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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT GRANO, et al.,  
  
Plaintiffs,  
  
v.  
  
SODEXO MANAGEMENT, INC., et al.,  
  
Defendants.

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AND RELATED CASES

Case Nos.: 18cv1818-TWR(BLM)

**ORDER GRANTING IN PART  
PLAINTIFFS' MOTION TO DETERMINE  
SUFFICIENCY OF CARGILL'S  
RESPONSES TO PLAINTIFFS' SECOND  
REQUESTS FOR ADMISSION**

**[ ECF NO. 240 ]**

Currently before the Court is Plaintiffs' November 4, 2020 Motion to Determine Sufficiency of Cargill's Responses to Plaintiffs' Second Requests for Admission [ECF No. 240-1 ("Mot.")], Defendant Cargill Meat Solutions Corp.'s November 18, 2020 opposition to the motion [ECF No. 245 ("Oppo.")], and Plaintiffs' November 24, 2020 reply [ECF No. 250 ("Reply")]. For the reasons set forth below, Plaintiffs' motion is **GRANTED IN PART**.

**DISCOVERY RELATED BACKGROUND**

On September 10, 2020, Plaintiffs served their Second Requests for Admission ("RFA") on Defendant Cargill. ECF No. 240-2, Declaration of R. Drew Falkenstein in Support of Plaintiffs' Motion to Determine Sufficiency of Cargill's Responses to Plaintiffs' Second Requests for Admission ("Falkenstein Decl.") at ¶ 2, Exh. A.

On October 12, 2020, Defendant Cargill served its responses to the RFAs. Id. at ¶ 3, Exh.

1 B. That same day, Plaintiffs' counsel sent Cargill an initial meet and confer email to which  
2 Cargill's counsel responded. Id. at ¶ 4a, Exh. C. On October 13, 2020, Plaintiffs' counsel sent  
3 as second meet and confer letter to Cargill addressing his substantive concerns with Cargill's  
4 responses, requesting that Cargill supplement or revise its responses, and requesting a  
5 telephonic meet and confer. Id. at ¶ 4b, Exh. D. Cargill's counsel responded on October 16,  
6 2020 and the parties held an unsuccessful telephonic meet and confer that same day. Id. at ¶¶  
7 4c and 4d, Exh. E.

8 On October 19, 2020, counsel for Defendant Cargill, Ms. Bullard and Mr. Bylund, and  
9 counsel for Plaintiffs, Mr. Falkenstein, jointly contacted the Court regarding the discovery dispute  
10 concerning the RFAs. ECF No. 229. In regard to the dispute, the Court issued a briefing  
11 schedule. Id. In accordance with that schedule, the parties timely filed their motion, opposition,  
12 and reply. Id.; see also Mot., Oppo., and Reply.

### 13 **LEGAL STANDARD**

14 "A party may serve on any other party a written request to admit, for purposes of the  
15 pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to: (A)  
16 facts, the application of law to fact, or opinions about either; and (B) the genuineness of any  
17 described documents." Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 36(a)(1). "Each matter  
18 must be separately stated." Fed. R. Civ. P. 36(a)(2). A responding party must admit a matter,  
19 specifically deny a matter, or state in detail why they cannot truthfully admit or deny it. Fed. R.  
20 Civ. P. 36(a)(4). If a matter is denied, the "denial must fairly respond to the substance of the  
21 matter; and when good faith requires that a party qualify an answer or deny only a part of a  
22 matter, the answer must specify the part admitted and qualify or deny the rest." Id. A  
23 responding party may object to a request if they state the ground for the objection. Fed. R. Civ.  
24 P. 36(a)(5). The requesting party may then seek a decision from the court determining the  
25 sufficiency of an answer or objection. Fed. R. Civ. P. 36(a)(6). The court must order that an  
26 answer be served unless it finds an objection justified. Id. "On finding that an answer does not  
27 comply with this rule, the court may order either that the matter is admitted or that an amended  
28 answer be served." Id. An order deeming matters admitted is a "severe sanction." Black

1 Mountain Equities, Inc. v. Players Network, Inc., 2020 WL 2097600, at \* 10 (S.D. Cal., May 1,  
2 2020) (citing Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1247 (9th Cir. 1981) (vacating  
3 district court's order deeming RFAs admitted because it was a “severe sanction” that required a  
4 showing “that a party has intentionally disregarded the obligations imposed by Rule 36(a)” and  
5 the district court did not state a basis for finding “that the [defendant] did not make reasonable  
6 inquiry or that the information readily obtainable was sufficient to allow them to admit or deny  
7 the particular requests”). The Ninth Circuit has observed that “courts generally order an  
8 amended answer rather than deem the matter admitted.” Id. at \* 10 (citing Asea, Inc., 669 F.2d  
9 at 1246).

