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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HOLLY CARBON, *et al.*,

Plaintiffs,

v.

SEATTLE REPRODUCTIVE MEDICINE
INC PS,

Defendant.

CASE NO. 2:19-cv-01491-RAJ-JRC

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTION TO
COMPEL

This matter has been referred to the undersigned by the District Court for the resolution of all discovery matters. *See* Dkt. 9. This matter is before the Court of plaintiffs' motion to compel defendant to respond to a number of interrogatories and requests for production. *See* Dkt. 25. Defendant opposes the motion to compel. *See* Dkt. 28.

Plaintiffs' motion to compel is granted in part because defendant failed to fully answer plaintiffs' interrogatories that are relevant to plaintiffs' claims and factual allegations. Defendant further offered inadequate, boilerplate objections to plaintiffs' requests for production. However, plaintiffs' motion to compel is denied in part because, following the filing of the motion to

1 compel, defendant supplemented its answers and responses to plaintiffs' interrogatories and
2 requests for production, thus resolving some of plaintiffs' asserted deficiencies.

3 Accordingly, parties shall comply with this Order as discussed herein on or before
4 **August 11, 2020 (14 days).**

5 BACKGROUND

6 Plaintiffs bring Washington State law claims against defendant for breach of contract,
7 negligence, negligent infliction of emotional distress, and bailment relating to defendant's
8 preservation, storage, and transfer of plaintiffs' cryopreserved embryo from Washington State to
9 a medical center in Texas. *See* Dkt. 1. Specifically, plaintiffs allege that defendant shipped a
10 container, purportedly containing plaintiffs' remaining embryo, to the medical center in Texas.
11 *See id.* However, plaintiffs allege that upon receipt of the container, the medical center in Texas
12 found that the container was empty. *See id.* at 7. Plaintiffs allege that they contacted defendant
13 and demanded to know where their embryo was, but defendant offered no explanation for the
14 loss of plaintiffs' embryo. *See id.*

15 In December 2019, the Court entered an order setting pretrial deadlines, and the parties
16 commenced discovery. *See* Dkt. 15. Before the discovery deadline, plaintiffs filed the pending
17 motion to compel, in which they assert that defendant inadequately responded to a number of
18 interrogatories and requests for production, as well as failed to properly certify its answers to
19 plaintiffs' interrogatories. *See* Dkt. 25. Prior to filing the pending motion to compel, plaintiff
20 states that the parties met and conferred but were unable to reach a resolution. *See id.* at 3.
21 However, defendant contests that plaintiffs conferred in good faith before filing the pending
22 motion to compel. *See* Dkt. 28, at 1. Defendant further states that it has edited the contested
23 objections and supplemented its responses to plaintiffs' discovery requests, thus rendering
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1 plaintiffs' motion to compel as moot. *See id.* Plaintiffs maintain that defendant's supplemented
2 discovery responses are still inadequate. *See* Dkt. 30.

3 DISCUSSION

4 I. Meet and Confer Requirement

5 As an initial matter, in its response brief, defendant asserts that plaintiffs failed to confer
6 with defendant in good faith prior to filing the pending motion to compel. *See* Dkt. 28, at 4–5.
7 Any motion for an order compelling disclosure or discovery must include a certification that the
8 moving party has in good faith conferred or attempted to confer with the party failing to make
9 disclosure or discovery in an effort to obtain it without court action. Fed. R. Civ. P. 37(a)(1);
10 Local Civil Rule (“LCR”) 37(a)(1). The certification, which may be included in the moving
11 party's motion, a declaration, or affidavit, must list the date, manner, and participants to the
12 conference. *See* LCR 37(a)(1). Where the moving party fails to include such a certification, the
13 court may deny the motion without addressing the merits of the dispute. *See id.*

14 Here, plaintiffs sent defendant a letter specifically addressing each contested deficiency
15 in defendant's responses to plaintiffs' discovery requests. *See* Dkt. 26-3. Further, on May 27,
16 2020, the parties held a telephone conference, in which they discussed some, but not all, of
17 defendant's discovery responses at issue. *See* Dkts. 26, at 2; 29, at 2–3. Plaintiffs filed a
18 declaration in support of the motion to compel, certifying their efforts to obtain discovery
19 responses from defendant before seeking court intervention. *See* Dkt. 26, at 2. Although the
20 parties did not address each contested discovery response in their May 27, 2020, telephone
21 conference, plaintiffs attempted to confer in good faith with defendant, though discussions
22 apparently “degraded in productivity” and ended without resolution. Dkts. 28, at 3; 30, at 2.

