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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
11

12 ESMÉ BIANCO,
13 Plaintiff,
14 vs.

15 BRIAN WARNER a/k/a MARILYN
MANSON, individually; MARILYN
16 MANSON RECORDS, INC.,
17 Defendants.

CASE NO. 2:21-CV-3677-FLA-MAR

**DEFENDANT BRIAN WARNER'S
NOTICE OF MOTION AND
MOTION TO COMPEL
COMPLIANCE WITH THE
AUGUST 9, 2022 SUBPOENA
SERVED ON NON-PARTY
ASHLEY WALTERS; JOINT
STIPULATION**

***REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL***

Date: October 19, 2022
Time: 10:00 a.m.
Crtrm.: 790

The Hon. Margo A. Rocconi

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on October 19, 2022, at 10:00 a.m., in
3 Courtroom 790 of this Court, located at Roybal Federal Building and United States
4 Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Defendant Brian Warner
5 will and hereby does move this Court for an order compelling non-party Ashley
6 Walters to comply with the subpoena served on her on August 9, 2022.

7 The Motion is made pursuant to Rules 26, 30, 37, and 45 of the Federal Rules
8 of Civil Procedure on the grounds that Ms. Walters' failure to appear at her duly
9 scheduled deposition or produce any documents is improper, given that (1) her
10 "relevance" and "privacy" objections to the subpoena are without merit; (2) the
11 subpoena provided more than sufficient time for Ms. Walters to comply, and she has
12 not established any undue burden; and (3) she unilaterally called off the
13 deposition/production deadline without first obtaining a Court order (or even filing a
14 motion for a protective order or to quash/modify the subpoena).

15 PLEASE TAKE FURTHER NOTICE THAT Mr. Warner will and hereby
16 does request that the Court order Ms. Walters and her counsel to pay the reasonable
17 expenses incurred in bringing this Motion to compel Ms. Walters' attendance,
18 including attorney's fees, pursuant to Rules 37 and 30 of the Federal Rules of Civil
19 Procedure.

20 On September 7, 2022, Judge Rocconi granted the parties leave to file this
21 Motion and Joint Stipulation without a pre-motion phone conference with the Court.

22 The Motion is based on this Notice of Motion; the attached Joint Stipulation
23 and Exhibits; all pleadings, papers, records, and files in this action; and such other
24 argument as may be presented to the Court at the hearing on this Motion.

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12 ESMÉ BIANCO,
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 14 vs.
 15 BRIAN WARNER a/k/a MARILYN
 MANSON, individually; MARILYN
 16 MANSON RECORDS, INC.,
 17 Defendants.

CASE NO. 2:21-CV-3677-FLA-MAR

**JOINT STIPULATION
 REGARDING DEFENDANT BRIAN
 WARNER’S MOTION TO
 COMPEL COMPLIANCE WITH
 THE AUGUST 9, 2022 SUBPOENA
 SERVED ON NON-PARTY
 ASHLEY WALTERS**

***REDACTED VERSION OF
 DOCUMENT PROPOSED TO BE
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Date: October 19, 2022
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The Hon. Margo A. Rocconi

Discovery cutoff date: January 27, 2023
 Pretrial conference date: June 2, 2023
 Trial date: June 20, 2023

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1 **I. INTRODUCTORY STATEMENTS**

2 **A. Defendant’s Introductory Statement**

3 The Court should order non-party Ashley Walters to comply with the
4 subpoena, Ex. 1, served on her because it seeks relevant information proportional to
5 the needs of the case and Defendant Brian Warner selected a reasonable production
6 and deposition date more than six weeks out—a date which Ms. Walters’ counsel
7 selected and agreed to. Nevertheless, Ms. Walters has now stated she will not attend
8 her September 20 deposition or produce documents responsive to the subpoena’s
9 single document request. Ms. Walters’ frequently shifting objections—which at one
10 time even asserted that the duly served *civil, non-government* subpoena violated hers
11 and others’ Fourth Amendment rights—lack any merit. After extensive meet-and-
12 confer efforts and unreasonable delays by Ms. Walters, Mr. Warner must now ask
13 the Court to intervene.

14 First, Ms. Walters’ objections to the document request should be overruled,
15 and the Court should order her to produce the responsive documents without further
16 delay because her communications with Ms. Bianco, Evan Rachel Wood, and
17 Ashley Gore a/k/a Illma Gore concerning Mr. Warner are central to Mr. Warner’s
18 defenses in this action. Nearly all of the women who simultaneously emerged in
19 early 2021 with false allegations that Mr. Warner abused them ten or more years
20 earlier, including Ms. Walters and Ms. Bianco, claimed some form of “repressed”
21 memory to circumvent their statute of limitations problems. And nearly all of them,
22 including Ms. Walters and Ms. Bianco, claimed they could not remember or did not
23 recognize the alleged abuse until late 2020 to early 2021 when they were brought
24 together by Ms. Wood and Ms. Gore to share their “stories” with one another. What
25 Ms. Bianco claims to remember about the alleged abuse, and when she claims she
26 was able to remember those things, are issues central to Mr. Warner’s defense.
27 Mr. Warner is entitled to understand why she waited ten-plus years to file suit, and
28 the circumstances surrounding her decision to file. What’s more, Mr. Warner is

1 entitled to examine the extent to which Ms. Bianco’s recovered or uncovered
2 memories were distorted by the highly suggestive conversations she had with Mes.
3 Walters, Wood, and Gore. Ms. Walters offers no basis to limit her production only
4 to documents that mention Ms. Bianco or the specific allegations in Ms. Bianco’s
5 complaint. Moreover, any “privacy” objection Ms. Walters has is already addressed
6 by the existing Protective Order in this action, pursuant to which she may designate
7 documents and testimony as appropriate.

8 Second, Ms. Walters’ repeated attempts to limit and delay her deposition
9 should be rejected, and sanctions should be awarded as a result of her recent self-
10 help remedy of unilaterally cancelling the deposition. Ms. Walters has provided no
11 basis to refuse to answer questions that seek information “beyond [her] knowledge
12 of Ms. Bianco’s allegations.” Rule 30 of the Federal Rules of Civil Procedure
13 provides a limited number of reasons a witness may refuse to answer questions, and
14 a purported “relevance” objection is not one of them. Worse yet, she provided no
15 explanation for calling off the deposition scheduled on the date *she proposed* other
16 than claiming she would not have enough time to collect and review documents—
17 something for which she also failed to provide an explanation.

18 Mr. Warner has been forced to endlessly “confer” with Ms. Walters, who has
19 caused unjustified delay from early July to the present. *See* Exs. 2-4. There is no
20 reason why a deposition subpoena with a single document request, served in early
21 August after weeks of emails among counsel, remains outstanding. The Court
22 should order her to provide available dates and appear at a deposition within 14
23 days.

24 **B. Ms. Walters’ Introductory Statement**

25 Ms. Walters is a non-party to this litigation who has engaged with Defendant
26 Warner in numerous and extensive meet and confers, offered multiple compromises,
27 and agreed to sit for a deposition and produce documents responsive to the
28 subpoena. Defendant’s assertion that Ms. Walters refused to attend her September

1 20 deposition or produce documents responsive to the subpoena’s single document
2 request is a shockingly false statement, particularly given the attached exhibits,
3 which clearly show that Ms. Walters has always agreed to testify and produce
4 communications with Plaintiff Bianco that relate to Plaintiff Bianco and the
5 allegations in the operative complaint.