### 10 **PARTIES' POSITIONS**

11 Plaintiffs seek an order from the Court striking Cargill's objections and answers to  
12 Plaintiffs' Second RFAs Nos. 14-21 and requiring Cargill to answer each RFA as written. Mot. at

13 5. Plaintiffs argue that Cargill's responses to the RFAs are deficient because they

- 14 (1) employ boilerplate, inappropriate objections to specifically defined terms,  
15 (2) ignore specifically defined terms, (3) substitute specifically defined terms  
16 out and, in narrative fashion, premise denials on different terms that  
17 inappropriately introduce concepts that Plaintiffs specifically sought to avoid, and  
(4) explicitly premise each denial on its stated objections.

18 Id. Specifically, in responding to its RFAs, Cargill improperly removed the term “elimination  
19 step”<sup>1</sup> and substituted it with “a narrative discussion of ‘lethality treatment,’ which is a defined  
20 term at 9 C.F.R § 430.1.”<sup>2</sup> Mot. at 3. Plaintiffs note that the term lethality treatment introduces

21 <sup>1</sup> Plaintiffs define the term as:

22 Elimination-step includes any treatment applied to, or action taken with respect  
23 to, any raw beef components that you utilized to produce the subject ground beef  
24 products, or to the finished subject ground beef products themselves, to eliminate  
25 (i.e., reduce to zero) any viable pathogens via thermal, chemical, biological,  
26 or mechanical process. The term “elimination-step” includes specifically, but  
not exclusively, irradiation.

27 Falkenstein Decl. at Exh. A.

28 <sup>2</sup> Lethality treatment is “[a] process, including the application of an antimicrobial agent, that  
eliminates or reduces the number of pathogenic microorganisms on or in a product to make the

1 concepts that they intentionally sought to avoid in the wording of their RFAs and permits Cargill  
2 to avoid responding to the questions Plaintiffs want to ask. Id. Plaintiffs also argue that Fed.  
3 R. Civ. P. 36 does not permit Cargill to rewrite Plaintiffs' specifically defined term and  
4 fundamentally alter the meaning of the request. Id. at 4. Fed. R. Civ. P. 36(a)(4) required  
5 Cargill to admit or specifically deny each RFA or state in detail why it could not, which it failed  
6 to do, instead relying on improper boilerplate objections. Id. at 5. Plaintiffs argue that Cargill's  
7 objections to the term "subject ground beef products" were improper given that it refers  
8 "definitively and without question" to the ground beef patties Cargill produced.<sup>3</sup> Id. at 5-6.  
9 Plaintiffs further argue that additional objections to the RFAs raised in Cargill's October 16, 2020  
10 meet and confer letter do not excuse Cargill from truthfully admitting or denying the RFAs at  
11 issue. Id. at 7. Specifically, contrary to the statements of Cargill's counsel, the RFAs were  
12 simple, narrow, and concise and the use of the term elimination-step was appropriate. Id.  
13 Finally, Plaintiffs argue that "Cargill's responses improperly introduce narrative about its  
14 observance of the industry standard of care." Id. at 10.

15 Cargill contends that Plaintiffs' motion should be denied because its objections and  
16 responses are proper under Fed. R. Civ. P. 36. Oppo. at 12. Cargill contends that its responses  
17 are proper, clear denials and that its objections are proper given the compound and convoluted  
18 nature of Plaintiffs' RFAs and because the RFAs are vague, ambiguous, and overbroad. Id. at  
19 12-14. Cargill further contends that Plaintiffs' motion should be denied because it asks the Court

20 \_\_\_\_\_  
21 product safe for human consumption. Examples of lethality treatments are cooking or  
22 the application of an antimicrobial agent or process that eliminates or reduces pathogenic  
microorganisms." Mot. at 3.

