UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE RULE 45 SUBPOENA ISSUED TO PREMIER DISTRIBUTION COOPERATIVE, INC. D/B/A BLUE HAWK DISTRIBUTION OR BLUE HAWK COOPERATIVE REGARDING DURAPLAS, LP v. DIVERSITECH CORPORATION, a case pending in the United States District Court for the Northern District of Texas, Case No. 25-cv-1310-K	Misc. No.

DURAPLAS, LP'S MOTION TO COMPEL NON-PARTY PREMIER DISTRIBUTION COOPERATIVE, INC. D/B/A BLUE HAWK DISTRIBUTION OR BLUE HAWK COOPERATIVE'S COMPLIANCE WITH RULE 45 SUBPOENA AND BRIEF IN SUPPORT

Pursuant to Federal Rules of Civil Procedure 34(c) and 45(d)(2)(B)(i), DuraPlas, LP ("DuraPlas") files this Motion to Compel ("Motion") and asks this Court to compel Premier Distribution Cooperative, Inc. d/b/a Blue Hawk Distribution or Blue Hawk Cooperative ("Blue Hawk") to comply with the document subpoena duly served on it in connection with *DuraPlas, LP v. DiversiTech Corporation*, No. 25-cv-1310-K (N.D. Tex. May 26, 2025), pending in the Northern District of Texas (the "Underlying Action").

INTRODUCTION

This Motion arises from Blue Hawk's prolonged failure to comply with a properly served non-party subpoena seeking documents central to DuraPlas's claims against DiversiTech Corporation ("DiversiTech") in the Underlying Action. More than eight months have passed since Blue Hawk was served with the Subpoena. Despite multiple meet-and-confer efforts and DuraPlas's significant concessions to reduce any alleged burden, Blue Hawk has only produced ten documents and refuses to produce anything more unless DuraPlas pays Blue Hawk's unspecified costs.

Blue Hawk's intransigence is particularly unjustified given its central role in the events underlying DuraPlas's claims. Blue Hawk is a buying cooperative that, by its own description, administers DiversiTech's conditional rebate programs—the very programs DuraPlas challenges in the Underlying Action as anticompetitive exclusive dealing arrangements. Blue Hawk's internal communications and communications with its members regarding those programs are uniquely within Blue Hawk's possession and directly relevant to DuraPlas's claims against DiversiTech.

Blue Hawk's strategy of stringing DuraPlas along for months, making a token production, then conditioning any further compliance on cost-shifting and an indefinite delay, flouts its obligations under the Subpoena and the Federal Rules of Civil Procedure. Accordingly, DuraPlas asks this Court to compel Blue Hawk to produce responsive documents and reject Blue Hawk's demand that DuraPlas bear its costs as a condition precedent to compliance.

FACTUAL AND PROCEDURAL BACKGROUND

The Underlying Action is an antitrust and patent dispute between DuraPlas and DiversiTech. DuraPlas alleges, among other things, that DiversiTech has unlawfully monopolized or attempted to monopolize the market for plastic pads used to mount outdoor heating, ventilation, air-conditioning, and refrigeration ("HVAC/R") units, including through *de facto* exclusive dealing arrangements implemented via conditional rebate programs. *See generally DuraPlas, LP v. DiversiTech Corp.*, No. 25-cv-1310-K, at Dkt. 23 (N.D. Tex. May 26, 2025).

Blue Hawk is a buying group and cooperative that leverages the combined purchasing power of its members to obtain HVAC/R equipment and supplies, including DiversiTech's plastic pads.[1] Blue Hawk administers DiversiTech's rebate and discount programs for its members, placing it at the center of the exclusive dealing arrangements DuraPlas challenges. *See* **Exhibit 4**,

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[1] *See* https://www.bluehawk.coop/blue-hawk-story/; https://www.bluehawk.coop/vendor-partners/ (last visited Jun. 23, 2026).

Feb. 18, 2026 correspondence, at 4. As such, Blue Hawk's internal documents and communications with its members are uniquely relevant to DuraPlas's claims and are not obtainable from DiversiTech.

