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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT WATTS, on behalf of
himself individually and all others
similarly situated,

No. 2:08-cv-01877 LKK KJN

Plaintiff,

vs.

ALLSTATE INDEMNITY CO., an
Illinois corporation, et al.,

Defendants.

ORDER

_____ /

Presently before this court are plaintiff Robert Watts’ motions to compel:

(1) Responses and Production in Response to Plaintiff’s Requests for Production of Documents, Set One; (2) Responses and Production in Response to Plaintiff’s Requests for Production, Set Two; and (3) Responses to Plaintiff’s Special Interrogatories, Set One. The parties appeared before the undersigned for hearing on the motions on October 14, 2010, at 10:00 a.m. Attorneys Wendy York and Jennifer Euler appeared on behalf of plaintiff. Attorney Sonia Martin appeared on behalf of defendants Allstate Indemnity Company, Allstate Insurance Company, and Allstate Property and Casualty Insurance Company (collectively “Allstate” or “defendants”). After careful consideration of all of the papers filed in support of and in opposition to these motions,

1 the authorities cited therein, and following oral argument, the motions to compel will be granted
2 in part and denied in part for the reasons stated at the hearing and as set forth below.

3 I. Brief Background

4 Plaintiff Robert Watts (“plaintiff”) allegedly had an automobile insurance policy
5 with one or more of the defendants. (Dkt. No. 79.) His car was involved in an automobile
6 accident, after which he requested that Allstate replace the seatbelts and associated mechanisms.
7 (Id.) Defendants allegedly refused to pay for these costs or to allegedly engage in related
8 accommodating actions.

9 Plaintiff then filed a putative class action against Allstate. (Id., Dkt. No. 67.) The
10 putative class action complaint asserts claims for relief for breach of contract, insurance bad
11 faith, breach of the implied covenant of good faith and fair dealing, fraud and/or
12 misrepresentation, and unfair competition. (Dkt. Nos. 67, 79.) In a July 29, 2010 order, the
13 Honorable Lawrence K. Karlton set forth a discovery deadline for non-expert, class discovery¹ of
14 December 15, 2010, with a corresponding deadline that motions to compel non-expert class
15 discovery be heard by November 15, 2010.² (Dkt. No. 143.)

16 II. Legal Standards

17 Pursuant to Federal Rule of Civil Procedure 26(b)(1), the scope of federal
18 discovery is broad. Parties may obtain discovery regarding any nonprivileged matter that is
19 relevant to any party’s claim or defense. Fed. R. Civ. Proc. 26(b)(1). Relevant information need
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21 ¹ Although the issue of a stay of non-class discovery was addressed at the hearing and in
22 the briefing submitted to the court, the court finds, as stated at the hearing, that there is no stay
23 presently in place on non-class or merits discovery in this action. (See Dkt. No. 143.) Therefore,
any objections based on an alleged stay are, absent further order from Judge Karlton, overruled.

24 ² As the undersigned stated at the October 14, 2010 hearing, so long as the parties are
25 working diligently towards resolution of their remaining discovery disputes, the court is
26 supportive of a brief extension of time on class discovery. However, this case is ultimately
managed by the district judge assigned to this case, Judge Karlton. If the parties desire any
extensions of time regarding class or merits discovery, such a request must be sought from Judge
Karlton.

1 not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of
2 admissible evidence. Id. The broad scope of permissible discovery encompasses any matters
3 that bear on, or that reasonably could lead to other matters that could bear on, any issue that is or
4 may be present in the case. Oppenheimer Fund, Inc. v. Sanders, 427 U.S. 340, 351 (1978)
5 (recognizing that discovery is not necessarily limited to the merits of a case, and that discovery
6 has often been used to, for example, illuminate issues upon which a district court must pass in
7 deciding whether a suit should proceed as a class action). Discovery is not limited to the merits
8 of a case, “for a variety of fact-oriented issues may arise during litigation that are not related to
9 the merits.” Id.

10 Under Federal Rule of Civil Procedure 26(e), a party who has made a disclosure
11 under Rule 26(a), or who has responded to an interrogatory, request for production, or request for
12 admission *must supplement or correct* its disclosure or response in a timely manner if the party
13 learns in some material respect the disclosure or response is incomplete or incorrect. Fed. R.
14 Civ. Proc. 26(e) (emphasis added).

15 III. Plaintiff’s Motions to Compel

16 Plaintiff originally filed his motions to compel on August 23, 2010. As addressed
17 at the hearing, it is unclear whether plaintiff was motivated to file these premature motions to
18 compel responses to his 15-month-old discovery requests by the impending class discovery
19 cutoff date. Regardless, as a result, for nearly the next 30 docket entries (see Dkt. Nos. 145
20 through 176), plaintiff and defendants chose to file a flurry of documents which sought to explain
21 each counsel’s view that opposing counsel was obstreperous, unresponsive, and dilatory. Nearly
22 a thousand pages of documents poured into the court via its electronic filing system. Attorney
23 Euler’s declaration was so lengthy it was filed in eight parts. Exhibits contained sub-sets of
24 exhibits. And what might have been a well-intentioned motion to compel seeking to confirm the
25 completeness of discovery and document production became less about information gathering
26 and more about retaining a more righteous discovery stance.