6 However, the subpoena served on Ms. Walters is not proportional to the needs
7 of this case. Ms. Walters appropriately objected from the outset to the document
8 request as it is currently drafted because it is overbroad, burdensome, harassing, and
9 invades the privacy rights of Ms. Walters and other nonparties. Ex. 3 at 20-21.
10 Pursuant to Rule 26 of the Federal Rules of Civil Procedure, a Court may limit
11 discovery if “the discovery sought ... is obtainable from some other source that is
12 more convenient, less burdensome, or less expensive” or if “the burden or expense
13 of the proposed discovery outweighs its likely benefit.” Fed.R.Civ.P. 26(b)(2)(C).
14 Notably, Defendants Brian Warner and Marilyn Manson Records, Inc.
15 (“Defendants”) and have not even deposed Plaintiff Bianco.

16 It must also be noted that Defendants who are the subject of numerous civil
17 actions and an 18-month long criminal investigation recently turned over to the L.A.
18 District Attorney’s Office (*see* Ex. 9), have continued to intimidate and threaten
19 parties and non-parties who have asserted allegations against them. Most relevant,
20 Defendants brought suit against Evan Rachel Wood and Ashley Gore aka Ilma Gore
21 in an attempt to lend credibility to their defense of last resort – that all of these
22 women have somehow conspired to assert fabricated stories against Defendants.

23 The “single” document request that Defendant Warner propounded – “All
24 written communications with Esme Bianco, Evan Rachel Wood, and/or Ashley Gore
25 aka Ilma Gore regarding Brian Warner...” – encompasses more than a decade of
26 communications between Ms. Walters and three individuals, including ones that
27 have nothing to do with Plaintiff Bianco or the issues in this case. Locating,
28 reviewing, and producing communications for a time period in excess of ten years is

1 burdensome and expensive. Ms. Walters already agreed to produce all
2 communications with Plaintiff Bianco despite Defendant Warner’s failure to limit
3 the time and scope thereof. Defendant is also seeking documents between Ms.
4 Walters, Evan Rachel Wood and Ashley Gore that are not limited in time or scope.
5 Ms. Walters’ communications with Ms. Wood and Ms. Gore about Defendant
6 Warner that do not involve Plaintiff Bianco are not relevant or proportional to any
7 claims or defenses in this matter. Defendant Warner’s position that all of Ms.
8 Walters’ communications with Ms. Wood or Ms. Gore “relate to” Ms. Bianco and
9 her allegations is speculative, untrue, and cannot serve as the basis for relevance.

10 The document request is not limited in scope to seek communications related
11 to discussions about Defendant Warner’s abuse or Ms. Bianco’s memories related to
12 his abuse. Instead, the request seeks all communications that mention Defendant
13 Warner. That is on its face over broad and burdensome. There are numerous
14 allegations by multiple individuals against Defendant Warner that involve highly
15 sensitive and personal information. Defendant Warner seeks access to private and
16 personal information of non-parties who have no relevance to Plaintiff Bianco.
17 Defendant Warner’s fishing expedition should not be permitted. **REDACTED**

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 With respect to the deposition testimony sought, Defendant Warner
25 misleadingly argues that Ms. Walters suddenly and unilaterally called off her
26 deposition. To the contrary, Ms. Walters’ counsel attempted to engage in a
27 meaningful dialogue with Defendant’s counsel regarding the testimony sought. As
28 the communications between counsel detail, when it became evident a compromise

1 could not be achieved despite numerous, extensive attempts, Defendant threatened
2 to depose Ms. Walters a second time if she failed to answer or produce documents to
3 their satisfaction. Ms. Walters’ counsel then emailed Defendant on September 2,
4 2022 to propose later dates that would allow Ms. Walters the time to review and
5 produce more than a decade of communications with Ms. Bianco **REDACTED**

6 **REDACTED**
7 **REDACTED** The brief delay in re-scheduling Ms. Walters’ deposition does not
8 harm Defendant, as the proposed dates fall within the discovery period in the *Bianco*
9 matter, Defendants jointly with Plaintiff requested an extension of the discovery cut-
10 off which was granted, Ex. 8, 10, and Defendants have not yet even deposed
11 Plaintiff Bianco. Defendant Warner refused to further meet and confer with Ms.
12 Walters, and rebuffed all reasonable offers to compromise and narrow the scope of
13 their subpoena.

14 Ms. Walters has already agreed to testify and produce communications with
15 Ms. Bianco that relate to Ms. Bianco and her allegations. Defendant Warner’s
16 overbroad subpoena is clearly a fishing expedition designed to gather information
17 that (1) is obtainable from the Plaintiff in this matter whom Defendants have chosen
18 not to depose, (2) is overbroad in scope and seeking information that is not
19 proportional to the matter, and (3) imposes an undue burden on a non-party.

20 Assuming the Court denies the instant motion to compel, the Court should
21 issue a protective order to limit her testimony and production of documents to her
22 knowledge of Ms. Bianco’s claims and communications with Ms. Bianco regarding
23 Defendants. Fed. R. Civ. P. 37(a)(5)(B). The Court should also award Ms. Walters
24 her reasonable expenses and attorneys’ fees incurred in opposing this motion. *Id.*

25 **II. ISSUE 1: THE DOCUMENT REQUEST.**

26 The subpoena contains one document request, which reads as follows: “All
27 written communications with Esmé Bianco, Evan Rachel Wood, and/or Ashley Gore
28 aka Illma Gore regarding Brian Warner, including but not limited to text messages,

1 emails, social media messages, and any other direct messages.” Ex. 1 at 14.

2 **A. Defendant’s Position**

3 Ms. Walters must be ordered to produce promptly all documents in her
4 possession, custody, and control that are responsive to the already narrowly tailored
5 request. She may not arbitrarily withhold documents concerning Mr. Warner that
6 she contends do not “relate to” Ms. Bianco or the specific allegations in Ms.
7 Bianco’s complaint, on the grounds that they are irrelevant and/or confidential. Ex.
8 3 at 20-21; *see also id.* at 16-17; Ex. 4 at 7-8. The documents she intends to
9 withhold are central to Mr. Warner’s defenses in this action, and it is unclear how
10 Ms. Walters continues to assert in good faith that such documents are not relevant
11 given that she has not even collected or reviewed them. *See* Ex. 3 at 7-11.

12 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, non-parties like
13 Ms. Walters may be “command[ed]” by subpoena to “attend and testify” and
14 “produce designated documents, electronically stored information, or tangible things
15 in that person’s possession, custody, or control.” Fed. R. Civ. P. 45(a)(1)(A). “At
16 any time, on notice to the commanded person, the serving party may move the court
17 for the district where compliance is required for an order compelling production or
18 inspection.” Fed. R. Civ. P. 45(d)(2)(B)(i).

19 Ms. Walters’s view of what is discoverable and relevant does not control.
20 Rather, the permissible scope of a Rule 45 document subpoena is governed by Rule
21 26(b)(1). *Dominguez v. Ford Motor Co.*, 2021 WL 6496838, at *1 (C.D. Cal. Dec.
22 1, 2021). Accordingly, Ms. Warner is entitled to obtain from Ms. Walters
23 “discovery regarding any nonprivileged matter that is relevant to any party’s claim
24 or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

25 The subpoena requests that Ms. Walters produce her communications with
26 Ms. Bianco, Ms. Wood, and Ms. Gore to the extent those communications concern
27 Mr. Warner. Ex. 1 at 14. These communications are relevant and proportional to
28 the needs of this case, including because they are central to Mr. Warner’s defenses.