On October 6, 2025, DuraPlas served on Blue Hawk a non-party document subpoena (the "Subpoena"), a true and correct copy of which is attached as **Exhibit 1**. The Subpoena contained 22 requests for production seeking documents and communications regarding, *inter alia*, DiversiTech's exclusivity arrangements, conditional rebate programs, communications with Blue Hawk's members about DuraPlas and its products, and the Underlying Action. Ex. 1. The Subpoena specified a compliance deadline of November 5, 2025 and listed the undersigned's Chicago office, located within this District, as the place of compliance. *Id.*

The deadline for Blue Hawk to serve its objections to the Subpoena was October 20, 2025 (i.e., fourteen days after service). *See* FED. R. CIV. P. 45(d)(2)(B). Blue Hawk did not serve any objections or responses by that date. In fact, DuraPlas heard nothing from Blue Hawk for nearly three months.

On January 7, 2026, Blue Hawk's CEO contacted DuraPlas's counsel and stated that he had only recently discovered the Subpoena in a stack of documents. *See* **Exhibit 2**, Jan. 8-Jan. 30, 2026 correspondence. The next day, DuraPlas sent Blue Hawk a copy of an order in the Underlying Action lifting a previously issued discovery stay, identified nine "priority" requests from the Subpoena, and asked Blue Hawk to produce responsive documents by January 16, 2026, because DuraPlas needed the "priority" documents to oppose DiversiTech's motion for preliminary injunction in the Underlying Action. *Id.*

Blue Hawk served written responses and objections on January 12, 2026, almost three months after its objection deadline lapsed. *Id.* Notably, Blue Hawk's responses and objections were limited to the nine priority requests identified in the January 7, 2026 correspondence from DuraPlas's counsel. According to Blue Hawk, it lacked documents responsive to eight of the nine priority requests and objected that its vendor agreements with DiversiTech were confidential. *Id.*

The same day, DuraPlas asked Blue Hawk to produce the agreements under the protective order in the Underlying Action and inquired about Blue Hawk's search methodology for those requests where it claimed to lack responsive documents. *Id.* After not receiving a response from Blue Hawk, DuraPlas followed up on January 26, 2026. *Id.*

On January 30, 2026, Blue Hawk indicated it had retained counsel to represent it in connection with responding further to the Subpoena. *See id.* On February 5, 2026, Blue Hawk's counsel sent DuraPlas a letter flatly refusing to produce any documents and asking DuraPlas to withdraw the Subpoena. **Exhibit 3**, Feb. 5, 2026 correspondence.

On February 10, 2026, counsel for DuraPlas and Blue Hawk met and conferred regarding the scope of the Subpoena. *See* Ex. 4. Following that discussion, DuraPlas sent Blue Hawk a detailed letter proposing modifications that substantially narrowed the scope of the Subpoena requests to address Blue Hawk's stated concerns. *Id.*

On March 23, 2026, Blue Hawk's counsel responded, indicating that Blue Hawk would produce its Vendor Partner Agreements and Purchase Incentive Agreements with DiversiTech for 2022-2026, but otherwise refused to produce additional documents, principally on the ground that the requested documents should be sought from DiversiTech in the first instance. *See* **Exhibit 5**, Mar. 23, 2026 correspondence.

On or about April 2, 2026, Blue Hawk produced the vendor agreements, which consisted of ten documents totaling just 58 pages. This remains the entirety of Blue Hawk's production to date.

On April 17, 2026, following another meet-and-confer, DuraPlas offered Blue Hawk additional significant concessions, narrowing the Subpoena from 22 requests to just six. To address Blue Hawk's objection that responsive documents could be more readily obtained from DiversiTech, DuraPlas limited each of those six requests to Blue Hawk's internal documents and communications and external communications with its members—categories of documents uniquely in Blue Hawk's possession that DiversiTech would not have. *See* **Exhibit 6**, Feb. 3-May 28, 2026 correspondence.

Despite repeated follow-up communications on April 27, May 6, May 13, May 21, and May 28, 2026, Blue Hawk failed to substantively respond to DuraPlas's April 17 proposal for over a month. Blue Hawk's counsel variously stated they were conferring with their client or scheduling a call, but never provided a substantive position. *See id.*

Finally, on June 1, 2026, DuraPlas managed to arrange a call with Blue Hawk's counsel, who still was unable to provide their client's position on DuraPlas' proposal. During the call, counsel noted that some of the six narrowed requests related to claims dismissed in the Underlying Action that DuraPlas now seeks to reassert in its complaint through a pending motion for leave to amend. DuraPlas once again accommodated Blue Hawk, offering to hold those requests in abeyance until the Court rules on the motion for leave. Counsel agreed to bring this proposal back to Blue Hawk.