1 Accordingly, the Court finds that plaintiffs complied with the federal and local rules to meet and
2 confer in good faith. *See* Fed. R. Civ. P. 37(a)(1); LCR 37(a)(1).

3 II. Motion to Compel

4 Federal Rule of Civil Procedure 26(b) governs the scope of discovery that may be
5 obtained—

6 Parties may obtain discovery regarding any nonprivileged matter that is relevant to
7 any party's claim or defense and proportional to the needs of the case, considering
8 the importance of the issues at stake in the action, the amount in controversy, the
9 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.

10 Fed. R. Civ. P. 26(b)(1). "An interrogatory may relate to any matter that may be inquired into
11 under Rule 26(b)." Fed. R. Civ. P. 33(a)(2). Similarly, a party may serve on another party
12 requests to serve documents within the scope of Rule 26(b). *See* Fed. R. Civ. P. 34(a).

13 "The grounds for objecting to an interrogatory must be stated with specificity. Any
14 ground not stated in a timely objection is waived unless the court, for good cause, excuses the
15 failure." Fed. R. Civ. P. 33(b)(4).

16 The answers to interrogatories must be responsive, full, complete and unevasive.
17 The answering party cannot limit [its] answers to matters within [its] own
18 knowledge and ignore information immediately available to [it] or under [its]
19 control. . . . If the answering party lacks necessary information to make a full, fair
and specific answer to an interrogatory, [it] should so state under oath and should
set forth in detail the efforts made to obtain the information.

20 *Essex Builders Grp., Inc. v. Amerisure Ins. Co.*, 230 F.R.D. 682, 685 (M.D. Fla. 2005) (quoting
21 *Continental Illinois Nat'l Bank & Trust Co. v. Caton*, 136 F.R.D. 682, 684 (D. Kan. 1991)).

22 When responding to requests for production, a party must produce all relevant documents
23 within its "possession, custody[,] or control."
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1 & *Agr. Implement Workers of Am.*, 160 F.R.D. 691, 695 (S.D. Ind. 1993) (quotation marks
2 omitted). The requesting party “is entitled to individualized, complete responses to each of the
3 requests . . . , accompanied by production of each of the documents responsive to the request,
4 regardless of whether the documents have already been produced.” *Louen v. Twedt*, 236 F.R.D.
5 502, 505 (E.D. Cal. 2006).

6 **III. Interrogatories**

7 Plaintiffs assert that defendant has failed to adequately answer Interrogatories Nos. 4, 5,
8 6, 7, 8, 9, 11, 12, and 14. *See* Dkt. 25, at 4–6. Although defendant supplemented its answers
9 after plaintiffs filed the motion to compel (*see* Dkt. 29-5), plaintiffs argue that defendant’s
10 supplemental answers are incomplete, or non-answers, to plaintiff’s interrogatories. *See* Dkt. 30,
11 at 3–5. The Court addresses the contested supplemental interrogatory answers below.

12 **A. Policy and Procedure Interrogatories**

13 Five interrogatories—Interrogatories Nos. 4, 5, 6, 7, and 8—inquired about whether and
14 how defendant followed certain policies and standard operating procedures with respect to
15 defendant’s business operations and with respect to plaintiffs’ embryo:

16 Interrogatory No. 4: Describe whether [defendant] followed [Standard Operating
17 Procedure “SOP”] IVFP-41 with respect to [plaintiffs’ embryo]. If so, describe
how and if not, explain why not.

18 Interrogatory No. 5: Describe whether [defendant] followed SOP IVFP-19 with
19 respect to [plaintiffs’ embryo]. If so, describe how and if not, explain why not.

20 Interrogatory No. 6: Describe whether [defendant] followed any standard operating
21 procedure with respect to [plaintiffs’ embryo]. If so, identify the standard operating
procedures and describe how [defendant] complied. If now, explain why not.