1 As an initial matter, Mr. Warner’s position is that Ms. Walters’
2 communications with Ms. Wood or Ms. Gore about Mr. Warner *do* “relate to” Ms.
3 Bianco and her allegations in this action, regardless of whether they reference Ms.
4 Bianco by name or her allegations specifically. That is why they are relevant. Ms.
5 Walters should not be allowed to withhold documents concerning Mr. Warner after
6 unilaterally determining they do not sufficiently “relate to” Bianco and her specific
7 allegations.

8 In May 2021, Ms. Walters sued Mr. Warner, falsely claiming he abused her
9 during her stint as his personal assistant from approximately August 2010 to
10 October 2011. *See* Ex. 5. Ms. Walters’ complaint was one of several
11 simultaneously filed in early 2021 alleging claims of abuse arising from acts that
12 allegedly occurred ten or more years earlier. Her reason for not filing within the
13 statutory period was that her memories of abuse were “repressed” until Fall 2020
14 when she met with a group of so-called “survivors” of Mr. Warner, including Ms.
15 Bianco. *Id.*, ¶¶ 2, 4, 56-59, 71, 73, 77, 81, 84-89, 107-109, 115-119. According to
16 Ms. Walters, “[h]earing the experiences of others began to unlock new memories.”
17 *Id.* (Ms. Walters’ complaint has since been dismissed, although she has appealed.)

18 Curiously, nearly everyone else who emerged in early 2021 to assert false
19 claims that Mr. Warner abused them ten or more years earlier—including Ms.
20 Bianco—also alleged their memories were affected in late 2020 to early 2021 by
21 communications with (or stories about) other “survivors.” Ms. Bianco herself
22 alleged that she “did not recognize the true extent of her psychological injuries, nor
23 that the actions committed by Defendant constituted sexual assault and sexual
24 battery, *until meeting with other victims and speaking about her abuse in 2020.*”
25 Ex. 6 at 18 (emphasis added). The requested communications are relevant to
26 defeating these allegations and others, including that Mr. Warner should be estopped
27 from asserting a statute of limitations defense. *See Corby v. Pac. Gas & Elec. Co.*,
28 2018 WL 4737269, at *9 (C.D. Cal. June 25, 2018) (refusal produce discovery

1 “relevant to Defendant’s statute of limitations defense . . . prejudices Defendant’s
2 ability to defend itself”).

3 While Ms. Walters appears willing to produce all communications with Ms.
4 Bianco concerning Mr. Warner, she is standing on her objections communications
5 with Ms. Wood and Ms. Gore concerning Mr. Warner. *See* Ex. 3 at 6-7. These
6 documents are relevant. The “group” meetings in Fall 2020 were spearheaded and
7 organized by at least Ms. Gore and Ms. Wood, and some were filmed for a two-part
8 movie called *Phoenix Rising*. Ms. Wood, who also emerged with false allegations
9 of abuse in February 2021, is a former significant other of Mr. Warner. Mr. Warner
10 contends that these meetings and other communications organized by Ms. Gore and
11 Ms. Wood tainted the memories of people who were never abused, which explains,
12 in part, why so many of the demonstrably false factual allegations repeat from
13 complaint to complaint. Communications with Ms. Wood and Ms. Gore concerning
14 Mr. Warner may help illuminate the circumstances under which Ms. Bianco
15 emerged with public accusations against him after ten years of not alleging any
16 abuse. These documents are relevant not only to defeating Ms. Bianco’s attempt to
17 toll the statute of limitations, but also to defeating her claims on the merits. *See*
18 Ex. 3 at 18-19.

19 The gist of Ms. Walters’ objections to this portion of the request is that Mr.
20 Warner seeks “irrelevant” and “private” documents. *Id.* at 20-22. She has also
21 belatedly contended that she cannot comply with the subpoena by September 20—
22 the date she selected for her deposition. *Id.* at 7-10. All of these objections should
23 be overruled.

24 Ms. Walters has never attempted to refute Mr. Warner’s argument for why the
25 requested documents are relevant. Rather, she maintains that any communications
26 with Ms. Wood or Ms. Gore must relate to Ms. Bianco or the specific allegations in
27 her complaint. *Id.* at 16-17. But this is not the test for discoverability. The only
28 question is whether the requested documents are “relevant to any party’s claim *or*

1 *defense,*” which they clearly are. Ms. Walters’ communications with Ms. Wood or
2 Ms. Gore likely arose in the context of intermingling prospective accusers, including
3 Ms. Bianco, in Fall 2020. Even if such communications do not discuss Ms. Bianco
4 by name, they are central to understanding the circumstances under which Ms.
5 Bianco came to publicly accuse Mr. Warner alongside others involved with Ms.
6 Wood and Ms. Gore, who were all somehow unable to plead their claims at any
7 point in the preceding ten years. Ms. Walters’ communications with Ms. Wood or
8 Ms. Gore concerning Mr. Warner may discuss meetings Ms. Bianco attended, or
9 conversations Ms. Bianco participated in, without mentioning Ms. Bianco by name.
10 Responsive communications may also discuss information about Mr. Warner that
11 Ms. Bianco received indirectly, *e.g.*, via Ms. Gore or Ms. Wood, and not directly
12 from Ms. Walters or others. These documents are all relevant and Ms. Walters
13 should not be the arbiter of whether she considers them to be related enough to Ms.
14 Bianco or her specific allegations to be discoverable.

15 The Court should also overrule Ms. Walters’ confidentiality objection. She
16 cannot withhold documents based on a claim they are private; instead, she may
17 designate documents as “Confidential” under the Protective Order in this action to
18 the extent it permits her to. *Zurich Am. Ins. v. Sealink Ins. Servs. Corp.*, 2018 WL
19 10561907, at *1 (C.D. Cal. Mar. 16, 2018) (overruling privacy objection because
20 “[g]enerally, the privacy and confidentiality of records can be adequately protected
21 by a protective order”). Ms. Walters cannot rely on the Fourth Amendment to the
22 U.S. Constitution. Even a first-year law student knows “[t]he Fourth Amendment
23 regulates only governmental action.” *United States v. Rosenow*, 33 F.4th 529, 538-
24 39 (9th Cir. 2022); *see also Lease v. Fishel*, 2009 WL 922486, at *5 (M.D. Pa. Apr.
25 3, 2009) (“It strains common sense and constitutional analysis to conclude that the
26 fourth amendment was meant to protect against unreasonable discovery demands
27 made by a private litigant in the course of civil litigation.”) (internal quotations
28 omitted).