On June 12, 2026, Blue Hawk's counsel stated that Blue Hawk planned "to defer any additional document productions until after the pleadings [in the Underlying Action] closed," insisted that "it would be an undue burden on non-party Blue Hawk to search for, review, and produce electronic documents in multiple rounds," and conditioned any further production on DuraPlas's agreement to "pay [Blue Hawk's] reasonable expenses." *See* **Exhibit 7**, June 12, 2026 correspondence. Blue Hawk did not quantify the purported burden or identify any specific costs, custodians, or data volumes. *See id.*

ARGUMENT

A. Legal Standard

The scope of discovery under Rule 45 is coextensive with Rule 26(b)(1), which permits discovery of "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); *see also Laudicina v. City of Crystal Lake*, 328 F.R.D. 510, 512 (N.D. Ill. 2018) (mem. op.). This includes information in the possession of non-parties. *See Hobley v. Burge*, 433 F.3d 946, 949 (7th Cir. 2006); *see also* FED. R. CIV. P. 45. Although courts may consider a non-party's status in assessing the burden of responding to a subpoena, that status does not afford the responding party with absolute immunity from the costs and burdens of compliance. *See* FED. R. CIV. P. 45(d)(1). When a non-party fails to comply with its discovery obligations under a subpoena, the issuing party may seek to compel compliance. FED. R. CIV. P. 34(c) (non-parties "may be compelled to produce documents and tangible things or to permit an inspection."); *see also* FED. R. CIV. P. 45(d)(2)(B)(i) ("[T]he serving party may move the court for the district where compliance is required for an order compelling production or inspection.").

B. Blue Hawk Waived Its Objections to the Subpoena.

As a threshold matter, Blue Hawk has waived any objections to the Subpoena by failing to serve timely written objections. Rule 45 is clear: a subpoena recipient's objections "must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served." FED. R. CIV. P. 45(d)(2)(B). Absent timely written objections, courts routinely find waiver even when compliance would be inconvenient or burdensome. *See Brogren v. Pohlad*, No. 94 C 6301, 1994 WL 654917, at *1 (N.D. Ill. Nov. 14, 1994) (non-party waived its right to object to a subpoena duces tecum where it waited for over two months to serve its written objections); *see also Whitlow v. Martin*, 263 F.R.D. 507, 510 (C.D. Ill. 2009).

Here, the Subpoena was served on October 6, 2025. Ex. 1. Blue Hawk's objections were due by October 20, 2025. *See* FED. R. CIV. P. 45(d)(2)(B). Blue Hawk did not serve any written objections until January 12, 2026—nearly three months after the deadline to serve written objections passed. Ex. 2. Even then, Blue Hawk only objected to the nine "priority" requests identified by DuraPlas's counsel rather than the full set of 22 requests in the Subpoena. *See id.* Blue Hawk has therefore waived any objections to the Subpoena. *See Brogren*, 1994 WL 654917, at *1; *Whitlow*, 263 F.R.D. at 510. Blue Hawk's actions reflect precisely the type of conduct Rule 45 is designed to prevent: ignoring a subpoena, delaying for months, and then asserting objections after the fact to avoid compliance. The Court should deem all objections waived and compel full compliance on this basis alone.

C. The Narrowed Requests Seek Documents That Are Relevant and Proportional to the Needs of the Underlying Action.

Setting aside Blue Hawk's waiver, DuraPlas narrowed its 22 requests to just six requests to address Blue Hawk's contention that responding to the Subpoena would be overly burdensome. The six narrowed requests easily satisfy Rule 26(b)(1)'s relevance and proportionality requirements. DuraPlas's claims challenge DiversiTech's use of *de facto* exclusive dealing arrangements and conditional rebate programs to maintain its monopoly in the plastic HVAC/R pad market. Blue Hawk is not a peripheral actor. It is the entity that administered those programs and communicated the terms of those arrangements to its member distributors.

DuraPlas's narrowed requests focus on Blue Hawk's (a) internal communications regarding these programs; and (b) external communications with its members, who were subject to the alleged exclusionary conduct. For example, narrowed Request Nos. 1 and 2 (based on original Request Nos. 6 and 15) seek:

- **Narrowed Request No. 1 (Original Request No. 6):** Blue Hawk's communications with its members regarding rebates, discounts, or preferential pricing terms DiversiTech offered members where those benefits were conditioned on members (i) sourcing plastic HVAC/R pads from DiversiTech exclusively; (ii) committing to purchase a specified volume of plastic pads from DiversiTech; or (iii) purchasing plastic pads as part of a multiproduct bundle. *See* Ex. 4.

