

DISTRICT COURT OF THE VIRGIN ISLANDS, DIVISION OF ST. CROIX

Katherine Willett v. Christopher Dahlberg

Willett v. Dahlberg, No. 1:24-cv-00024-MEM-EAH (D.V.I. Mar. 6, 2026) · No. 1:24-cv-00024-MEM-EAH ·

Decided March 6, 2026

SUMMARY

The District Court of the Virgin Islands addresses a motion to compel discovery in Willett v. Dahlberg. The dispute concerns Katherine Willett’s invocation of the Fifth Amendment in response to requests for admission and document requests involving an alleged transfer of funds, as well as requests for medical and professional-licensing records. The court’s discussion applies Federal Rules of Civil Procedure 26, 34, 36, and 37 and the law governing testimonial privilege and waiver.

OPINION

DISTRICT COURT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX || KATHERINE WILLETT, || || Plaintiff/Counter-Defendant, || || v. || 1:24-cv-00024-MEM-EAH || CHRISTOPHER DAHLBERG, || || Defendant/Counter-Plaintiff. ||

|| TO: Lee J. Rohn, Esq. David J. Cattie, Esq. ORDER THIS MATTER comes before the Court on the Motion to Compel, filed by Defendant/Counter-Plaintiff Christopher Dahlberg on November 24, 2025.

Dkt. No. 122. In the Motion, Dahlberg seeks an Order pursuant to Fed. R. Civ. P. 37 and LRCi 37.1 compelling Plaintiff/Counter-Defendant Katherine Willett to provide responses to certain discovery demands served upon her in this case. Willett filed an Opposition on January 9, 2026, Dkt. No. 136, and Dahlberg filed a Reply on January 13, 2026. Dkt. No. 139.

For the reasons that follow, the Court will grant in part andB dAeCnKy GinR pOaUrtN tDh e Motion to Compel. I. Amended Complaint, Answer & Counterclaim, Further Litigation Although no Scheduling Order has been entered in this case, litigation has been proceeding vigorously since the Complaint filed by Willett in the Superior Court of the Virgin Islands was removed to this Court in October 2024.

The Court will provide some procedural background to place the current Motion to Compel in context. Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 2 After the Complaint was removed, Willett filed an Amended Complaint. Dkt. No. 7. She alleged that, on numerous occasions, Dahlberg “pushed, hit, threatened and heIdld Plaintiff down to the ground” which caused a spinal injury requiring multiple surgeries.. ¶ 5.

As a result of his actions, Willett incurred damages including medical expenses, permanent injuries, post-traumatic stress disorder, chronic pain, loss of income, and economic losses. ¶ 11. She alleged claims for assault (Count I); trespass (Count II); intentional infliction of emotional distress (Count III); false imprisonment (Count IV); trespass to chattels (Count V); conversion (Count VI); and battery (Count VII).. at 4-5.

In November 2024, Dahlberg filed an answer and counterclaims. Dkt. No. 9. He alleged that the parties had been married from June 2009 until the Superior Court dissolved their marriage in February 2024. ¶ 6. Willett—a licensed medical provider—has experienced mental and psychological issues for years, including bipolar disorder, and admitted to Dahlberg, inter alia, that she lied on her Virgin Islands medical license application. ¶¶ 18d- 21.

Further, Willett stole \$19,000 from his bank account and refused to return the funds.. ¶¶ 40-41. Dahlberg alleged counterclaims for abuse of process (Count I); conversion (Count II); and intentional infliction of emotional distress (Count III).. at 8-10. One of the Counterclaim allegations provided: 40.

In 2024, Katherine Willett stole \$19,000 from Counter-Plaintiff's bank account, without any authority to do so, and she has refused to return those funds. Dkt. No. 9 ¶ 40. Willett answered the Counterclaims. Dkt. No. 17.

In response to Paragraph Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 3 Deny. In 2024, while the Parties were still married, Plaintiff/Counter Defendant with Defendant/Counter Plaintiff's agreement and permission paid the two children's Montessori tuition out of Defendant/Counter Plaintiff's account.. ¶ 40.

The parties extensively litigated the terms of a protective order. During that litigation, Willett's counsel, Lee J. Rohn, Esq., filed an exhibit in April 2025 consisting of an October 2022 email from Dahlberg to Lydia Moolenaar, Esq., Dahlberg's attorney in the Superior Court divorce/domestic violence proceedings, that revealed attorney-client communications.

Dkt. No. 37. On April 16, 2025, Dahlberg's attorney in this Court, David J. Cattie, Esq., filed a Motion for Sanctions against Willett and Attorney Rohn, charging that Willett impermissibly accessed Dahlberg's email account and stole his privileged communications. Dkt. No. 38.

The motion asserted that the crime fraud exception to attorney-client privilege applied and accused both Willett and Attorney Rohn of violating the Computer Fraud & Abuse Act, the Stored Communication Act, and Virgin Islands criminal statutes. Dkt. No. 39.

The Court held an evidentiary hearing on the motion on July 29, 2025. During Willett's testimony, Attorney Cattie asked questions pertaining to Defendant's Exhibit 13 (admitted into evidence)—Dahlberg's Truist Bank statement that indicated, inter alia, that "Katie Dahlberg" had verified the

account via PayPal on 12/27/23, and an \$18,080 withdrawal for “St. Croix Montess” was made on 1/12/24.