22 Interrogatory No. 7: Describe how [defendant] cryptopreserved [plaintiffs’
23 embryo], including but not limited to, any procedures, protocols, processes,
guidelines, quality assurance standards, or requirements followed.

1 Interrogatory No. 8: Describe the procedures involved in [defendant]'s
2 cryptopreservation of embryos, including, but not limited to, record keeping,
storage, transportation, thawing, and use.

3 Dkt. 26-1, at 8–11. In its supplemental answers, defendant partially answers these
4 interrogatories, but raises a number of objections. *See* Dkt. 29-5.

5 Having reviewed defendant's supplemental answers identified by plaintiffs, the Court
6 agrees that the supplemental answers to Interrogatories Nos. 4, 5, and 7 are insufficient, and
7 defendant must fully answer these interrogatories. For example, in Interrogatories Nos. 4 and 5,
8 defendant answers that "[w]ithout waiving [its] objections, answering defendant[] consistently
9 adhered to the standard of care and SOP IVFP-41" and "SOP IVFP-19." Dkt. 29-5, at 13–14.
10 However, defendant fails to answer how it complied with or adhered to these policies. *See id.*
11 Although defendant objects to these interrogatories on the bases that "responsive information
12 may be gleaned from medical records already in possession of [p]laintiffs," defendant fails to
13 "specify[] the records that must be reviewed, in sufficient detail to enable [plaintiffs] to locate
14 and identify them as readily as [defendant] could." Dkt. 29-5, at 13–14; Fed. R. Civ. P. 33(d)(2).
15 Defendant's reference to unspecified "medical records" is insufficiently specific to answer
16 plaintiffs' interrogatories. *See id.*

17 Regarding Interrogatories Nos. 6 and 8, defendant argues that plaintiff agreed to
18 withdraw and resubmit these interrogatories. *See* Dkt. 28, at 8–7. Plaintiffs concede that they
19 agreed to "try and narrow those interrogatories, but did not withdraw them." *See* Dkts. 30, at 3;
20 32, at 2. In light of plaintiffs' apparent concession, the Court finds that plaintiffs must properly
21 tailor Interrogatories Nos. 6 and 8, as agreed, before defendant is required to respond.
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1 Accordingly, the Court GRANTS plaintiffs' motion to compel defendant to fully answer
2 Interrogatories Nos. 4, 5, and 7. The Court DENIES plaintiffs' motion to compel defendant to
3 answer Interrogatories Nos. 6 and 8 as written. *See* Dkt. 26-2, at 9, 11.

4 ***B. Lost Embryo Interrogatories***

5 Three interrogatories—Interrogatories Nos. 9, 11, and 12—inquired about factual
6 allegations regarding plaintiffs' lost embryo:

7 Interrogatory No. 9: Describe any acts, or omissions that [defendant] believes may
8 have led to the destruction and/or loss of [plaintiffs' embryo].

9 Interrogatory No. 11: Describe when and how [defendant] learned that [the Texas
10 medical center] received the Shipment, and the Shipment did not contain [plaintiffs'
11 embryo].

12 Interrogatory No. 12: Describe any action [defendant] took after it learned that the
13 Shipment did not contain [plaintiffs' embryo].

14 Dkt. 26-1, at 11–13. In its supplemental answers, defendant again raises a number of objections,
15 yet answers that “[r]esponsive information may be gleaned from the medical records already in
16 possession of plaintiff.” Dkt. 29-5, at 22.

17 As discussed above, defendant's supplemental answers fail to “specify[] the records that
18 must be reviewed, in sufficient detail to enable [plaintiffs] to locate and identify them as readily
19 as [defendant] could.” Fed. R. Civ. P. 33(d)(2). Defendant's reference to unspecified “medical
20 records” is insufficiently specific to answer plaintiffs' interrogatories. *See id.*

21 Further, beyond identifying unspecified “medical records,” plaintiffs argue in their reply
22 brief that defendant “evades” answering Interrogatory No. 12, which seeks information as to
23 what action(s) defendant took “after it learned the Shipment did not contain [plaintiffs'
24 embryo].” *See* Dkt. 30, at 4. Defendant argues its objections are proper because the allegation

1 that the shipment did not contain plaintiffs' embryo is in dispute and because any steps taken by
2 defendant "for quality assurance purposes are privileged." Dkt. 28, at 9.