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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12 [REDACTED]

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15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Lastly, Ms. Walters failed to provide any explanation for belatedly

26 contending that she could not comply with the subpoena by September 20—the date

27 *she* proposed for the deposition—other than it would take “some time” to collect

28 and review documents. Ex. 3 at 10. This does not pass muster under Rule 45. The

1 subpoena was served on August 9 (after more than four weeks of delay by Ms.
2 Walters), which gave her a more-than-reasonable six weeks to comply. Ex. 1; Ex. 2.
3 It was not until September 1 that Ms. Walters claimed she could not collect and
4 review the requested documents by September 20. See Ex. 3 at 7-11. In fact, she
5 requested an extension of *at least five more weeks*, and not even to fully comply
6 with the subpoena, but to determine whether or not she would assert any of her
7 meritless objections. *Id.* These maneuvers would have resulted in more than three
8 months of delay, likely without any resolution. Critically, when objections were due
9 under Rule 45, Ms. Walters did not claim that she was unable to comply by
10 September 20. See Fed. R. Civ. P. 45(d)(2)(B) (objections “must be served before
11 the earlier of the time specified for compliance or 14 days after the subpoena is
12 served”); *Omnicare, Inc. v. R & W Delivery, LLC*, 2021 WL 4776695, at *2 (C.D.
13 Cal. Mar. 15, 2021) (untimely objections waived absent “absent unusual
14 circumstances and a showing of good cause”). Nor did she object on the grounds
15 that to collect, review, and produce the scope Mr. Warner sought was any more of a
16 burden than collecting, reviewing, and producing the scope she proposed. Nor
17 could it be. If anything, the scope sought by Mr. Warner would be less burdensome
18 to implement given that Ms. Walters would not have to make document-by-
19 document determinations about whether communications concerning Mr. Warner
20 were sufficiently “related to” Ms. Bianco or her allegations.

21 Aside from explaining why Ms. Walters’ objections lacked merit, Mr. Warner
22 proposed to resolve this issue by offering to discuss an extension that would allow
23 Ms. Walters to comply with the scope of the subpoena as drafted. Ex. 4 at 1-2. Ms.
24 Walters did not accept this offer but stated—despite weeks of emails back and forth,
25 a call among counsel, and a single, plainly written document request—that she still
26 wanted “an actual understanding of what [Defendants] are looking for.” *Id.*

27 **B. Ms. Walters’ Position**

28 There is nothing “narrowly tailored” about Defendant Warner’s document

1 request. The request for all written communications between Ms. Walters and non-
2 parties Ms. Wood and Ms. Gore related to Defendant Warner is overbroad on its
3 face and seeks information that is not proportional to the claims or defenses in the
4 matter. Even Defendant Warner’s own explanation above suggests that they
5 primarily seek communications regarding the meeting among survivors in Fall 2020,
6 which is significantly narrower than their subpoena. Although Federal Rule 45
7 permits the use of subpoenas to command nonparty witnesses to produce
8 documents, it also mandates that “[a] party or attorney responsible for issuing and
9 serving a subpoena must take reasonable steps to avoid imposing undue burden or
10 expense on a person subject to the subpoena.” Rule 45(d)(1). “Rule 26(b)(1)
11 instructs litigants and courts to consider the following in determining
12 proportionality: ‘the importance of the issues at stake in the action, the amount in
13 controversy, the parties’ relative access to relevant information, the parties’
14 resources, the importance of the discovery in resolving the issues, and whether the
15 burden or expense of the proposed discovery outweighs its likely benefit’”, which
16 Defendant Warner has failed to do. *Yphantides v. Cnty. of San Diego*, No. 21-CV-
17 1575, 2022 U.S. Dist. LEXIS 145819, at *16-17 (S.D. Cal. Aug. 15, 2022) (citing
18 Fed. R. Civ. P. 26(b)(1)).

19 “In addition to the need of the requesting party for the information and the
20 burden on the non-party in complying with the subpoena, other factors a court
21 should consider include the relevance of the requested information and the breadth
22 or specificity of the discovery request.” *In re Pioneer Corp.*, No. CV 18-4524 JAK
23 (SSX), 2019 WL 5401015, at *5 (C.D. Cal. Jan. 9, 2019) citing *Moon v. SCP Pool*
24 *Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005). “Courts are particularly reluctant to
25 require a non-party to provide discovery that can be produced by a party.” *Id.* citing
26 *Precourt v. Fairbank Reconstruction Corp.*, 280 F.R.D. 462, 467 (D. S.D. 2011) (“If
27 the party seeking information can easily obtain the same information without
28 burdening the non-party, the court will quash the subpoena.”). Relevance is not

1 without limits. *Yphantides*, 2022 U.S. Dist. LEXIS 145819, at *8, 17-18, 21
2 (citation omitted) (denying motion to compel further responses where moving party
3 failed to establish relevancy and proportionality of the requests).

4 With respect to the relevance and breadth of the discovery request, Ms.
5 Walters has already agreed to produce all written communications with Plaintiff
6 Bianco regarding Defendant Warner. *See* Ex. 3 at 7-8, 20-21. However, Defendant
7 Warner’s request includes all written communications between Ms. Walters and
8 non-parties Ms. Wood and Ms. Gore based on their contention that those
9 communications are relevant and proportional because they “may help illuminate
10 the circumstances under which Ms. Bianco emerged with public accusations....”
11 This position is nonsensical and overbroad as any communications Ms. Walters may
12 have had with other non-parties without Ms. Bianco or that do not concern Ms.
13 Bianco cannot illuminate or provide any information about Ms. Bianco’s decision to
14 come forward with allegations against Defendant Warner, or whether her memories
15 were “tainted.” That information can clearly be better answered by Plaintiff Bianco
16 herself. Yet, Defendants have chosen not to take her deposition. While Defendants
17 have the right to choose not to obtain this information from Plaintiff Bianco at this
18 stage, they should not be allowed to overburden a non-party by seeking information
19 that is readily available and ascertainable from a party. Moreover, Defendants have
20 filed suit against Ms. Wood and Ms. Gore and can readily obtain the information
21 they seek from them in the discovery process, including any communications they
22 have had regarding Ms. Bianco’s claims in this suit.

23 Defendant Warner further argues that these non-party communications are
24 relevant to the claims and/or defenses because “Ms. Walters’ communications with
25 Ms. Wood or Ms. Gore *likely* arose in the context of intermingling prospective
26 accusers.” Defendant Warner is speculating about the contents of the
27 communications, and, as a result, their relevance. This type of fishing expedition
28 into a non-party’s communications with other non-parties should not be permitted.

1 *See In re Pioneer Corp.*, No. CV 18-4524 JAK (SSX), 2019 WL 5401015, at *6
2 (C.D. Cal. Jan. 9, 2019) (holding “A requesting party’s mere suspicion that
3 additional documents exist is an insufficient basis to grant a motion to compel.”).
4 Defendant Warner’s overbroad subpoena is designed to further harass and intimidate
5 Ms. Walters, and conduct discovery for other litigation pending against him.

6 The operative complaint in this action does not contain any “me too”
7 allegations; nor does Defendants’ Answer contain any reference to Defendants’
8 purported defense that these women conspired to make false allegations against him.
9 Ex. 11, 12. Defendant Warner even misstates Ms. Bianco’s allegations, confusing
10 them with allegations made by other survivors, in an attempt to craft a false
11 narrative for their defense without any factual support. Nowhere in Ms. Bianco’s
12 operative complaint does she state that she repressed memories, or reference a
13 meeting among survivors. *See generally* Ex. 11. She only states in her operative
14 complaint that it “took Ms. Bianco years to understand the extent of Mr. Warner’s
15 physical, sexual, psychological, and emotional abuse.” Ex. 11 at ¶ 24. Neither Ms.
16 Bianco’s nor Ms. Walters’ operative complaints state that Ms. Wood or Ms. Gore
17 convened the meeting of survivors in Fall 2020. *See generally* Ex. 5, 11. By
18 conflating various survivors’ allegations, Defendant Warner is clearly trying to
19 obtain discovery regarding several women’s claims against them far beyond the
20 claims at issue in this case by a single plaintiff.