23 <sup>3</sup> Plaintiffs defined "subject ground beef products" as

24 "Subject ground beef products" are the frozen ground beef patties 80/20, Cargill  
25 product number 771853, which Sodexo identifies as product number 5922877,  
26 that were shipped to Sodexo pursuant to invoice number 5115243, dated October  
17, 2017.

27 Falkenstein Decl. at Exh. A.

1 to order Cargill to respond to RFAs that Plaintiffs wish they had asked instead of the RFAs they  
2 served. Id. at 17.

3 Plaintiffs reply that the Court should order Cargill to answer the RFAs “none of which  
4 were in any way improper or unclear.” Reply at 2. Plaintiffs argue that Cargill’s “denials are  
5 premised on (1) objections that Plaintiffs believe are improper and without foundation, and  
6 (2) narrative dicta that is simply irrelevant and changes the meaning of the several requests.”  
7 Id. at 3. Plaintiffs further argue that the only issue is whether Defendant’s processes include  
8 an elimination step as defined by Plaintiffs and Cargill’s responses do not address that issue.  
9 Id. Plaintiffs note that Cargill does not claim it is unable to understand the defined terms or  
10 the RFAs, only that the terms are not commonly used in the food industry and make the  
11 requests compound. Id. at 5.

## 12 DISCUSSION

13 Requests for admission “may not contain compound, conjunctive, or disjunctive (e.g.,  
14 “and/or”) statements.” U.S. ex rel. Englund v. Los Angeles Cty., 235 F.R.D. 675, 684 (E.D. Cal.  
15 2006) (citing Herrera v. Scully, 143 F.R.D. 545, 549 (S.D.N.Y. 1992)). However, “[a] party may  
16 not avoid responding based on technicalities. For example, a party who is unable to agree with  
17 the exact wording of the request for admission should agree to an alternate wording or  
18 stipulation.” Id. (internal citations omitted) (citing Marchand v. Mercy Med. Ctr., 22 F.3d 933,  
19 938 (9th Cir. 1994), citing Milgram Food Stores, Inc. v. United States, 558 F. Supp. 629, 636  
20 (W.D. Mo. 1983)). When the purpose and significance of a request are reasonably clear, courts  
21 do not permit denials based on an overly-technical reading of the request. Id. “It is not ground  
22 for objection that the request is ‘ambiguous’ unless so ambiguous that the responding party  
23 cannot, in good faith, frame an intelligent reply. Parties should ‘admit to the fullest extent  
24 possible, and explain in detail why other portions of a request may not be admitted.” Id. at 685  
25 (quoting Marchand, 22 F.3d at 938).

26 The first four paragraphs of Cargill’s response to RFA Nos. 14-20<sup>4</sup> are identical and state:

27 \_\_\_\_\_  
28 <sup>4</sup> RFA No. 14 asked Cargill to “[a]dmit that your HACCP plan did not include any elimination-step  
for the production of the subject ground beef products.” Falkenstein Decl. at Exh. B. RFA No.

1 Cargill objects to this Request as vague, ambiguous, and overbroad as to its use  
2 of the terms “elimination-step” and “subject ground beef products.” These terms  
3 are not defined within this Request and require reference back to another section  
4 within Plaintiff’s Second Requests for Admissions to attempt to discern their  
5 meaning and impact.

6 “Elimination-step” is not a commonly used or understood term within the  
7 food industry or applicable regulations. The Request may reflect a failed attempt  
8 to refer to “lethality treatment,” which is defined under 9 C.F.R. § 430.1 of the  
9 Food Safety and Inspection Service (“FSIS”) of the USDA as “[a] process, including  
10 the application of an antimicrobial agent, that eliminates or reduces the  
11 number of pathogenic microorganisms on or in a product to make the  
12 product safe for human consumption. Examples of lethality treatments are  
13 cooking or the application of an antimicrobial agent or process that eliminates or  
14 reduces pathogenic microorganisms.”