To all of the questions concerning this exhibit and withdrawal of funds, including whether Willett accessed the Truist account from Dahlberg’s Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 4 that, upon the advice of her attorney, she was “pleading the Fifth [Amendment].” Dkt. No. 137 at 11.

In his testimony, Dahlberg asserted that he had set up the Truist bank account shortly after he and Willett separated, and he never gave her authorization to access it. She appeared to have withdrawn \$18,080 for a school payment. at 13.

The Court issued a Report & Recommendation on January 9, 2026 that recommended granting in part Dahlberg’s Motion for Sanctions, to the extent that sanctions in the form of attorney’s fees and costs be assessed on Willett related to the litigation expenses surrounding the sanctions motion. Dkt. No. 137 at 40-41.

The Court recommended denying the motion in part to the extent that Dahlberg had asked that the case be dismissed.. The R&RII is currently on hold. In August 2025, Attorney Cattie sent a letter to Attorney Rohn, pursuant to LRCi 37.1, outlining deficiencies in certain requests for admission and requests for production of documents submitted by Dahlberg, Dkt.

No. 122-1, and arranged a meet and confer with Attorney Rohn to resolve the disputes. Dkt. No. 122 at 1. The meet and confer took place on September 2, 2025 by telephone; the parties were unable to resolve all of their outstanding issues..

As a result, Attorney Cattie sought an informal conference with the Court, pursuant to LRCi 37.1(c). At the October 30, 2025 conference, the Court directed Willett to supplement her responses to Dahlberg’s discovery demands by November 14, 2025 and also directed counsel to brief the issues related to Willett invoking her Fifth Amendment right against self- Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 5 the other requests for production of documents were insufficient, he should brief that issue as well. at 2.

On November 17, 2025, Willett supplemented her responses. Dkt. No. 122-3. While she executed requested medical authorizations, she did not supplement her other responses and refused to supply requested medical or business records. Dkt. No. 122. Consequently, her attempt to avoid the Motion to Compel on November 24, 2025.

In the Motion to Compel, Dahlberg challenges two of Willett’s responses to his requests for admissions in which Willett invoked the Fifth Amendment privilege: 11. Admit that on January 12, 2024 you transferred \$18,080.00 from Responder Christopher Dahlberg’s Truist One bank

account through a web-based application.: Plaintiff declines to respond pursuant to her 5 Amendment Rights on the advice of counsel.

12. Admit that you have no documentation (including text messages, direct messages, e-mails, letters, correspondences) in which Christopher ResponDsaehlberg authorized you to access his Truist One bank account to withdraw the \$18,080.00 taken on January 12, 2024.: See response to Request for Admissions No. 11. Dkt. No. 122 at 3, citing Dkt. No. 122-5. Dahlberg argues that Willett waived her Fifth Amendment objections by (1) filing her responses beyond the 30-day deadline set out by Fed.

R. Civ. P. 36(a)(3), and (2) admitting in her Answer to the Counterclaims that she took the money from the Ida.ccount with Dahlberg's permission, thereby disclosing the incriminating evidence. at 4-8. Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 6 Second, Dahlberg argues that Willett failed to establish that invIdoking the Fifth Amendment to refuse production of documents comported with the law.. at 10-14.

The demand and response at issue are as follows: 1. Any and all documents in your possession or otherwise accessible to you related, in any way, to the transactions shown on the Truist Statement (bates numbered at CD-000122-000127) including, but not limited to, any PayPal account statements or transaction records for 2023 and 2024, for any account that was (or is) in your name or any PayPal account over which you had access at any time in 2023 and/or 2024, including any accounts which are now closed.

The word "transactions" in this request refers to the January 12, 2024 internet payment for \$18,080.00 [shown] and the December 27, 2023 "deposits, Responcsredits and interest" transactions [not shown here]. th: Plaintiff declines to respond pursuant to her 5 Amendment Rights on the advice of counsel. Dkt. No. 122 at 10, citing Dkt. No. 122-6. Dahlberg contends that the Fifth Amendment does not apply to the production of documents created bGy & o tVh eFrasr m(ssu, cLhL aCs v P. aHyaPratlfo,r adn Fdi rthe eIyn sw.

Ceroe. not "testimonial." Dkt. No. 122 at 10-11 (quoting, No. 09-cv-1324, 2011 WL 4565632, at *5 (M.D. Pa. Sept. 29, 2011)). In addition, Willett could not rely on thceo anctet notf production rule to avoid production because that rule does not concern whether the produci nogf the documents is incriminatory bludt. whether the testimony inherent in the act of the documents is incriminatory.

The party Iodpposing production must articulate a basis for invoking the rule, and Willett did not do so.. at 12-13. And even if possession and production of these records were incriminating, the Fifth Amendment protection does not apply if the existence and authenticity of the records was already known Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 7 Id. to the "foregone conclusion exception." at 13.