21 Ms. Walters is not a plaintiff in this action and her own claims against
22 Defendants are not at issue in this action. As Defendant Warner notes, her case was
23 dismissed and is being appealed. Defendant Warner’s discussion of Ms. Walters’
24 own claims and reliance her complaint as an exhibit make clear they are simply
25 seeking to circumvent any discovery process in that case through the subpoena at
26 issue here. For example, Defendants should not be permitted to depose Ms. Walters
27 regarding her own claims against Defendants, her emotional distress, mental health
28 treatment she has sought as a result of Defendants’ conduct, her knowledge of other

1 survivors' claims or medical or mental health treatment, or sexual histories of Ms.
2 Walters or other survivors. Defendant Warner has refused to limit the deposition in
3 any manner and has made clear he seeks free reign to depose Ms. Walters on any
4 topic they wish.

5 **REDACTED**
6 **REDACTED**
7 **REDACTED**
8 **REDACTED**
9 **REDACTED**
10 **REDACTED**
11 **REDACTED**
12 **REDACTED**
13 **REDACTED**
14 **REDACTED**
15 **REDACTED**
16 **REDACTED**
17 **REDACTED**
18 **REDACTED**

19 Here, the information sought is undoubtedly highly sensitive and related to an
20 ongoing criminal investigation. Defendant Warner specifically identifies that he is
21 seeking documents which likely include other prospective accusers and discuss
22 sexual assault support group meetings. There have been many accusations made
23 against Defendant Warner – some public and some private. Individuals attending a
24 sexual assault support group have an expectation of privacy including under the
25 California Constitution, particularly from their abuser. Defendant Warner is seeking
26 an end around to access information about other survivors of Defendant Warner and
27 the information that they may possess by claiming – without proof – that it may
28 involve Plaintiff Bianco. However, members of a sexual assault support group

1 should not be subjected to having their privacy rights obliterated because Defendant
2 Warner believes that he is entitled to communications that do not discuss Plaintiff
3 Bianco in any way. “The initiation of a lawsuit, does not, by itself, grant [parties]
4 the right to rummage unnecessarily and unchecked through the private affairs of
5 anyone they choose. A balance must be struck.” *Ceramic Corp. of Am. v. Inka Mar.
6 Corp. Inc.*, 163 F.R.D. 584, 589 (C.D. Cal. 1995). The court specifically found that
7 the non-party’s “family, health, and financial documents” were not discoverable. *Id.*
8 In any event, Ms. Walters has already agreed to testify about her knowledge of Ms.
9 Bianco’s claims and her communications with Ms. Bianco regarding her claims.

10 Defendant Warner’s contention that the communications sought by the
11 subpoena are relevant to whether “Mr. Warner should be estopped from asserting a
12 statute of limitations defense” has no support in the law. Estoppel focuses on
13 Defendants’ conduct toward Plaintiff Bianco. *See, e.g., Bianco v. Warner*, 562 F.
14 Supp. 3d 526, 533 (C.D. Cal. 2021) (“Estoppel may be appropriate in the statute of
15 limitations context ‘where the defendant’s act or omission actually and reasonably
16 induced the plaintiff to refrain from filing a timely suit.’”) (citation omitted). Thus,
17 only Ms. Walters’ knowledge of Ms. Bianco’s claims against Defendants is relevant
18 here—not Ms. Walters’ communications regarding Defendants which do not pertain
19 to Ms. Bianco, or with persons other than Ms. Bianco.

20 Defendant Warner also refused to meet and confer in good faith. Ms. Walters
21 agreed to produce responsive documents to the extent they exist, subject to
22 reasonable limitations, and offered to further meet and confer. Ex. 3 at 10-11; Ex. 4
23 at 1. Defendant Warner rebuffed Ms. Walters’ efforts to further meet and confer by
24 serving his portion of this Joint Stipulation, demonstrating he was not interested in
25 any form of compromise. Ex. 13 at 1. Defendant Warner’s proposal to provide a
26 further extension for Ms. Walters to “comply with the scope of the subpoena as
27 drafted” is not a compromise, and does nothing to resolve Ms. Walters’ valid
28 objections.

1 Finally, with respect to Defendant Warner’s position that Ms. Walters did not
2 provide any explanation for why she could not sit for the scheduled September 20,
3 2022 deposition, once again, Defendant misstated the conversations and emails with
4 Ms. Walters. Ms. Walters received the subpoena on August 9, 2022. *See* Ex. 1. It
5 requested documents that are more than a decade old. Counsel engaged in
6 conversations about the lack of a time limitation. In an effort to compromise, Ms.
7 Walters then agreed to produce all communications between herself and Plaintiff
8 Bianco regardless of the timeframe. *See* Ex. 3 at 7-11. Ms. Walters then needed time
9 to locate, access, and identify the relevant communications. *Id.* at 10-11. When Ms.
10 Walters’ counsel understood the universe of documents at issue, Counsel reached
11 out to Defendants within three weeks of the subpoena being issued to inform them
12 that Ms. Walters needed additional time to gain access to, review and produce all of
13 the relevant documents. *Id.* Ms. Walters also offered “to review the communications
14 [Defendants] are seeking and determine whether we can withdraw some or all of our
15 objections” and continue the deposition so that Defendants could review the
16 documents sufficiently in advance of the deposition and prepare, and obviate the
17 need for a potential second deposition. *Id.* It was a reasonable request, particularly
18 considering Defendant Warner’s overbroad subpoena. Further, given that
19 Defendants have chosen not to depose Plaintiff Bianco prior to setting non-party
20 depositions, Ms. Walters should not continue to be subjected to additional discovery
21 requests based on subsequent testimony from the parties to this action. While
22 Defendants have the right to depose Plaintiff Bianco at any time during the
23 discovery period, non-parties like Ms. Walters should not suffer as a result of that
24 choice.

25 **III. ISSUE 2: MS. WALTERS’ DEPOSITION.**

26 The subpoena was served on Ms. Walters on August 9, 2022. The subpoena
27 called for a September 20, 2022 deposition. On September 1 and 2, 2022, Ms.
28 Walters stated she would not appear at the deposition. She has also stated she will

1 not answer questions on certain topics.

2 **A. Defendant’s Position**

3 Ms. Walters was not entitled to take matters into her own hands and
4 unilaterally call off her deposition. *See* Ex. 3 at 7-10. The Court should compel Ms.
5 Walters to appear within a reasonable time not to exceed 14 days.

6 Pursuant to Rule 30, Mr. Warner may depose any person by oral questions,
7 including non-parties like Ms. Walters whose attendance at a deposition may be
8 compelled by issuing a subpoena under Rule 45. Fed. R. Civ. P. 30(a)(1). A non-
9 party is compelled to attend a deposition where the non-party is served with a
10 subpoena, notice of the subpoena is given to other parties, and the place of
11 compliance is “within 100 miles of where the person resides, is employed, or
12 regularly transacts business in person.” Fed. R. Civ. P. 45(a)-(b). When a
13 subpoenaed non-party fails or refuses to attend his or her deposition, the Court may
14 order compliance under Rule 37. *Sali v. Corona Reg’l Med. Ctr.*, 884 F.3d 1218,
15 1222 (9th Cir. 2018) (“While a subpoena’s judicial imprimatur and the threat of
16 sanctions for noncompliance is one way to ensure that a deponent shows up for a
17 deposition, it isn’t the only way.”).