3 Having reviewed defendant's supplemental answer to Interrogatory No. 12, the Court
4 finds that defendant's objections are partially proper. Under Washington State law, health care
5 providers' internal records (and information contained therein), created specifically for, and
6 collected and maintained by, a peer review committee or quality improvement committee are
7 privileged and not subject to discovery in any civil action. *See* RCW 4.24.250(1); RCW
8 42.56.360; *Fellows v. Moynihan*, 285 P.3d 864, 868 (Wash. 2012). As defendant appears to be a
9 health care provider under Washington State law, defendant's objection to Interrogatory No. 12
10 on these grounds is proper. *See* RCW 7.70.020 (defining "health care provider"). Defendant is
11 required to disclose whether or not a quality assurance procedure occurred, even if the
12 documents related to such a procedure may be privileged. If defendant asserts a privilege over
13 certain documents, then plaintiffs are entitled to a privilege log over any such documents.

14 Also, because a party "may obtain discovery regarding any non-privileged matter that is
15 relevant to any party's claim or defense," an interrogatory is "not objectionable merely because it
16 asks for an opinion or contention that relates to fact." Fed. R. Civ. P. 26(b)(1); 33(a)(2). Here,
17 Interrogatory No. 12 is directly relevant to plaintiffs' claims against defendant regarding the
18 allegedly lost embryo. *See* Dkt. 1. Accordingly, defendant's objection based on disputed "facts
19 not in evidence" is not proper, and defendant must answer Interrogatory No. 12, excepting any
20 privileged information, as set forth above. *See* Dkt. 29-5, at 24.

21 Accordingly, the Court GRANTS plaintiffs' motion to compel defendant to answer
22 Interrogatories Nos. 9, 11, and 12 consistent with Fed. R. Civ. P. 26(b)(1); 33(a)(2), (d)(1).

1 **C. *Affirmative Defense Interrogatory***

2 Interrogatory No. 14 requests that defendant “[s]tate the alleged factual basis for each of
3 [defendant]’s affirmative defenses.” *See* Dkt. 26-1, at 13. Plaintiffs argue that although
4 defendant provided a partial supplemental answer to Interrogatory No. 14, defendant’s asserted
5 objections are improper. *See* Dkt. 30, at 5. Defendant objected to Interrogatory No. 14 because
6 the interrogatory (1) “amounts to a fishing expedition,” (2) is a “catch all request,” (3) “fails to
7 comply with [Fed. R. Civ. P.] 34(b)’s requirement for reasonable particularity,” and (4) is
8 “premature.” Dkt. 29-5, at 26.

9 Having reviewed defendant’s supplemental answer and objections, the Court finds that
10 defendant’s answer and objections to Interrogatory No. 14 are insufficient. First, Rule 33(a)(2)
11 allows a party to discover an opponent’s theory of a case or its view regarding particular facts
12 supporting a legal claim. *See* Fed. R. Civ. P. 33(a)(2); *Wilkerson v. Vollans Automotive, Inc.*,
13 No. CO8-1501RSL, 2009 WL 1373678, at *1 (W.D. Wash. 2009). Thus, plaintiffs’
14 interrogatory seeking facts supporting defendant’s affirmative defenses in this matter is neither a
15 “fishing expedition” nor a “catch all request.” *See id.*; Dkt. 29-5, at 26. Second, Rule 34(b)
16 governs the production of documents, not interrogatories. *See* Fed. R. Civ. P. 34. Accordingly,
17 this objection to Interrogatory No. 14 is also improper. Third, while discovery in this matter may
18 be in an early stage, Interrogatory No. 14 is not premature to the extent it seeks facts supporting
19 affirmative defenses alleged in defendant’s answer to the complaint. *See* Dkts. 5, at 10–11.
20 However, the Court notes that defendant’s supplemental answer to this interrogatory
21 contemplates additional affirmative defenses that may develop through discovery. *See* Dkt. 29-
22 5, at 26. To that extent, defendant is not required to answer the interrogatory but must timely
23 supplement its response pursuant to Fed. R. Civ. P. 26(e).