Willett admitted to withdrawing the funds from the account and the records showed the withdrawal Iwdas conducted through Willett's PayPal Bac. coRuenqtu, eessttasb floisrh Pinrgo dthuaactt itohne PayPal records exist.. Dahlberg asked Willett to produce medical records and her application to the V.I. Board of Medical Examiners ("VIBME"): 14. All applications (including any amended or corrected version thereof), forms, letters, correspondence, or other communications between you Responasned the Virgin Islands Board of Medical Examiners exchanged at any Suppletmimeen. tal Response: Objection irrelevant.: Plaintiff states that her search to date has not uncovered any such documents.

Plaintiff will produce any responsive documents should any be discovered. 15. Any medical reports, notes, tests, prognoses, prescriptions, bills, invoices, etc. related, in any way, to any treatment you have ever received regarding any mental illness including, but not limited to, Respondseepression, bi-polar disorder, alcohol abuse, narcotics abuse, prescription drug abuse.

Suppleme:n Otbajle cRteiosnp,o onvseerly broad as it is not limited to time and scope and as such seeks irrelevant information.: Plaintiff states she has no medical records or related documents in her possession responsive to this request However, please see the executed Medical Records and Information (Mental Health Care Providers) and Medical Records and Information (Health Care Providers) authorizations produced and attached hereto as Bates Nos. KW000302- KW000304.

1R6e.s ponAslel records, reports, notes, tests, prognoses, prescriptions, bills, Suppleimnveonictaesl, Retecs. pfroonms eyour treatment at Three Rivers Behavioral Health.: Objection irrelevant as to time and scope.: Plaintiff states she has no records or related documents in her possession responsive to this request.

However, please see Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 8 and Medical Records and Information (Health Care Providers) authorizations Id produced and attached hereto as Bates Nos. KW000302-KW000304.. at 14-15 (quoting Dkt. No. 122-3). Dahlberg argues that these responses are insufficient: Willett was required to obtain these documents herself, as she has the legal right to obtain the IdIoI.c umWenitlsl eotnt 'ds eOmpapnods.i tio. ant 15.

In her Opposition, Willett acknowledges that Dahlberg issued his Requests for Admission on June 25, 2025, Dkt. No. 68, which were due on July 25, 2025. Dkt. No. 136 at 3. On July 29, 2025, the Court held the evidentiary hearing on the Motion for Sanctions, where Willett asserted her Fifth Amendment privilege against self-incrimination fourteen times related to questioIdns concerning Willett accessing Dahlberg's bank account and "stealing" money from him..

She points out that Dahlberg did Indo.t object to these responses but relied on them to obtain an adverse inference against her. On July 30, 2025, Willett responded to Requests for Admission 11 and 12 (above)Id c.onsistent with her testimony at the hearing by invoking her Fifth Amendment privilege. at 4.

On August 1, 2025, Dahlberg received Willett's response to the Second Request for Production (No. 1, above) where she invoked her Fifth Amendment privilege consistent with her testimony at the hearing. Willett contends that she properly and timely asserted her Fifth Amendment privilege and it has not been waived. at 4-11. She asserted the privilege when her fear of incrimination became substantial and real—at the evidentiary hearing—which partially focused on her alleged illegal access to Dahlberg's bank account to steal funds from him.

Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 9 have been premature because she did not have a genuine fear of criminal prosecution at that time. Her answer to the Counterclaim stated that she had Dahlberg's permission to access the funds, but after the briefing on the Motion for Sanctions, Dahlberg was accusing her of a crime. She realized that if Dahlberg continued to deny that she had permission to pay for their children's schooling (that Willett believed she had), she could face criminal prosecution or be compelled to provide evidence that could be used to prosecute her criminally.

She therefore timely invoked her Fifth Amendment privilege when her fear became real—a situation created by Dahlberg. at 7-8. Further, responding to requests for admissions five days late did not waive her privilege. at 9. It was Dahlberg who waived any objection by not objecting to Willett's assertion at the hearing, that took place four days after the requests for admission were due. at 10.

Dahlberg also waived any argument that Willett waived the privilege by failing to identify any prejudice to him from Willett's invocation of the privilege. Even if he did not waive his objection, Willett's two late admissions do not waive the privilege because failure to comply with technical parameters of a rule of civil procedure for five days should not render a constitutionally protected right waived in its entirety, and Dahlberg failed to cite any case supporting his position. at 10-11.

Willett then asks the Court to allow her to amend her Answer to Dahlberg's Counterclaim if the Court finds that it "distorts the truth of these proceedings such that it affects Willett's ability to assert her Fifth Amendment privilege." at 11-12. While a party Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 10 response to the Counterclaim is considered an admission, nothing prohibits amendment, and Willett has no intention of asserting permission as a defense moving forward. at 12.

The Court should also permit her leave to amend her admissions. She "moves the Court" to permit her to amend the admissions to assert her privilege as consistent with her testimony at the hearing, which would promote presentation of the merits of the action and not prejudice either party. at 13. Next Willett argues that the privilege precludes her from producing any PayPal records she may possess because they may "implicitly communicate inculpatory statements of fact that the Fifth Amendment protects.".