1 During the flurry of filings, on August 26, 2010, this court ordered that the
2 plaintiff's motions to compel would be continued so the parties could file discovery dispute
3 documents which complied with Local Rule 251. With the hope that the parties could narrow
4 their issues and engage in a meaningful meet and confer process in drafting joint statements, the
5 court ordered the parties to file joint statements on the motions and rescheduled the hearing for
6 October 14, 2010. (Dkt. No. 166.)

7 Although seemingly impossible, the joint statement devolved into an even less
8 useful vehicle by which the court could adjudicate the issues at hand. Counsel did not take this
9 opportunity to narrow any issues for the court. Instead, counsel filed joint statements that
10 contained back-and-forth position statements for approximately one hundred document requests
11 and special interrogatories, with the parties unable to even agree about what was at issue.

12 The parties inability to resolve any disputes informally—or even agree about what
13 requests were at issue—forced the court to divert dozens of hours away from other pressing
14 business in an effort to analyze each request and the parties' positions. Through continued and
15 repeated review of the parties' voluminous filings, it became ever more apparent that the parties
16 were both culpable for failing to meet and confer in good faith.

17 A. Failure of Meet and Confer

18 While discovery disputes are a portion of this court's adjudicatory functions,
19 unnecessary discovery disputes are not. Counsel, in this instance, invested much more mental
20 energy in leveling attacks at opposing counsel than in resolving the substance of the instant
21 disputes. At the October 14th hearing, it quickly became apparent that the parties hoped to dump
22 their inability to communicate as professionals upon this court's extraordinarily busy doorstep.
23 Defendants' counsel pointed out, for instance, that plaintiff had only notified her of certain issues
24 at 2:00 p.m. on the day the joint statement was due. It was also indicated that plaintiff may not
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1 have fulfilled his Rule 26 disclosure obligations.³ Plaintiff's counsel did not appear conciliatory
2 or make any showing that she worked with opposing counsel in good faith to resolve unanswered
3 discovery issues. Yet, on numerous occasions it was also revealed that the parties, in fact, had
4 already reached an agreement regarding some discovery requests that were nevertheless
5 presented to the court in the motions to compel. It is inconceivable how counsel could request,
6 in essence, that the court do their homework for them or that the court engage in the futile
7 exercise of analyzing nonexistent discovery disputes.

8 Defendants' counsel is not without blame. She repeatedly stated that she had to
9 check with her client on a variety of production issues and that she would need to contact
10 vendors or other personnel regarding the availability of certain information. Defendants have
11 failed to illuminate to the court why more than a year has elapsed between plaintiff's
12 propounding of his requests for production and defendants' seemingly newly commenced
13 investigation into factual responses. Defendants' counsel does not appear to have worked in a
14 timely fashion to provide plaintiff the information to which he is entitled.

15 In the context of discovery the term "communicate" has been clarified to mean "to
16 speak to each other in person or by telephone, in a good faith attempt to resolve disputed issues."
17 Davis v. Apfel, 2000 WL 1658575, at *2 (M.D. Fla. 2000). The court firmly believes that if the
18 experienced counsel involved in this action had met and conferred in good faith over the
19 telephone, or more preferably in person, that the instant motions to compel would never have
20 been filed and would not have necessitated this court's premature and extensive involvement. As
21 counsel may be aware, the docket is severely overloaded in this district. A good faith attempt to
22 meet and confer requires more than sharply worded letters and emails between counsel. See
23 generally Imbody v. C&R Plating Corp., 2010 WL 3184392, at *1 (N.D. Ind. 2010) (recognizing
24 that a serious meet and confer must take place prior to the court's ruling on a motion and that

25 ³ Counsel are **encouraged** to review and embrace the simple and elegant discovery
26 framework contained within Federal Rules of Civil Procedure 26 and 34.

1 several letters being exchanged between counsel does not constitute a good faith conference).
2 The parties have not complied with Local Rule 251 and the requirement to meet and confer in
3 good faith.

4 At the hearing on these motions, plaintiff’s counsel conceded that she “did not
5 have the time” to review a whole host of documents if and when defendants decided to produce
6 them in response to overbroad document requests. The court, quite frankly, does not have the
7 time to sort through an ill-conceived, unripe motion to compel, or worse yet, three of them. As
8 set forth below, the court will order that the counsel in this case engage in civil, productive
9 communication designed to elicit cooperation and the presentation of issues for the court to
10 resolve in the future. What did become clear from the hearing was that the parties are still
11 engaged in an ongoing meet and confer process and that there were very few issues properly
12 before the court. What the undersigned also made clear is that although the court spent an
13 inordinate amount of time seeking to provide the parties with guidance for going forward with
14 discovery in this case, in the future the court will only rule on ripe, properly and narrowly
15 presented issues which the parties have first attempted in good faith to resolve of their own
16 accord. Very few of those issues are present in the instant dispute.

