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Conservation Law Foundation, Inc.
v.
Shell Oil Company et al

Civil No. 3:21-cv-00933 (VDO)
U.S. District Court, District of Connecticut

Filed May 18, 2026

Farrish, Thomas O., United States Magistrate Judge

ORDER

ORDER granting [941] Motion to Compel Production of Reliance Materials. The defendants, Shell Oil Company and others ("Defendants"), have moved the Court for an order compelling the plaintiff, Conservation Law Foundation, Inc. ("CLF"), to produce materials on which its expert witness, Dr. Naomi Oreskes, relied upon in producing her expert witness report. In accordance with the Discovery Order at ECF No. 473, the parties presented the dispute in the form of simultaneous letter briefs. (ECF Nos. 940, 941.) The Court directed them to meet and confer for the purpose of reducing the areas of dispute. (ECF No. 961.) The parties then reported that they had resolved all issues identified in the letter briefs except for "their dispute concerning Defendants' request for the prompts Dr. Oreskes used in conducting her AI analysis and outputs." (ECF No. 963, at 2.) The Court held a hearing on the remaining dispute on May 14, 2026.

CLF first protests that artificial intelligence prompts used by an expert witness are not within the scope of discovery under Rule 26(b), but the Court disagrees. An expert witness's methodology is fair ground for discovery, see, e.g., *Macchia v. ADP, Inc.*, 711 F. Supp. 3d 162, 167-68 (E.D.N.Y. 2024), and under the facts of this case, the process by which Dr. Oreskes culled down the defendants' document production into a subset to be worked with is an aspect of that methodology.

CLF then argues that the prompts are outside the scope of a Rule 29 discovery agreement between the parties, but the Court disagrees with this as well. It is true that Rule 29 permits parties to limit the scope of discovery by agreement, and that courts should enforce those agreements in appropriate cases. *Conservation L. Found., Inc. v. Shell Oil Co.*, No. 3:21-cv-933, 2025 WL 842278, at *3 (D. Conn. Mar. 18, 2025). But before a court denies otherwise-relevant discovery based on a Rule 29 agreement, that agreement "must be quite clear." *Id.* Here, CLF says that the parties had an agreement not to take discovery of each other's "expert notes, drafts, or communications needed by, and made during, the report drafting process," and at oral argument it contended that Dr. Oreskes' AI prompts qualified as "notes." But this is not so obvious as to be "quite clear," and accordingly it is not a sound basis for denying discovery that is otherwise within the scope of Rule 26(b).

CLF then argues that it has no additional responsive information to produce, and that it should therefore not be placed under any sort of order. CLF says that Dr. Oreskes did not use "prompts," but rather only applied "search terms," and it says that it has produced all such search terms.

When a requesting party seeks information within the scope of Rule 26(b), and the responding party claims to have no such information, the Court is presented with the question of whether it should nevertheless place the latter under an order to produce. "Under ordinary circumstances, a party's good faith averment that the items sought simply do not exist, or are not in his possession, custody, or control,

should resolve the issue of failure of production since one cannot be required to produce the impossible[.]” Zervos v. S.S. Sam Houston, 79 F.R.D. 593 (S.D.N.Y. 1978) (quotation marks and citation omitted). “Yet this principle has been held not to apply when the requesting party has a strong reason for disbelieving the responding party’s claim to have made a complete production – in other words, a reason backed up by solid evidence rather than mere suspicion.” Lewis v. Doe, No. 3:19-cv-2015 (JCH) (TOF), 2021 WL 863473, at *5 (D. Conn. Mar. 8, 2021). In this case, the defendants have an evidence-backed reason for doubting CLF’s representation, because Dr. Oreskes’ assistant, Dr. Alexander Kaurov, referenced “prompt[s]” in his declaration. (ECF No. 941-4, 8.)

The Court therefore deems it appropriate to place CLF under an order of production. CLF is ordered to revise its responses to any Rule 33 interrogatories or Rule 34 requests for production that call for disclosure of any artificial intelligence prompts and/or queries used by Dr. Oreskes or her team in the course of producing her expert witness report. If, after a diligent search, CLF determines that no additional responsive materials exist, it shall say so in its response, signed by the appropriate person under Rule 33 or 34. Rule 37(b) sanctions may then become available to the defendants if that representation is later revealed to be untrue. The revised responses shall be served on or before June 1, 2026. See D. Conn. L. Civ. R. 37(d). It is so ordered.

Signed by Judge Thomas O. Farrish on 5/18/2026.(LaRue-Zitzkat, S)