Dahlberg speculates that Willett used a PayPal account to transfer money from his bank account to St. Croix Montessori school, but there is no evidence Willett had such an account and no evidence linking her to the PayPal deposits. at 15. Assuming that Willett produced PayPal records, she would be potentially admitting: (1) she had a PayPal account; (2) the PayPal account was used to deposit funds into Dahlberg's account; (3) the PayPal account was used to transfer funds to the school; and (4) the authenticity of those documents.

Requiring Willett to produce her PayPal account "provides too many links in the chain of evidence to not qualify as testimonial" and requires her to incriminate herself. Moreover, Dahlberg cannot independently authenticate Willett's PayPal records. at 16.

Finally, the Court should deny Dahlberg's motion to compel production of Willett's VIBME File, medical records, and Three Rivers Behavioral Health ("TRBH") records. Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 11 for the VIBME files is duplicative; and Willett has already executed authorizations for him to obtain her medical and TRBH records. at 16-17.

Regarding the VIBME file, the Court ruled that Dahlberg was entitled to Willett's initial VIBME application but quashed the remaining records as irrelevant; the records Dahlberg now seeks were encompassed within that subpoena duces tecum to the VIBME. at 17-18.

The Court should therefore deny Dahlberg's motion to compel the VIBME file. at 18. Willett does possess the requested documents. As to Willett's medical and TRBH records, she executed authorizations on November 17, 2025 as agreed at the October 30, 2025 informal conference. Dahlberg claims she is obligated to obtain the documents as they are under her control. at 18 & n.16.

But they are also under his control since he has the authority to obtain them, and the motion to compel them is frivolous. Dahlberg points out that when Willett responded to Counterclaim 40, she made an affirmative admission that she took the money but with Dahlberg's express permission. Dkt. No. 139 at 2. She could have invoked the Fifth Amendment at that time (as the allegation was that she "stole" money from his account) or denied it, but she did neither.

This is not a simple case of untimeliness but an affirmative statement of innocence—not a mere failure of timely invoking the privilege. She now seeks to amend her Counterclaim, but an Opposition is the wrong mechanism to seek such relief. Such gamesmanship (permitting a party to amend an answer because the admission blew up in her face) is the antithesis of a search for truth. Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 12 is advantageous. at 2-3 (citing Dkt.

No. 136 at 12 that she no longer intends to assert "permission" as a defense which, in Dahlberg's view, is an admission she lied in her answer to the Counterclaim). Invoking the privilege in

response to questions at the hearing did not excuse the fact that Willett failed to invoke it when responding to the Counterclaim or to the requests for admission and constitutes waiver. at 3.

Willett's statement that the hearing gave her a real and substantial fear of criminal prosecution does not carry the burden as she has not identified any law enforcement investigation into her conduct. at 3-4. Dahlberg does not speculate that Willett used her PayPal account to transfer money from his bank account to the school because Willett admitted to that fact in her answer to the Counterclaim, and the records show an account verification conduct was done through PayPal to Dahlberg's bank account shortly before the transfer—the method by which PayPal confirms access to a bank account.. at 4-6, citing Dkt.

No. 139-1. Dahlberg adds that Willett admitted she had a PayPal account in response to Interrogatory 13, that asked her to identify her email address associated with any PayPal account she has used since 2020. at 6 (citing Dkt. No. 139-2).

Having admitted she had a PayPal account, and where the direct and circumstantial evidence showed her account was used to complete the transfer, the foregone conclusion rule requires her to produce the records. The fact there may be other Katie Dahlberg accounts does not overcome the evidence that her account was used to complete the theft.

As to the VIBME records, the Court has ruled on their relevance. Whether Willett actually physically possesses them is Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 13 DISCUSSION I. Applicable Standards A. Discovery Under Rule 26 Federal Rule of Civil Procedure 26(b)(1), concerning discovery scope and limits, provides, inter alia: Unless otherwise limited by court order, the scope of discovery is as follows: Parties 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, considering the importance of the issues at stake in the action, the amount in controversy, the 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. Fed. R. Civ. P. 26(b)(3) (v1.) Where discovery is committed to the broad discretion of the court, 869 F.3d 193, 220 (3d Cir. 2017).

The Third Circuit has described the Rule's relevancy standard as "undemanding," noting that courts "employ a liberal and broad discovery-type standard to determine whether the desired information is relevant." No. 22-2608, 2023 WL 3801820, at *2 (3d Cir. Apr. 10, 2023). The Federal Rule of Civil Procedure 36 governs requests for admissions.

Rule 36(a)(3) provides: “A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection. Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 14 36(b) concerns the effect of an admission and withdrawing or amending it. “A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended[.]” Fed.

R. Civ. P. 36(b). Federal Rule of Civil Procedure Rule 34 governs the production of documents. The rule provides that, for each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons.

The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection.... 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[.]

Fed. R. Civ. P. 34(b)(2)(B), and (C). As with all discovery, a party's requests may seek “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).

The decision to find a waiver of objections under Rule 36(a)(3) is within the sound discretion of the court. C. Motion to Compel, 340 F.R.D. 232, 238 (D.N.J. 2022) (citing cases). Rule 37 of the Federal Rules of Civil Procedure authorizes a party to move to compel another party to comply with discovery obligations.