18 The Court should enforce the subpoena here because there is no dispute that
19 (1) the subpoena was served on Ms. Walters’ counsel who agreed to accept service
20 on her behalf, Exs. 1-2, (2) Ms. Walters is a resident of Los Angeles County, *i.e.*,
21 within 100 miles of the Los Angeles deposition location, Ex. 5, ¶10, and (3) the
22 deposition was duly set for September 20, a date insisted upon by Ms. Walters’
23 counsel and agreed to by Ms. Bianco’s counsel, Ex. 2 at 2. For purposes of a
24 motion to compel, Ms. Walters’ unequivocal statements that she would not attend
25 her duly scheduled deposition are as if she failed to appear. *See Grasshopper*
26 *House, LLC v. Renaissance Recovery Servs., LLC*, 2011 WL 13214102, at *3-4
27 (C.D. Cal. Mar. 30, 2011) (motion to compel is ripe where counsel stated
28 unequivocally that witness would not attend deposition). Accordingly, the Court

1 has the authority to enter an order requiring her attendance. *See, e.g., Minx Int'l,*
2 *Inc. v. Vivace Design, Inc.*, 2014 WL 12560618, at *1 (C.D. Cal. Sept. 17, 2014)
3 (ordering subpoenaed non-party to attend a rescheduled deposition where non-party
4 was served with a deposition subpoena but failed to appear). The Court should
5 order Ms. Walters to provide available dates within 7 days of the Court's order, and
6 that the deposition proceed within 14 days. *See RG Abrams Ins. v. L. Offs. of C.R.*
7 *Abrams*, 2021 WL 4974049, at *13 (C.D. Cal. Aug. 19, 2021).

8 The Court should also overrule Ms. Walters' prospective "objections" to
9 potential lines of questioning, based on the same "relevance" and "privacy"
10 objections discussed above. Ex. 3 at 21; *id.* at 18-20. She stated that "she will not
11 provide a response" to any question seeking information "relating to anything other
12 than Ms. Walters' knowledge of the allegations made in Ms. Bianco's operative
13 complaint." Ex. 3 at 21. This attempt to limit her testimony is improper under the
14 Federal Rules of Civil Procedure, which state that "[a] person may instruct a
15 deponent not to answer only when necessary to preserve a privilege, to enforce a
16 limitation ordered by the court, or to present a motion under Rule 30(d)(3)." Fed. R.
17 Civ. P. 30(c)(2). None of these exceptions apply here. Ms. Walters only contends
18 that "information beyond Ms. Walters' knowledge of Ms. Bianco's allegation" is
19 "irrelevant" and "invades the privacy rights of Ms. Walters and other third parties."
20 Ex. 3 at 21. But "relevance" and "privacy" are not proper bases to limit deposition
21 testimony. *See Doe v. City of San Diego*, 2013 WL 6577065, at *5 (S.D. Cal. Dec.
22 13, 2013) (objection that questions "lacked relevance" and "invaded the privacy
23 rights of Detective Botsford and/or other non-parties" were "improper grounds for
24 instructing Detective Botsford not to answer"). The "relevance" objection also fails
25 on the merits as discussed above.

26 As to Ms. Walters' confidentiality objection, she may designate portions of
27 the deposition transcript under the Protective Order in this action as "Confidential"
28 to the extent it permits her to. *Zurich Am. Ins.*, 2018 WL 10561907, at *1.

1 Aside from explaining why Ms. Walters’ objections lacked merit, Mr. Warner
2 proposed to resolve this issue by offering to discuss an extension that would allow
3 Ms. Walters to comply with the scope of the subpoena as drafted. Ex. 4 at 1-2. Ms.
4 Walters did not accept this offer but stated—despite weeks of emails back and forth,
5 a call among counsel, and a single, plainly written document request—that she still
6 wanted “an actual understanding of what [Defendants] are looking for.” *Id.*

7 **B. Ms. Walters’ Position**

8 Defendant Warner’s assertion that Ms. Walters took matters into her own
9 hands and unilaterally called off her deposition is demonstrably false. Ms. Walters
10 never refused to appear for her deposition. First, Ms. Walters informed Defendant
11 Warner that she needed additional time to locate, review and produce the documents
12 she agreed to produce and provided multiple additional dates that she was available
13 to be deposed. *See* Ex.3 at 7-11. She proposed reviewing and producing responsive
14 documents to see if she could withdraw some or all of the objections regarding the
15 document production, and continuing the deposition so that Defendant Warner had
16 sufficient time to review such documents before the deposition and prepare, and
17 obviate the need for a second deposition. Ex. 3 at 10-11. Second, the parties were
18 engaged in a discovery dispute about the breadth of the subpoena requests which the
19 parties were unable to resolve, despite Ms. Walters’ repeated efforts to further meet
20 and confer. *See* Ex. 4 at 6-8. Ms. Walters suggested continuing the deposition so that
21 the parties could continue to meet and confer, and agree on the scope of testimony in
22 advance of the deposition. Instead, Defendant Warner insisted on seeking court
23 intervention, and given the briefing schedule, Defendant Warner’s motion to compel
24 will not be decided before the scheduled September 20 deposition date. **REDACTED**

25 **[REDACTED]**

26 **[REDACTED]**

27 **[REDACTED]**

28 **[REDACTED]**

1 [REDACTED]

2 [REDACTED] Finally, Ms. Walters further sought clarity
3 on the scope of the deposition to determine whether a motion to quash or a motion
4 for a protective order would be necessary. Defendant Warner refused to participate
5 in any additional conversations with Ms. Walters’ counsel despite multiple
6 reasonable requests. Defendant Warner’s assertion that Ms. Walters’ notifying them
7 three weeks in advance that she needed additional time to review and produce
8 relevant documents while also engaging in repeated communications to attempt to
9 compromise on the scope of the deposition to determine whether a motion to quash
10 or a motion for protective order was appropriate certainly is not a failure to appear.
11 To suggest otherwise is absurd. Similarly, Defendant Warner’s claim that the Court
12 should enforce a subpoena, which Ms. Walters already agreed to and provided dates
13 for, is unnecessary puffery, premature, and a waste of judicial resources.

14 To be clear, Ms. Walters does not object to providing deposition testimony
15 related to her communications with or about Plaintiff Bianco. Ms. Walters’ has
16 reasonably sought to understand the topics and scope of her non-party deposition
17 testimony. Defendant Warner has refused to provide that information.

18 Yet, “...the right to discovery, even plainly relevant discovery, is not
19 limitless.” *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D.
20 406, 409 (C.D. Cal. 2014). “Concern for the unwanted burden thrust upon non-
21 parties is a factor entitled to special weight in evaluating the balance of competing
22 needs’ in a Rule 45 inquiry.” *Id. See also Dart Industries Co., Inc. v. Westwood*
23 *Chemical Co.*, 649 F.2d 646 (9th Cir.1980) (“While discovery is a valuable right
24 and should not be unnecessarily restricted, the ‘necessary’ restriction may be
25 broader when a non-party is the target of discovery.”); *Katz v. Batavia Marine &*
26 *Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed.Cir.1993) (“Although Rule 26(b)
27 applies equally to discovery of nonparties, the fact of nonparty status may be
28 considered by the court in weighing the burdens imposed in the circumstances.”);

1 *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 405, 412
2 (C.D. Cal. 2014) (“Preparing and sitting for a deposition is always a burden, even
3 when documents are not requested, particularly for a non-party”). Thus, the Court
4 must weigh whether Ms. Walters possesses unique, relevant information such that
5 her testimony outweighs the burden on her as a non-party in complying with the
6 subpoena as it is currently drafted. *Amini Innovation Corp.*, 300 F.R.D. 406, 409
7 (C.D. Cal. 2014).

