

16 IT IS SO ORDERED.

17 DATED: June 5, 2025

18   
19 ALLISON CLAIRE  
20 UNITED STATES MAGISTRATE JUDGE  
21  
22  
23  
24  
25  
26  
27  
28