The Rule provides, *inter alia*, that “[o]n notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery.” Fed. R. Civ. P. 37(a)(1). Under Rule 37, a court may issue an order compelling discovery where a party fails to answer an interrogatory under Rule 33 or fails to produce documents in response to a request for production of documents.

Ins. Corp. v. Port Vue Plumbing & Heating, Inc., No. 23-cv-1088, 2024 WL 5118431, at *1 (W.D. Pa. Dec. 16, 2024). A party moving to compel discovery has the burden of proving the relevance of the requested information., 203 F.R.D. 195, 196 (E.D. Pa. 2001). “Once that initial burden is met, the party resisting the discovery has the burden to establish the lack of relevance by demonstrating that the requested discovery (1) does not come within the broad scope of relevance as defined under Fed.

R. Civ. P. 26(b)(1), or (2) is of such marginal relevance that the potential harm occasioned by its disclosure outweighs the harm to the party's privacy or other interests.” Fed. R. Civ. P. 26(b)(1), (2).

presumption in favor of broad disclosure.”, No. 2:18D-C V-03F4if5th, 2 A0m22e nWdLm 1e6n4t2 P3r9i4v,i alet g*e4 (W.D. Pa. May 24, 2022) (citation modified).

The Fifth Amendment protects against self-incrimination through its provision that “[n]o person... shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. It can be invoked “in anKya sptrigoacer evd. iUnngi,t ecdiv Silt aotre sc,riminal, administrative or judicial, investigatory or adjudicatory[.]” 406 U.S. 441, 444 (1972).

The right protects against disclosures “which the witness reasonably believes could be used in as cerei malisnoa Ul npiroesde Sctuattieosn v o. Yr ucroauslodv liechad to other evidence that might be so used.” at 444– 45; 580 F.2d 1212, 1215 (3d Cir. 1978) (privilege extends “to answers that would in themselves support a conviction but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant.”) Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 16 (citation modified).

If a party voluntarily reRveoaglesr isn vc.r Uimniitneadt iSntga tfeascts, the party cannot invoke privilege to avoid disclosure of the details., 340 U.S. 367, 373 (1951). The Fifth Amendment does not bar the production of all incriminating evidence, “but applies only whUenni ttehde Satcactuesse vd. iAsp cpolem MpealclePdrot oC ommapkuet ear Testimonial Communication that is incriminating.”, 851 F.3d 238, 247 (3d Cir.

2017). “To be testimonial, a communicatIdo.n must either explicitly or implicitly relate a factual assertion or disclose information.” (citation modified). Invocation of the Fifth Amendment poses substantial problems for an adverse party who is deprived ofS a.E s.oCu. vrc. eG roaf yinstfoonrem Nataisohn, tlnhca.t, might conceivably be determinative in a search for the truth.

25 F.3d 187, 190 (3d Cir. 1994). Further, in determining whether to allow defendant to assert this privilege, the court is required to “balance the defendant's rights aglani rnes tP etnhne iCnetnetrreaslt Ss eocfs t. hLeit pigla.,intiff in full discovery and speedy disposition of the civil action.” 347 F. Supp. 1347, 1348R o(Eb.eDr:t sP av..1 U9n7i2te)d. States The privilege is not self-executing,, 445 U.S. 552, 559 (1980) and can beR owgaeirvse,d by failing to insveoek ael isto iUn nai tteimd eStlya tmesa vn.n Ferrie arnsodn by disclosing incriminating evidence.

340 U.S. at 373; 945 F.2d 650, 660 (3d Cir. 1991) (privilege is not “self-executing and thus must be claimed when self-incrimination is threatened.”). The party Bwrohck vcl. aGiemrsa ctehe privilege has the burden of establishing the existence of the privilege., 110 F.R.D. 58, 63 (D.N.J. 1986).

In cases where the waiver of the privilege is disIdp.uted, the party claiming the privilege also has the burden of Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 17 II. Application A. Requests for Admissions Willett invoked the Fifth Amendment privilege in response to two requests for admission and one request for production, which Dahlberg has challenged.

As Willett acknowledges, the requests for admission, served on June 25, 2025, were due 30 days later, on July 25, 2025. She served her responses on July 30, 2025, five days after the deadline and a day after the July 29, 2025 evidentiary hearing. Dkt. No. 136 at 3, 4, 10. Rule 36 explicitly provides that the matter is “admitted” unless, within that 30-day time frame, the responding party serves a written answer or objection.

Fed. R. Civ. P. 36(a)(3). Thus, by operation of the Rule, Dahlberg’s requests for admissions 11 and 12 are admitted. Willett argues that this late response does not waive her Fifth Amendment privilege because Dahlberg waived any objection to her asserting the privilege by not objecting at the June 29, 2025 hearing and by failing to identify any prejudice he experienced because of the assertion, and failure to comply with the rule “should not” render a constitutionally-protected right waived in its entirety. at 9-10.

Willett has cited no Rule or case law in support of her position that because Dahlberg did not object to her invocation of her Fifth Amendment rights at the hearing he waived any right to object to her invocation of that right in her late responses to the requests for admissions, and the Court rejects that argument. And contrary to her assertion, Dahlberg identified prejudice from Willett’s assertion.