1 Finally, the Court further notes that defendant answers Interrogatory No. 14 in part by
2 asserting that “the factual basis for [d]efendant’s affirmative defenses can be found in medical
3 records produced to plaintiff.” Dkt. 29-5, at 26. As discussed above, defendant’s supplemental
4 answer fails to “specify[] the records that must be reviewed, in sufficient detail to enable
5 [plaintiffs] to locate and identify them as readily as [defendant] could.” Fed. R. Civ. P. 33(d)(2).
6 Defendant’s reference to unspecified “medical records” is insufficiently specific to answer
7 plaintiffs’ interrogatories. *See id.*

8 Accordingly, the Court GRANTS plaintiffs’ motion to compel defendant to answer
9 Interrogatory No. 14 consistent with Fed. R. Civ. P. 26(e); 33(a)(2), (d)(1).

10 ***D. Remaining Interrogatories***

11 For the first time, in their reply brief, plaintiffs take issue with defendant’s answers to
12 Interrogatories Nos. 2 and 13. *Compare* Dkt. 25, at 4–6, *with* Dkt. 30, at 3, 5. Although plaintiff
13 raised concerns regarding defendant’s supplemental answers to these interrogatories via email on
14 July 11, 2020 (*see* Dkt. 31-1), plaintiff failed to dispute defendant’s answers to these
15 interrogatories in the motion to compel. *See* Dkt. 25. Additionally, there is no indication that the
16 parties have further conferred regarding the purported deficient supplemental answers to these
17 interrogatories. *See* LCR 37(a)(1); *see also* Dkt. 31-1, at 1 (indicating that plaintiffs would not
18 strike the pending motion to compel despite the July 11, 2020, email to defendant’s counsel).

19 Accordingly, the Court declines to address defendant’s answers to Interrogatories Nos. 2
20 and 13 at least until such time as the parties attempt to confer in good faith and resolve any
21 remaining concerns regarding interrogatories not directly addressed in this order. *See* LCR
22 37(a)(1).

IV. Waiver of Objections to Interrogatories

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2 Plaintiffs argue that defendant's "new, tardy objections" in its supplemental answers to
3 interrogatories "should be deemed waived." *See* Dkt. 30, at 7. "The grounds for objecting to an
4 interrogatory must be stated with specificity. Any ground not stated in a timely objection is
5 waived unless the court, for good cause, excuses the failure." Fed R. Civ. P. 33(b)(4).
6 Defendant cites the ongoing COVID-19 pandemic and the furlough of the majority of
7 defendant's employees as the cause of its delay in responding to plaintiffs' discovery requests.
8 *See* Dkts. 28, at 3–4; 29, at 2. Defendant further explains that its supplemented answers and
9 objections were based on information recently received from employees returning from furlough.
10 *See* Dkts. 28, at 4; 29, at 6.

11 The Court recognizes that the parties' ability to effectively conduct discovery may very
12 well have been impacted by the ongoing COVID-19 pandemic. Further, considering that many
13 of defendant's employees were furloughed until recently, the Court finds good cause to excuse
14 defendant's failure to timely assert all objections in its original answers to plaintiffs'
15 interrogatories. *See* Fed. R. Civ. P. 33(b)(4). Accordingly, defendant's new objections raised in
16 its supplemental answers to plaintiffs' interrogatories are not waived.

V. Requests for Production

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18 Plaintiffs assert that defendant has failed to adequately respond to Requests for
19 Production Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, and 15. *See* Dkt. 25, at 8–11. Although
20 defendant supplemented its responses to these requests after plaintiffs filed the motion to compel
21 (*see* Dkt. 29-5), plaintiffs argue that defendant's responses and boilerplate objections to these
22 requests "obscure[] whether responsive information would be withheld" if and when defendant
23 "locates additional documents." Dkt. 30, at 5.