8 Again, all the information Defendant Warner is seeking can be obtained from
9 Plaintiff Bianco or the parties in other pending actions. In fact, the defense they
10 assert, as baseless as it may be, requires that at some point Ms. Bianco either
11 personally heard, was told, or was provided information that served to shape her
12 memories. During our minimal discussions with Defendant Warner’s counsel, Ms.
13 Walters attempted to gain further clarity on their position that Ms. Walters’
14 communications with third parties in any way supports their theories. If Plaintiff
15 Bianco was not privy to these discussions, meetings, communications or
16 information, how could it possibly impact her memories of the abuse she alleges?
17 As such, only Plaintiff Bianco sits in a position to provide the information
18 Defendant Warner is seeking and he knows it. Ms. Walters’ communications with
19 Ms. Wood and Ms. Gore, without Ms. Bianco or which do not concern Ms. Bianco,
20 cannot shed any light on Defendants’ purported defense that her memories were
21 “tainted” or why she decided to come forward with her claims when she did. Thus,
22 such evidence has no “tendency to make a fact more or less probable than it would
23 be without the evidence” and “is of [no] consequence in determining the action.”
24 Fed. R. Evid. 401. Likewise, since they have filed suit against Ms. Wood and Ms.
25 Gore, they can also obtain this information from them directly as parties, rather than
26 from a non-party. This line of discovery is nothing more than a fishing expedition
27 to garner information that may tip them off to details of the criminal investigation,
28 and permit them to further harass other non-parties and survivors.

1 It remains Ms. Walters’ position that any testimony about her knowledge
2 regarding the ongoing criminal investigation into Defendant Warner, including by
3 way of example only, the victim impact stories she has knowledge of related to that
4 investigation, Ms. Walters’ own claims against Defendant Warner, the medical
5 histories of Ms. Walters or any other survivor, the sexual histories of Ms. Walters or
6 any other survivor, and Ms. Walters’ knowledge about the prior trauma of other
7 survivors, should be limited. Yet, Defendant Warner’s position continues to be that
8 Ms. Walters can be deposed without any limitation, and he has refused to provide
9 any information or communicate about the deposition testimony sought. This Court
10 should not permit Defendant Warner the unfettered right to depose Ms. Walters on
11 any topic. Because Defendant Warner refused to continue to meet and confer and
12 sought court intervention with this Joint Stipulation, Ms. Walters deemed it would
13 be premature and redundant to also file a motion to quash or motion for protective
14 order regarding the same. However, if the Court prefers that this discovery dispute
15 be resolved by way of a motion to quash or motion for protective order, Ms. Walters
16 will file such motion as appropriate.

17 As such, the Court should require Defendant Warner to identify the
18 deposition topics with particularity in order to allow Ms. Walters, a non-party to this
19 action, to properly determine the breadth of the deposition testimony sought. In
20 addition, Ms. Walters’ requests that the Court limit her deposition to one day of
21 testimony so that the Defendant Warner does not have the ability to recall her for
22 additional dates, as they have threatened to do, thereby burdening her further. It is
23 Defendants’ choice not to depose the Plaintiff in this matter. However, Ms. Walters,
24 a non-party, should not be required to testify again when and if Defendants decide to
25 depose Plaintiff Bianco or any other party to the litigation.

26 **IV. ISSUE 3: AWARD OF THE REASONABLE EXPENSES INCURRED**
27 **IN MOVING TO COMPEL MS. WALTERS’ ATTENDANCE.**

28

1 **A. Defendant’s Position**

2 Ms. Walters and her counsel should be required to pay for the reasonable
3 expenses incurred in making the Motion to compel her attendance, including
4 attorney’s fees. Fed. R. Civ. P. 37(a)(5)(A); *Foshee v. Mastec Network Sols., Inc.*,
5 2021 WL 5529891, at *10 (E.D. Cal. Nov. 24, 2021) (“[F]or a subpoenaed
6 nonparty’s failure to attend a deposition, Civil Rule 37(a)(5) authorizes an award of
7 expenses, including attorney’s fees, incurred for a motion to compel the nonparty’s
8 attendance.”).

9 Mr. Warner filed the Motion only after attempting in good faith to obtain Ms.
10 Walters’ deposition, Fed. R. Civ. P. 37(a)(5)(A)(i), including most recently, offering
11 to postpone the deposition to yet a later date when she could fully comply—an offer
12 she refused. *See* Ex. 4 at 1-2.

13 Ms. Walters cannot establish that her refusal to attend her deposition, on the
14 already-delayed date she demanded (or some other date), was “substantially
15 justified.” Fed. R. Civ. P. 37(a)(5)(A)(ii). Rather, the record reflects months of
16 unjustified delay by Ms. Walters, Ex. 2, followed but further attempts to delay the
17 proceeding, Ex. 3. Fed. R. Civ. P. 30(d)(2) (“The court may impose an appropriate
18 sanction—including the reasonable expenses and attorney’s fees incurred by any
19 party—on a person who impedes, delays, or frustrates the fair examination of the
20 deponent.”). While Mr. Warner was never required to obtain Ms. Walters’ consent
21 to a deposition date, he did so in early July as a courtesy and to minimize any
22 potential burden on Ms. Walters, a non-party in this action. Ex. 2 at 7. Ms. Walters
23 abused that gesture through weeks of delay followed by insisting on a deposition
24 date nearly two months later. *Id.* at 1-6. Even after the parties agreed on this date,
25 the pattern continued. Ex. 3. Ms. Walters made clear that she intended to stand on
26 her objections to the subpoena, but prevented the issue from being presented to the
27 Court sooner. *Id.* Ms. Walters failed to file a motion—*ex parte* or otherwise—
28 seeking protection before the deposition date. *Grasshopper House*, 2011 WL

1 13214102, at *4 (“A party served with a deposition notice must obtain a protective
2 order (e.g. a stay of the deposition pending hearing on the motion) *before the date*
3 set for the discovery response or deposition.”); *see also Daniels v. Dixon*, 2022 WL
4 3574443, at *4 (C.D. Cal. July 12, 2022) (Rocconi, J.) (where party “unilaterally
5 terminated the deposition without filing a motion with the Court under Rule 30(d)(3)
6 . . . [his] conduct necessitated th[e] Motion” and “should bear the costs associated
7 with the first deposition”). Rather, when counsel for Mr. Warner made clear they
8 intended to appear on the mutually agreed-upon deposition date, Ms. Walters
9 unilaterally pulled out, and refused subsequent offers to postpone the deposition to a
10 later date by which Ms. Walters would be able to fully comply. Ex. 3 at 7-11.
11 Monetary sanctions are warranted under the circumstances because Mr. Warner had
12 to bring this motion to compel compliance.

13 **B. Ms. Walters’ Position**

14 Ms. Walters should not be required to pay for any expenses incurred in
15 making the Motion to compel her attendance and associated attorney’s fees. The
16 Motion to Compel is unwarranted and as discussed in detail, Ms. Walters’ brief
17 scheduling delay is justified and made in good faith. She has agreed to sit for a
18 deposition and attempted to work with Defendant Warner to schedule additional
19 dates. *See Ex. 3 at 7*. The brief delay was to allow Ms. Walters the necessary time
20 to locate, review and produce the documents Defendant Warner requested, which
21 cover more than a ten-year period. Defendant Warner’s claim that Ms. Walters
22 abused the courtesy of scheduling a deposition date by insisting on a date in
23 September is false. Through various communications, Ms. Walters and her counsel
24 made it clear that the selected August dates were not amenable for either party due
25 to travel restraints and prior commitments that could not be rescheduled. *See Ex. 2*
26 *at 4-5*. Ms. Walters provided her availability for September (which included more
27 than one date) all of which were well within the discovery period and all parties
28 came to a mutually agreed upon date. *See Ex. 2 at 2*. Ms. Walters agreed to testify

1 and produce documents relative to Ms. Bianco’s claims.