Dkt. No. 122 at 8 (“It would be extremely Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 18 funds] in this case while simultaneously preventing Dahlberg from challenging her position.”); at 10 (“Willett has ‘cherry picked’ her invocation [of the Fifth Amendment] which is prejudicing Dahlberg’s ability to substantiate his claims.”).

As to Willett’s argument that failure to comply with the deadlines in Rule 36 “should not” render a constitutionally-protected right waived in its entirety, her late response to the admissions does not implicate waiver: it simply provides that the responses are “conclusively established.” Fed. R. Civ. P. 36(b).

The way such admissions can be withdrawn or amended is by motion.. No motion has been filed in the seven months since Willett responded to the admissions. Although her Opposition asked the Court to grant her leave to amend the admissions the Court found that they were admitted, Dkt. No. 136 at 12-13, that contingent request did not come by way of a motion.

An opposition to a motion to compel is not the vehicle to seek such relief pursuant to the Rule. Thus, under Rule 36, admissions 11 and 12 are established., 543 B.R. 833, 834-35 (Bankr. N.D. Ill. 2015) (“Rule 36 requires a respondent to either answer or object within 30 days and if the respondent does neither then the matter is deemed admitted.

Fed. R. Civ. P. 36(a)(3). If a matter is admitted, then the only way for a party to assert an objection is by withdrawing the admission by motion to the court. Moreover, this rule complies with the

Supreme Court's directive that the Fifth Amendment privilege against self-incrimination may not be relied upon unless it is invoked in a timely fashion.

As such, the Debtor here should have invoked his privilege as an answer to the Plaintiff's Complaint and Amended Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 19 In re Le-Nature's, Inc. privilege is considered waived."); 380 B.R. 747, 750-51 (Bankr. W.D. Pa. 2008) (requests for admissions not responded to in 30 days admitted, even where objection could have been based on Fifth Amendment right).

Willett asserts that operation of the Rule should not equate to her waiving her Fifth Amendment rights because those rights are so important. But even if the Court were to conclude that requests for admission 11 and 12 were not admitted by operation of Rule 36, it would still hold that WillettU w.Sa. viv. eOdn eh Meri lFliaofnth T Ahrmeee nHdumndernted r Tigwhetsn tbyy-T nwoot Tihnovuoskainngd Tthwaot pHruontdercetido Fno irnt ya- Ttiwmoe lDyo mllaarnsn &er F. ifty-Eight Cents, 938 F.2d 433, 439 (3d Cir.

1991) (explaining that a party wishing to assert his Fifth Amendment privilege in response to document requests is R"orbeeqrutisr,ed to assert timely objections in response to individual discovery requests."); 445 U.S. at 559. Dahlberg argues that Willett waived that protection over a year ago because she did not assert it in response to Counterclaim 40 that accused her of "stealing" \$19,000 from his bank account without any authority to do so.

Dkt. No. 9 ¶ 40. But instead of raising her Fifth Amendment rights in response to an allegation that accused her of stealing—a word that certainly invokes a crime—Willett not only admitted taking the money but added that she was justified in doing so based on permission given by Dahlberg. Dkt. No. 17 ¶ 40.

In the year since she filed that AnsPwaerri ltlao vt.h l eA PC oWuonrtledrwcliadiem S,e srhves.,h VaIs Innoc.t, moved to amend it, and she is bound by that pleading., 368 F.3d 269, 275 (3d Cir. 2000). But, similar to her request to amend her admissions, Dkt. Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 20 id Answer to the Counterclaim,, at 11-12.

As counsel knows, an Opposition is not the proper vehicle to seek leave to amend, and the Court rejects such an improper request. Willett argues that her invocation of the privilege was not untimely because she asserted it "when her fear if incrimination became substantial and real"—at the July 2025 evidentiary hearing—which focused in part on her alleged illegal access to Dahlberg's bank account causing her to invoke the Fifth Amendment fourteen times.

Dkt. No. 136 at 7. According to Willett, if she had attempted to assert the privilege in response to the Counterclaim, it would have been pIrde.mature because she did not have a genuine fear of criminal prosecution at that time.

The Court rejects this argument for a number of reasons. First, as indicated above, the Counterclaim accused her of a crime—stealing—and thus she should have appreciated the risk that if she answered, she might incriminate herself. But her position was that she had to take money. Given that was her position, she had no genuine fear of criminal prosecution at that time.

On April 16, 2025, Dahlberg filed his Motion for Sanctions, Dkt. No. 38, explicitly accusing Willett of violating certain criminal statutes in stealing money from his bank account. Dkt. No. 39. Even if the Court accepted Willett’s assertion that when she answered the Counterclaim she did not have a fear of criminal prosecution, it is beyond cavil that the filing of the Motion for Sanctions should have clearly put a fear of criminal prosecution in her sights.

That was certainly the time to re-evaluate her Answer to the Counterclaim and invoke her Fifth Amendment privilege. However, it was not until July 29, *Willett v. Dahlberg* 1:24-cv-00024-MEM-EAH Order Page 21 first she had a fear of criminal prosecution and therefore invoked her Fifth Amendment privilege to questions that focused on “stealing” those funds. She does not explain why the Motion for Sanctions, explicitly raising possible criminal violations, did not induce a fear of prosecution when, in the Court’s view, it clearly should have.