- **Narrowed Request No. 2 (Original Request No. 15):** All internal documents or communications and external communications with members related to the implementation or enforcement of any DiversiTech exclusivity arrangements, including actual or threatened penalties for departing from the arrangement. *See id.*

These requests go directly to establishing how the rebate programs were structured and communicated; whether the programs functioned as *de facto* exclusive dealing arrangements; how compliance was monitored or enforced; and whether members understood or experienced pressure to purchase exclusively from DiversiTech.

Blue Hawk's principal objection to the narrowed requests is that they are purported "unduly burdensome" because they "seek[] documents that are readily obtained from DiversiTech...." Ex. 5. Blue Hawk misstates both the facts and the law. *First,* the six narrowed requests are expressly limited to Blue Hawk's *internal* documents and communications and its external communications with its members. DiversiTech cannot be expected to possess Blue Hawk's internal communications or the communications Blue Hawk had with its own members. Blue Hawk's central role as the conduit between DiversiTech and its distribution network makes its documents uniquely probative. That reality weighs heavily in favor of compelling compliance.

Second, any credible claim of burden is undermined by DuraPlas's extensive efforts to narrow the scope of the Subpoena. To avoid unduly burdening Blue Hawk, DuraPlas reduced its original 22 requests to just six targeted requests, limited the requests to specific subject matter tied to exclusivity and rebates, and restricted the scope to internal and member-facing communications and documents. That is the opposite of unduly burdensome discovery. It is tailored, focused, and proportional to the importance of the issues at stake, which include alleged monopolization in a national market.

Blue Hawk's other objection—that some of the narrowed requests relate to theories DuraPlas has sought leave to replead (Ex.7)—is a red herring. DuraPlas offered to table those requests pending the Court's ruling on its motion for leave to amend, leaving Blue Hawk to comply with only two requests (Narrowed Request Nos. 1 and 2) indisputably relevant to DuraPlas' surviving claims in the interim.[2] Blue Hawk rejected that accommodation, asserting without elaboration that producing documents in "multiple rounds" would impose an "undue burden." *See id.*

All these objections are deficient. A party resisting a subpoena must do more than invoke "burden" as a conclusory label; it must provide a particularized showing of the alleged burden. *Reed v. Illinois*, 318 F.R.D. 77, 79 (N.D. Ill. 2016) (citing *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 993 (7th Cir. 2002)); *see, e.g., U.S. v. Dean Foods Co.*, No. 10-CV-59, 2011 WL 9161, at *1 (E.D. Wis. Jan. 3, 2011) (denying subpoena recipient's motion to quash due to its failure "to articulate any facts underpinning its conclusory legal arguments and its failure to offer specific and detailed reasoning as to why [the] document requests are irrelevant or unduly burdensome"). Blue Hawk has offered no such showing. It has not identified the number of custodians whose documents would need to be searched, the volume of data at issue, the search terms that would be required, or any specific cost estimate. *See* Ex. 5. Instead, Blue Hawk relies on boilerplate

[2] Consistent with this position, DuraPlas does not ask the Court to compel immediate production of documents responsive to Narrowed Request Nos. 3-6. (*See* Ex. 6.) Rather, DuraPlas asks that the Court order Blue Hawk to produce these documents if and when the court in the Underlying Action grants DuraPlas's pending motion for leave to amend, or, alternatively, that the Court preserve DuraPlas's right to seek enforcement at that time.

assertions that the requests are "unduly burdensome." *Id.* That is legally insufficient and falls far short of the "particularized showing" required. *See Reed*, 318 F.R.D. at 79; *Dean Foods*, 2011 WL 9161, at *1; *see also CSC Holdings*, 309 F.3d at 993-94 (holding that subpoena recipient's "bare representation[s]" were "not enough to establish an undue burden under Rule 45 or to show some other exceptional circumstances that would justify prohibiting" the requested discovery).

D. Blue Hawk's Demand for Cost-Shifting Is Improper and Unsupported.

Blue Hawk's attempt to condition its compliance on prepayment of unspecified "reasonable expenses" is contrary to Rule 45 and governing case law. *See* Ex. 5. Rule 45 permits a court to protect a non-party from "significant expense resulting from compliance" with a subpoena; however, cost-shifting is not automatic and requires a showing of the "significant expense" required to comply. FED. R. CIV. P. 45(d)(2)(B)(ii); *see, e.g., DeGeer v. Gillis*, 755 F. Supp. 2d 909, 928-29 (N.D. Ill. 2010) (mem. op.).