1 Having reviewed defendant’s supplemental responses and objections, the Court finds that
2 some of defendant’s objections are insufficient because they fail to adequately explain the
3 reasons for objecting to these requests for production. *See* Fed. R. Civ. P. 34(b)(2)(B); *BNSF Ry.*
4 *Co. v. U.S. District Court for the District Court of Montana*, 408 F.3d 1142, 1149 (9th Cir. 2005)
5 (holding that “boilerplate objections or blanket refusals . . . [in] response to a Rule 34 requests
6 for production of documents are insufficient to assert a privilege.”); *see also* *Gibson v. SDCC*,
7 No. 13-cv-01379-RFB-PAL, 2016 WL 845308 at *6 (D. Nev. March 2, 2016) (discussing that
8 boilerplate objections are insufficient to establish that a particular discovery request is outside
9 the scope of discovery). Specifically, in responding to Requests for Production Nos. 3, 4, 5, 11,
10 13, 14, and 15, defendant asserts the following objections without explaining why the particular
11 request is outside of the scope of discovery: (1) “improperly calls for a legal conclusion” (Dkt.
12 29-5, at 13–14, 16); (2) the requests represent a “catch-all request” (*Id.* at 14, 16, 22, 27–28); and
13 (3) the requests amount to “a fishing expedition” (*Id.* at 16, 22, 25, 27–28). These boilerplate
14 objections, without more, are insufficient reasons for objecting to plaintiffs’ requests. *See* Fed.
15 R. Civ. P. 34(b)(2)(B); *BNSF Ry. Co.*, 408 F.3d at 1149 (9th Cir. 2005); *Gibson*, 2016 WL
16 845308 at *6.

17 Regarding Request for Production No. 5, although defendant objects to producing “all
18 documents . . . that relate to [defendant] following any standard operating procedure with respect
19 to [plaintiffs] embryo,” defendant offers to produce a copy of its standard operating procedures
20 index to allow [p]laintiffs to select from the voluminous policies they would like to review.”
21 Dkt. 29-5, at 16 (noting Fed. R. Civ. P. 34(b)’s “reasonable particularity” requirement). In
22 considering this request in conjunction with Interrogatories Nos. 6 and 8 (*see supra*, section
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1 III(A)), the Court finds defendant's offer reasonable, and hereby orders defendant to produce the
2 standard operating procedures index to plaintiffs to further facilitate discovery in this matter.

3 Regarding Requests for Production Nos. 6, 7, 8, and 9, defendant does not assert any
4 objection and unequivocally states that "no responsive materials have been withheld on the basis
5 of privilege." *See* Dkt. 29-5, at 18–19. As plaintiff does not appear to contest these
6 supplemental responses, the Court will not compel defendant to further respond to these requests
7 for production, except as required pursuant to Fed. R. Civ. P. 26(e).

8 As for plaintiffs' concern regarding future supplementation of responses, defendant's
9 responses to the requests for production indicate that defendant understands its duty to timely
10 supplement its responses pursuant to Fed. R. Civ. P. 26(e). *See, e.g.*, Dkt. 29-5, at 18–20, 23, 25
11 (discussing supplementation of responses and continued review of records). At this point,
12 plaintiffs' concern regarding future supplementation is hypothetical, and the Court will not
13 address hypothetical concerns. However, the Court reminds the parties of their ongoing duty to
14 timely supplement or correct any responses to discovery requests pursuant to Fed. R. Civ. P.
15 26(e). The Court further reminds the parties that documents withheld on the basis of any
16 privilege must be recorded in a privilege log and produced to the opposing party pursuant to Fed.
17 R. Civ. P. 26(b)(5)(A).

18 Accordingly, the Court GRANTS plaintiffs' motion to strike defendant's boilerplate
19 objections to Requests for Production Nos. 3, 4, 5, 11, 13, 14, and 15 (Dkt. 25, at 11–12), and
20 defendant must supplement its responses to these requests and produce any documents withheld
21 based on these objections. The Court further GRANTS plaintiffs' motion to compel defendant to
22 respond to Requests for Production No. 5 (Dkt. 25, at 9) to the extent that defendant is required
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1 to produce its standard operating procedures index to plaintiffs. The Court DENIES plaintiffs'
2 motion to compel defendant to further respond to Requests for Production Nos. 6, 7, 8, and 9.