Willett delayed in invoking the privilege and did not carry her burden of showing that she did not waive it. Thus, even if Requests for Admission 11 and 12 were not admitted by operation of Rule 36, Willett waived her Fifth Amendment privilege that she asserted in response to them, and the Court rules that the Request for Admission 12 is not admitted.

1. Fifth Amendment Privilege Dahlberg seeks to compel Willett’s response to Request for Production 1 that seeks “any and all documents” relating to the December 2023 Truist Bank withdrawals, including her PayPal account statements, to which Willett declined to respond citing her Fifth Amendment privilege. *See* *United States v. Williams*, 2006 WL 3195, 2008 WL 3791339 (E.D.

Pa. Dec. 21, 2008), the district court discussed two U.S. Supreme Court cases that opined on the Fifth Amendment privilege in the context of seeking production of documents: *Rogers v. United States*. The Court also concludes that Willett waived the Fifth Amendment privilege by disclosing incriminating evidence., 340 U.S. at 373.

In her Answer to the Counterclaim—still on the docket—Willett admitted taking the motion to the court. She testified that she did so with Dahlberg’s permission. Having voluntarily revealed “incriminating facts, that party cannot invoke the *Willett v. Dahlberg* 1:24-cv-00024-MEM-EAH Order Page 22 Mr. Hall has an individual Fifth Amendment right against self-incrimination. She testified, however, is not implicated by the mere fact that some of the documents that the plaintiff seeks may contain incriminating information.

530 U.S. 27, 35-36 (2000). The privilege against self-incrimination, however, may be implicated if the act of producing the documents communicates information about the existence, custody, or authenticity of the documents. Determining whether the production of documents is substantially communicative and testimonial to implicate the self-incrimination privilege depends on the facts and circumstances of each particular case.

425 U.S. 391, 410 (1976). In the U.S. Supreme Court held that a request for an accountant's work papers did not implicate the Fifth Amendment rights of a taxpayer because the government was not relying on the taxpayer's act of production to prove the existence or location of the documents, which the Court described as a "foregone conclusion." at 411.

In contrast, the Court held the Fifth Amendment rights of a defendant were violated when he was compelled to respond to broad government document requests used to "identify potential sources of information and to produce those sources." at 41.. at *2. Willett argues that the privilege precludes her from producing her PayPal records because they may "implicitly communicate inculpatory statements of fact that the Fifth Amendment protects" as she would be potentially admitting that: she had a PayPal account, that account was used to deposit funds into Dahlberg's account and to transfer funds to the school, and the documents were authentic, Dkt.

No. 136 at 13, and producing the documents "provides too many links in the chain of evidence to not qualify as testimonial." at 15, Dahlberg contends that the PayPal records are not testimonial, citing, 517 F. Supp. 3d 187, 190-91 (S.D.N.Y. 2021) and, even if they were, the "foregone conclusion" exception applies and requires Willett to comply with the demand for production.

Although Willett asserts there is no evidence she has a PayPal account, Dkt. No. 136 Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 23 Dkt. No. 113 at 3, showing account information for Dahlberg's Truist Bank account indicating two "AcctVerify Paypal [] Katie Dahlberg" entries on 12/27/23 under "Deposits, credits and interest" in the amount of 0.04 and 0.11.

Dkt. No. 122 at 10. This exhibit shows that Willett had a PayPal account and linked her to the PayPal deposits. Willett did not attempt to explain away these facts, other than mentioning that a search showed seven PayPal accounts in the name of Katherine Dahlberg. Dkt. No. 113 at 3. Further, Willett responded to one of Dahlberg's Interrogatories asking her to "identify your email address associated with any PayPal account you have used for any purpose since 2020" with "katiawillettdahlberg@gmail.com." Dkt.

No. 139-2 at 10. In the Answer to the Counterclaim, she admitted taking money from Dahlberg's account, albeit with permission. This evidence shows that she admitted she had a PayPal account,

and that the account was used to deposit 2 funds into K Dahlberg's bank account and to transfer funds to St. Croix Montessori.

In, a third party refused to produce telephone records (bills and invoices) to the plaintiffs, citing her Fifth Amendment protections. The court ruled that "it is undisputed that there is no Fifth Amendment privilege that attaches to the records themselves," as the records "were created by a third party and do not constitute [that person's] compelled testimony." at 190.

Here, too, the records were created by PayPal. As explained in No. 17-cv-1142, 2019 WL 1745664, at *2 (E.D. Pa. Apr. 18, 2019), "[t]he Fifth Amendment does not protect a person from producing documents in her possession that were created by third parties.

Such documents may include, for example, accountant's work papers, bank statements, and W-2 reports of income." But even if the Court were to hold that Willett's production of the PayPal records was testimonial, the foregone conclusion exception applies because Dahlberg is not required to produce the documents to prove the existence or location of the documents.", 2008 WL 3791339 at *2.

Under this exception, "the Fifth Amendment does not protect an act of production when any potentially testimonial component of the act of production—such as the existence, custody, and authenticity of evidence—is a foregone conclusion." *Acopnplelu Msiaocn P trhoa Ct oamddpsu ltiertle or nothing to the sum total of the [opspeo sailnsgo plna rrtay 'Gs]e ninefroicr mPhaatiromn.s"*.