When determining whether to shift compliance costs, courts begin from the presumption that the responding party bears its own costs. *Wiginton v. CB Richard Ellis, Inc.*, 229 F.R.D. 568, 571-72 (N.D. Ill. 2004); *DeGeer*, 755 F. Supp. 2d at 928 (recognizing the presumption that a responding party must bear the expense of compliance and noting that "[i]n the subpoena context, cost-shifting should occur when an order requiring compliance subjects a non-party to 'significant expense.'"). It is then the responding party's burden to establish the "significant expense" of complying with a subpoena. *Uriel Pharmacy Health and Welfare Plan v. Advoc. Aurora Health, Inc.*, 348 F.R.D. 329, 341 n.5 (E.D. Wis. 2025).

Blue Hawk has made no showing to justify its demand that DuraPlas pay its expenses associated with responding to the Subpoena. It has not provided any estimate of anticipated costs, breakdown of vendor expenses, explanation of the scope of collection or review, or evidence that compliance would be unusually costly. Ex. 5. Without such evidence, there is no basis for shifting

Blue Hawk's compliance costs to DuraPlas. Equally problematic, Blue Hawk seeks to condition any further production on DuraPlas's agreement to pay. That position is not supported by Rule 45 or the case law. *See DeGeer*, 755 F. Supp. 2d at 928 ("[T]he presumption is that the responding party must bear the expense of complying with discovery requests") (citation modified). A non-party may seek protection from undue burden, but it cannot refuse to comply outright unless paid. The proper procedure is either to produce responsive documents and then, if warranted, seek relief from the Court or to file a motion to quash, both of which require a showing of the significant expense associated with compliance.

Also weighing against cost-shifting is the fact that Blue Hawk is not "the quintessential innocent, disinterested bystander," given its role as administrator of DiversiTech's conditional rebate programs. *See Dale v. T-Mobile US, Inc.*, No. 22-CV-3189, 2025 WL 4059469, at *7 (N.D. Ill. Oct. 3, 2025) (citation modified). "[W]here a nonparty was substantially involved in the underlying transaction and could have anticipated that it would reasonably spawn some litigation, expenses should not be awarded." *Id.* (citation modified). Blue Hawk was intimately involved in the events giving rise to DuraPlas' antitrust claims: it helped DiversiTech administer the very rebate programs challenged as unlawful exclusive-dealing arrangements in the Underlying Action. *See* Ex. 4, at 4.

Finally, Blue Hawk's conduct forecloses equitable cost-shifting. It ignored the Subpoena for months, rejected narrowed requests, and produced just ten documents. A party that delays compliance and necessitates motion practice should not be rewarded with cost-shifting, particularly where its own conduct has increased the costs at issue. *See, e.g.*, *DeGeer*, 755 F.Supp.2d at 928-30. Accordingly, the Court should require Blue Hawk to bear the costs of complying with the Subpoena.

CONCLUSION

For the foregoing reasons, DuraPlas respectfully requests that the Court grant this Motion, deem Blue Hawk's untimely objections as waived, and order Blue Hawk to (1) produce all non-privileged documents responsive to DuraPlas's Narrowed Request Nos. 1 and 2 (based on Original Request Nos. 6 and 15) within ten days from the date of the Court's order granting this Motion; (2) produce documents responsive to the remaining four narrowed requests provided the court in the Underlying Action grants DuraPlas's motion for leave to amend; and (3) make such productions without any cost-shifting. DuraPlas further requests such other and further relief to which it may be justly entitled.

Dated: June 30, 2026

Respectfully submitted,

/s/ Ariba Ahmad

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 30, 2026 a true and correct copy of the above and foregoing document was served via email to the following:

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/s/ Ariba Ahmad
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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 37.2, the undersigned certifies that counsel for DuraPlas, Ian T. Hampton, conferred in good faith with counsel for Blue Hawk, Kristin E. Schubert and/or Ari Jakobson, on multiple occasions via telephone and email regarding the relief requested in this motion, most recently on June 1, 2026, but were unable to resolve the matter. Counsel for Blue Hawk opposes the relief sought in this motion.

/s/ Ariba Ahmad
Ariba Ahmad