15 Further, there are no “subject ground beef products” as no chain of custody has  
16 been established in this litigation to date. Therefore, Cargill understands and  
17 interprets this term to generally refer to the alleged type of product at  
18 issue in this litigation, Cargill’s ground beef patties 80/20 (Cargill product number  
19 771853).<sup>5</sup>

20 Subject to these objections, DENIED.

21 Falkenstein Decl. at Exh. B.<sup>6</sup>

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22 15 asked Cargill to “[a]dmit that you applied no elimination-step to any raw ground beef  
23 components used to produce the subject ground beef products.” Id. RFA No. 16 asked Cargill  
24 to “[a]dmit that you did not require any supplier of raw ground beef components, used to  
25 produce the subject ground beef products, to apply any elimination-step to the raw ground beef  
26 components supplied.” Id. RFA No. 17 asked Cargill to “[a]dmit that the suppliers of raw ground  
27 beef components, used to produce the subject ground beef products, did not apply any  
28 elimination-step to any raw ground beef components used to produce the subject ground  
beef products.” Id. RFA No. 18 asked Cargill to “[a]dmit that you applied no elimination-step  
to the subject ground beef products.” Id. RFA No. 19 asked Cargill to “[a]dmit that no other  
entity applied any elimination-step to the subject ground beef products.” Id. RFA No. 20 asked  
Cargill to “[a]dmit that an elimination-step applied to raw ground beef components is the only  
way to ensure that raw ground beef components do not contain any STEC.” Id.

<sup>5</sup> This paragraph does not appear in Cargill’s response to RFA No. 20.

<sup>6</sup> Cargill’s response to RFA No. 18 states: “DENIED. See Response to Request No. 14, which is  
incorporated herein by reference.” Falkenstein Decl. at Exh. B. Cargill’s response to RFA Nos.  
16 and 17 states “DENIED. See Response to Request No. 15, which is incorporated herein by  
reference.” Id.

1 Following these identical objections, explanations, and denials, Cargill set forth additional  
2 paragraphs that varied by RFA. Id. Cargill's response to RFA Nos. 14 and 18 ends stating:

3 Cargill's HACCP plan for its raw ground beef products processed at its  
4 North Butler Plant in Butler, Wisconsin satisfies the FSIS regulatory requirements.  
5 A true and accurate copy of this HACCP Plan that was in effect in October 2017  
6 was produced at CMS00000333. This HACCP plan addresses treatments for its  
7 ground beef patties 80/20 (Cargill product number 771853), including affixing  
a label onto the shipped product with instructions to cook the product to 160  
degrees F internally. See CMS00000333 at 7.3.3.2.

8 Id. Cargill's response to RFA Nos. 15 -17 concludes by stating:

9 Cargill employs multiple steps to process raw ground beef components used  
10 to produce its ground beef patties 80/20 (Cargill product number 771853) to  
11 eliminate or reduce pathogenic microorganisms, including, without limitation,  
12 heating, steam pasteurization, freezing/chilling, lactic acid rinse, and/or  
13 disposing of presumptive positive testing product of the raw ground beef  
14 components. See Cargill's Harvest HACCP Plans at CMS00006257-  
15 CMS00006262; CMS00006311-CMS00006319; CMS00007521-CMS00007575.  
16 Cargill's operation as an FSIS inspected food processor, its practices  
and procedures, prerequisite programs, good manufacturing practices,  
sanitation procedures, interventions and treatments and HACCP plans are  
appropriate safeguards.

17 In addition, Cargill affixes a label onto the shipped product of ground beef patties  
18 80/20 (Cargill product number 771853) with instructions to cook the product  
19 to 160 degrees F internally. See CMS00000333 at 7.3.3.2.

20 Id. Cargill's response to RFA No. 19 concludes by stating:

21 Cargill's suppliers are regulated, as is Cargill, by the FSIS. Cargill's suppliers  
22 have practices and procedures, prerequisite programs, good manufacturing  
23 practices, sanitation procedures, interventions and treatments and HACCP plans  
to safeguard their products.

24 Cargill's food service customers, including Sodexo, are also regulated and subject  
25 to obligations requiring the appropriate storage and preparation of ground  
26 beef. Compliance with these obligations, including the preparation of the  
27 products to the legally required and instructed temperature, would eliminate  
any potential pathogen present in the product.