Pricing Antitrust Litig, 851 F.3d at 247 (citation modified);, MDL No. 2724, 2019 WL 13444929, at *2 (E.D. Pa. Dec. 23, 2019). Dahlberg knows that the PayPal records exist, that PayPal has custody of the records, and that PayPal could authenticate them (in addition to the record already being admitted into evidence), and thus the foregone conclusion exception applies.

Knopf, No. 23-cv-02965, 2024 WL 919082, at *13 (D.N.J. Mar. 4, 2024); at 190–91 ("Even if Ringel had shown that the act of production privilege applied here, the foregone conclusion exception to that privilege would also apply.

The existence, control, and authenticity of the telephone records are a foregone conclusion. The plaintiffs can confirm that the telephone records exist and can authenticate them through the telephone company. *Willett v. Dahlberg* 1:24-cv-00024-MEM-EAH Order Page 25 The Court concludes that Willett must be compelled to produce all documents, in response to Request for Production 1, including but not limited to PayPal account statements for 2023 and 2024 related to the Truist account transactions on December 27, 2023 and the January 12, 2024. *In re* the 2017–2018 Equifax Data Breach Litigation, 2024 WL 1000000, at *10 (E.D. Pa. Mar. 1, 2024).

Related to Communications with VIBME, Mental Health Treatment, and Treatment at Three Rivers Behavioral Health Dahlberg seeks to compel prosudpurcation of documents in response to his Requests for Production 14, 15, and 16 (set out) that seek Willett's applications/correspondence with the VIBME, medical records related to treatment for any mental illness, and medical records related to treatment at Three Rivers Behavioral Health.

Dkt. No. 122 at 14-15. He states that Willett's responses that she does not have the records and that she has given authorizations for Dahlberg to obtain them are insufficient, and she herself must produce all discoverable documents in response to a request if they are in her control or she has the legal right to obtain them. Willett responds that Dahlberg has not shown that the documents are relevant.

Dkt. No. 136 at 17. As to the VIBME records, the Court previously ruled that Dahlberg was entitled to her initial application to the VIBME but that the production of the remaining records that VIBME may have in its file were irrelevant, and those documents were encompassed in Dahlberg's subpoena duces tecum to the VIBME.. at 17-18, citing Dkt. No. 104. Also, since Willett indicated she did not have thied VIBME documents, the court cannot compel her to produce something she does not have.. at 18.

Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 26 The Court agrees with Willett. The Court has already spoken on the issue of relevance in relation to Dahlberg's effort to obtain Willett's entire file with the VIBME, holding that Willett's "initial VIBME application may be relevant to issues of her credibility," and discoverable, but quashed Dahlberg's subpoena to the extent that he sought other documents in Willett's VIBME file.

Dkt. No. 104 at 15-16. The relevance of the VIMBE file has already been addressed and Dahlberg makes no additional argument in support of the Motion to Compel. Dahlberg has been permitted to obtain Willett's initial VIBME application directly from the VIBME. Further, given that Willett states she does not have a copy of that application, it is unclear why Dahlberg is seeking to have Willett obtain it and then produce it to him, when he should have already obtained that document himself.

The Motion to Compel documents in response to RFP 14 is denied. As to Requests for Production 15 and 16, Dahlberg seeks documents related to mental health issues in general and also records of Willett's treatment at Three Rivers Behavioral Health. Willett has executed authorizations for Dahlberg to obtain her medical records from both her Mental Health Care Providers and Health Care Providers.

In aSdedei tKiowna, nszhaea s vta. Bterso swzne does not have records that would be responsive to those two requests., 05-cv-5976, 2009 WL 10873025, at *2 (D.N.J. Apr. 15, 2009) ("The Court cannot compel Defendants to produce discovery that they represent they do not have."). Dahlberg

has not indicated that he has had any issues in obtaining the medical records based on these authorizations and why he would also need Willett to produce the medical records. Becoonred Ssc. rTehwe PCrooudrst.

Willett v. Dahlberg 1:24-cv-00024-MEM-EAH Order Page 27 Liab. Litig., No. MDL 1014, 1995 WL 925666, at *1 (E.D. Pa. Sept. 15, 1995) (concluding that plaintiffs who executed authorizations for medical records need not produce their medical records in response to defendants' discovery). U.S. DISTRICT COURT ORDERED Based on the analysis above, it is hereby GRANTED IN PART AND DENIED IN PART.

DPAahRITberg's Motion to Compel, Dkt. No. 122, is GRANTED Requests for Admissions 11 and 12. 2. TAhDeM MIToTtioEnD is to the extent that are GRANTED COMPELLED 3. TRheeq uMeostti foonr iPs roduction 1 to the extent that Willett is to respond to DENIED. 4.

The Motion Requests for Production of Documents 1a4t, W 1i5ll, e attn sdh 1a6ll not be compelled to respond to Dahlberg's. ENTER: Dated: March 6, 2026 /s/ Emile A. Henderson III
EMILE A. HENDERSON III U.S. MAGISTRATE JUDGE