2 In terms of the subpoena request for documents and testimony, Ms. Walters
3 has not refused to be deposed in relation to the Bianco matter; in fact, the evidence
4 shows quite the opposite. Correspondence between counsel for Ms. Walters and
5 Defendant Warner shows that Ms. Walters extended several opportunities for
6 compromise and made concessions which were disregarded by Defendant Warner.
7 See Ex.3 at 20-21, 10-11, and 7-8. Only when it became evident that Defendant
8 Warner refused to discuss the breadth of their requests did the delay occur.
9 However, at no time did Ms. Walters refuse to attend her deposition. Instead, when
10 Defendant Warner refused to meaningfully confer regarding Ms. Walters’ requests
11 for limitations and compromises, he threatened to depose Ms. Walters, a non-party,
12 a second time if she objected to any questioning at the deposition or failed to
13 produce all the communications they were seeking. Sanctions are unwarranted here
14 where “the movant filed the motion before attempting in good faith to obtain the
15 disclosure or discovery without court action.” Fed. R. Civ. P. 37(a)(5)(A)(i).

16 At that point, since Defendant Warner made clear he was unwilling to
17 compromise or meet and confer further, Defendant Warner’s motion to compel
18 should be ruled on and the scope of Ms. Walters’ deposition clarified prior to Ms.
19 Walters sitting for a deposition under these circumstances. Given the briefing
20 schedule alone for either a motion to quash, motion for protective order, or a
21 motion to compel, September 20th was no longer a viable date for Ms. Walters
22 deposition. As explained above, because Defendant Warner rebuffed Ms. Walters’
23 continued efforts to meet and confer and sought court intervention with this motion
24 to compel, Ms. Walters deemed it would be premature and redundant to also file a
25 motion to quash or motion for protective order regarding the same, but will do so if
26 the Court requires it.

27 Accordingly, an award of expenses incurred for a motion to compel Ms.
28 Walters’ attendance at a deposition for which she already agreed to attend and

1 provided additional dates to do so prior to Defendant Warner’s filing an unnecessary
2 motion is unwarranted. Sanctions are not appropriate where “the opposing party’s
3 nondisclosure, response, or objection was substantially justified.” Fed. R. Civ. P.
4 37(a)(5)(A)(ii). Defendant Warner also has not set forth what amount he is seeking
5 or justified why such amount is reasonable. Finally, the non-party subpoena
6 Defendant Warner issued is invalid because they failed to simultaneous tender
7 witness fees and the reasonably estimated mileage required by law.
8 Fed.R.Civ.P.45(b)(1). *See Chaudhry v. Angell*, No. 1:16-CV-01243-SAB, 2021 WL
9 1666988, at *4 (E.D. Cal. Apr. 28, 2021) citing *CF & I Steel Corp. v. Mitsui & Co.*
10 (*U.S.A.*), 713 F.2d 494, 496 (9th Cir. 1983) (upholding court's granting of motion to
11 quash subpoena on basis of invalid service due to no tendering of witness and
12 mileage fees, stating “[t]he language is clear and the interpretation adopted by the
13 district court is supported by widely accepted treatises on civil procedure,” and
14 therefore holding the plain meaning the rule “requires simultaneous tendering of
15 witness fees and the reasonably estimated mileage allowed by law with service of a
16 subpoena.”); *See also Amtrust N. Am., Inc. v. Safebuilt Ins. Servs., Inc.*, No. 2:16-
17 MC-0145 KJM AC, 2016 WL 5469257, at *1 (E.D. Cal. Sept. 29, 2016) (noting “it
18 appears that more generally, the court can quash the subpoena if it is invalid or
19 procedurally defective,” and that while “CF & I Steel was decided long before the
20 1991 amendments to the rules that added the specific grounds for quashing
21 subpoenas...those amendments do not ‘diminish’ the rights of witnesses [but]
22 [r]ather, the notes to the amendments indicate that they further protect witnesses
23 [and] [t]herefore, even though ‘invalidity’ and ‘procedural defect’ are not listed as
24 grounds for quashing subpoenas, they are still valid grounds for doing so.”).

25 Assuming the Court denies the instant motion to compel, Ms. Walters
26 requests the Court to issue a protective order authorized under Rule 26(c), and
27 require Defendant Warner to pay Ms. Walters her reasonable expenses incurred in
28 opposing the motion including attorneys’ fees. Fed. R. Civ. P. 37(a)(5)(B). Such

1 protective order should shield Ms. Walters from having to produce her
2 communications with Ms. Wood or Ms. Gore, and shield her from having to testify
3 regarding anything other than her knowledge of Ms. Bianco’s claims against
4 Defendants.

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7 DATED: September 23, 2022 KING, HOLMES, PATERNO &
8 SORIANO, LLP

9

10 By: /s/ Howard E. King¹
11 HOWARD E. KING
12 Attorneys for Defendant BRIAN WARNER

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14 DATED: September 22, 2022 HADSELL STORMER RENICK & DAI LLP
15 VALLI KANE & VAGNINI LLP²

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17 By: /s/ Tanya Sukhija-Cohen
18 DAN STORMER
19 TANYA SUKHIJA-COHEN

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Attorneys for Non-Party ASHLEY WALTERS

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25 ¹ Pursuant to L.R. 5-4.3.4(a)(2)(i), the filer of this document attests that all
26 other signatories listed, and on whose behalf the filing is submitted, concur in the
filing’s content and have authorized the filing.

27 ² Ms. Walters’ counsel from Valli Kane & Vagnini LLP were admitted *pro hac vice*
28 in the action *Ashley Walters v. Brian Warner, et al.*, No. 21STCV18680 in the
Superior Court of California, County of Los Angeles on August 19, 2021.

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EXHIBITS TO JOINT STIPULATION

Exhibit 1: Email exchange among counsel, subpoena, and notice of subpoena

Exhibit 2: Email exchange among counsel

Exhibit 3: Email exchange among counsel

Exhibit 4: Email exchange among counsel

Exhibit 5: Ashley Walters’ Second Amended Complaint

Exhibit 6: Esme Bianco’s Response in Opposition to Motion to Dismiss, Dkt. 18.

Exhibit 7: Scheduling Order, Dkt. 34

Exhibit 8: Order Granting Joint Stipulation to Modify Dates in Scheduling Order, Dkt. 47

Exhibit 9: Los Angeles Time Article regarding a criminal investigation of Defendant Brian Warner, dated September 20, 2022.

Exhibit 10: Defendants’ and Bianco’s Joint Stipulation to Modify Dates in the Scheduling Order, Dkt. 46

Exhibit 11: Plaintiff Bianco’s operative Second Amended Complaint, Dkt. 40

Exhibit 12: Defendants’ Answer to Plaintiff Bianco’s Amended Complaint, Dkt. 27

Exhibit 13: Email exchange among counsel, serving Defendants’ portion of Joint Stipulation