1 Id. RFA No. 20 concludes by stating:

2 Cargill's suppliers are FSIS inspected facilities, who have practices and  
3 procedures, prerequisite programs, good manufacturing practices, sanitation  
4 procedures, interventions and treatments and HACCP plans that constitute  
5 appropriate safeguards. Cargill and its suppliers engage in FSIS approved  
6 testing programs to further ensure ingredients are free of STEC. Finally, Cargill  
7 also affixes a label onto its shipped ground beef products with instructions to  
8 cook the product to 160 degrees F internally (See CMS00000333 at 7.3.3.2),  
9 that if so followed will ensure the absence of STEC in the ground beef products.

8 Id.

9 Initially, the Court overrules Cargill's objections in the first paragraph of its responses that  
10 the terms "elimination-step" and "subject ground beef products" are vague, ambiguous,  
11 overbroad, and improperly reference a different portion of the RFA request. The Court finds  
12 that Plaintiffs' definitions are properly set forth in the RFA request and are reasonably clear. See  
13 U.S. ex rel. Englund, 235 F.R.D at 685. The Court also denies as moot Cargill's objections to  
14 the term "subject ground beef products" because it appears that both Plaintiffs and Cargill are  
15 referring to the same products. The Court notes that Cargill does not contend that it cannot  
16 form an intelligent response to the RFAs using the defined terms, it merely challenges the  
17 validity, accuracy, and admissibility of the terms. The Court denies as premature Cargill's  
18 argument in the second paragraph of their responses that the correct standard is "lethality  
19 treatment" not "elimination-step." Fed. R. Civ. P. 26(b)(1) specifically states that "discovery  
20 need not be admissible in evidence to be discoverable." While the "elimination-step" definition  
21 and related evidence may not be admissible at trial, the Court finds that the subject RFAs seek  
22 relevant and permissible information for discovery purposes. Finally, the Court also denies as  
23 premature Cargill's argument in the third paragraph that Plaintiffs have not established the  
24 required chain of custody for the products at issue in this litigation. As discussed above, Rule  
25 26 does not require this proof for discovery purposes.

26 Cargill denied RFA Nos. 14-20, however, it is unclear whether Cargill denied the RFAs  
27 using Plaintiffs' definitions or denied them using Cargill's preferred term of "lethality treatment."  
28 Accordingly, the Court **STRIKES** the responses to RFA Nos. 14-20 and **ORDERS** Cargill to serve



1 new responses no later than **December 23, 2020** using Plaintiffs' definitions for "elimination-  
2 step" and "subject ground beef products." Pursuant to Fed. R. Civ. P. 36, if Cargill does not  
3 admit a matter, it must

4 specifically deny it or state in detail why [Cargill] cannot truthfully admit or deny  
5 it. A denial must fairly respond to the substance of the matter; and when good  
6 faith requires that [Cargill] qualify an answer or deny only a part of a matter, the  
7 answer must specify the part admitted and qualify or deny the rest. [Cargill] may  
8 assert lack of knowledge or information as a reason for failing to admit or deny  
only if [Cargill] states that it has made reasonable inquiry and that the information  
it knows or can readily obtain is insufficient to enable it to admit or deny.

9 Fed. R. Civ. P. 36(a)(4). In accordance with Rule 36(a)(4), if Cargill's amended responses  
10 require a qualified response, such as the paragraph(s) set forth after the denial in the original  
11 responses, Cargill may include the required qualification.

12 RFA No. 21 asked Cargill to "[a]dmit that you cannot ensure the absence of STEC  
13 in your ground beef products." Falkenstein Decl. at Exh. B. Cargill did not object to the RFA  
14 and responded

15 DENIED. Cargill's operation as an FSIS inspected food processor, its practices  
16 and procedures, prerequisite programs, good manufacturing practices,  
17 sanitation procedures, interventions and treatments and HACCP plans are  
18 appropriate safeguards. Cargill also affixes a label onto its shipped ground  
19 beef products with instructions to cook the product to 160 degrees F  
internally (See CMS00000333 at 7.3.3.2), that if so followed will ensure the  
absence of STEC in the ground beef products.

20  
21 Id. Plaintiffs' request to have Cargill's response to RFA No. 21 stricken is **DENIED**. Cargill  
22 denied the RFA without objection.

23 **IT IS SO ORDERED.**

24 Dated: 12/10/2020

25   
26 Hon. Barbara L. Major  
27 United States Magistrate Judge  
28