3 **VI. Certification of Discovery Responses**

4 Plaintiffs argue that defendant failed to properly certify its answers to plaintiffs'
5 interrogatories. *See* Dkt. 25, at 3. Answers to interrogatories must be in writing, given under
6 oath, and signed by each person giving the answers. *See* Fed. R. Civ. P. 33(b)(3), (5). Where an
7 answering party is a public or private entity, interrogatories must be answered by any officer or
8 agent, including an attorney. *See* Fed. R. Civ. P. 33(b)(1)(B); 8B Charles Alan Wright & Arthur
9 R. Miller, *Federal Practice and Procedure* § 2172 (5th ed. 2019).

10 Defendant's original answers to plaintiff's interrogatories were not compliant with Rule
11 33 because they were not signed under oath. *See* Fed. R. Civ. P. 33(b)(3); Dkt. 26-2, at 2, 32.
12 However, in early July 2020, defendant certified under oath its supplemental answers to
13 plaintiff's interrogatories in compliance with Rule 33(b)(3), (5). *See* Dkt. 29-5, at 30.
14 Defendant's certified supplemental responses thus render plaintiff's motion to compel
15 certification moot.

16 Accordingly, plaintiffs' motion to compel certification (Dkt. 25, at 3) is DENIED.
17 However, the Court notes that defendant's certification was only provided after the motion to
18 compel was filed. *See* Dkts. 25; 29-5. Therefore, the Court will consider defendant's subsequent
19 certification in determining whether plaintiffs are entitled to expenses, including attorneys' fees.
20 *See* Fed. R. Civ. P. 37(a)(5).

21 **VII. Request for Attorneys' Fees**

22 Plaintiffs motion the Court for an award of expenses, including reasonable attorneys'
23 fees, incurred in bringing its motion to compel. *See* Dkts. 25, at 13; 30, at 6–7. If a motion to
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1 compel discovery responses is granted in part and denied in part, or discovery is only provided
2 after the motion has been filed, the court may, after giving reasonable opportunity to be heard,
3 apportion reasonable expenses for the motion. *See* Fed. R. Civ. P. 37(a)(5). The Court
4 specifically notes that defendant failed to supplement its responses and failed to reconsider its
5 objections to plaintiffs' discovery requests until after plaintiffs filed this motion to compel. *See*
6 Dkts. 25, 26, 28, 29. Accordingly, expenses may be awarded if plaintiffs submit an affidavit
7 within **five (5) days** of this order. Any response to the affidavit shall be filed within **five (5)**
8 **days** after plaintiffs file any affidavit. *See* LCR 6(a).

9 In consideration of the motion for expenses, the Court notes that plaintiffs' motion to
10 compel exceeds the 12-page limit pursuant to LCR 7(e)(2) and that plaintiffs failed to file a
11 motion seeking the Court's approval to file an over-length motion. *See* Dkt. 25 (showing
12 plaintiffs' 14 page); LCR 7(f). An attorney or party who without just cause fails to comply with
13 the Local Civil Rules of this Court may be subject to sanctions as the Court may deem
14 appropriate. *See* LCR 11(c). Accordingly, the Court will take into consideration plaintiffs'
15 failure to comply with LCR 7 in determining whether and/or to what extent expenses may be
16 awarded to plaintiffs.

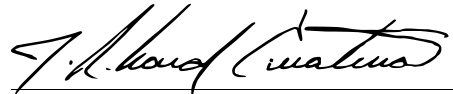
17 CONCLUSION

18 As set forth above, this Court **ORDERS** that:

- 19 1. Plaintiffs' motion to compel (Dkt. 25) is **GRANTED** in part and **DENIED** in part
20 as in indicated in this order.
- 21 2. Defendant shall have **fourteen (14) days** from the date of this order to
22 supplement its answers and responses to plaintiffs' interrogatories and requests
23 for production as indicated in this order.

1 3. Plaintiffs shall submit any affidavit regarding expenses incurred in bringing its
2 motion to compel (Dkt. 25) within **five (5) days** of this order. Defendant shall file
3 any response to the affidavit within **five (5) days** after plaintiffs file an affidavit.

4 Dated this 28th day of July, 2020.

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8 J. Richard Creatura
9 United States Magistrate Judge
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