17 B. Stipulations and Orders at the Hearing

18 At the October 14th hearing, both on and off the record, the parties reached
19 resolution on a variety of discovery issues, most likely because they were able to communicate
20 with one another directly. These stipulations and court orders are reflected, at least in part,
21 below.

22 a. Special Interrogatories

23 Plaintiff propounded Special Interrogatories, Set One, on July 2, 2009. (Dkt. No.
24 173 at 2.) Plaintiff’s special interrogatories numbers one through three sought information
25 regarding the numerosity portion of plaintiff’s class certification criteria. Defendants responded
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1 with a variety of objections,⁴ and the parties subsequently met and conferred.

2 The court will grant plaintiff’s motion to compel responses to these special
3 interrogatories. As defendants themselves argued in support of their motion to compel filed
4 earlier this year, the information sought in discovery “need not be admissible at the trial if it
5 appears reasonably calculated to lead to the discovery of admissible evidence.” (Dkt. No. 133 at
6 4 (citing Hickman v. Taylor, 329 U.S. 495, 507 (1947)).)

7 Moreover, prior to the hearing, defendants had already agreed to provide
8 responses to special interrogatories numbers one and two. As to the third special interrogatory,
9 defendants stated that they had no objection to responding if the information sought could be
10 ascertained. Because the interrogatories are seeking discoverable information relevant to the
11 plaintiff’s action and because defendants have agreed to produce responsive information if
12 available, this motion will be granted.

13 b. Requests For Production

14 Regarding plaintiff’s motion to compel further responses to his requests for
15 production of documents, the court addressed these disputes at length at the hearing. Plaintiff
16 sought a motion to compel responses to approximately one hundred separate requests for
17 production. Although the court reviewed and analyzed each and every one of the disputed
18 requests, following oral argument, it is apparent that the vast majority of these disputes remain in
19 the midst of the meet and confer process.

20 The court attempted at the hearing to ascertain the parties’ various stipulations,
21 modifications to the categories of requests, and variations from the statements contained in the
22 parties’ joint statements. However, what became clear is that except for the guidance provided at

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24 ⁴ Defendants’ counsel is cautioned against the use of boilerplate objections. They tend to
25 unnecessarily obfuscate the issues and may be ineffective in preserving the objection when used
26 in an unwarranted and overbroad manner. See e.g., Burlington N. & Santa Fe Ry. Co. v. U.S.
Dist. Ct., 408 F.3d 1142, 1149 (9th Cir. 2005) (holding, in part, that boilerplate objections or
blanket refusals inserted into a Rule 34 request for production of documents are insufficient to
assert a privilege).

1 the hearing and in this order, the parties need to continue their meet and confer efforts and
2 memorialize their agreements regarding the modified document requests to which the defendants
3 are agreeing to produce documents. Accordingly, except as expressly stated below, the court will
4 not issue a ruling on each individual document request.

5 C. Counsel's Continuing Obligations

6 Counsel shall work cooperatively towards a joint resolution of discovery disputes.
7 When a precise, live controversy or willful discovery violation exists, the court is available to
8 rule upon it. Although the court discussed the appointment of a discovery referee or special
9 master with the parties, the court finds that the experienced and articulate counsel in this action
10 should be entitled to correct the course of discovery in this matter without bearing the expense of
11 a special master. The court expects the parties to timely and productively meet and confer.
12 Bitterly fought discovery motions are not productive for the court, or lest we forget, the clients.
13 If the parties erroneously perceive strong-arm or dilatory litigation tactics as strategically
14 advantageous, then the court will consider monetary or evidentiary sanctions to discourage such
15 behavior.

16 The attorneys in this action have a duty as officers of the court to engage in just
17 and expeditious resolution of actions. This duty can and will be fulfilled simultaneously with
18 counsel's duty of zealous advocacy. Should the court learn of any discovery abuses, sanctions
19 may be imposed upon the non-cooperative, offending party. The court will not look favorably
20 upon any party who has needlessly multiplied the contentiousness of these proceedings.

21 IV. Conclusion

22 For the foregoing reasons, IT IS HEREBY ORDERED that:

23 1. Plaintiff's motion to compel further responses to his Special
24 Interrogatories, Set One, (Dkt. No. 160) is GRANTED. Defendants are ordered to serve
25 amended responses to plaintiff's Special Interrogatories, Set One on or before November 12,
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1 2010.⁵

2 2. Defendants are to file amended responses to the Requests for Production,
3 Sets One and Two on or before November 12, 2010. Defendants amended responses must
4 comply with the following: (1) if there are no documents responsive to a particular request,
5 defendants must so state for each such request for production; (2) defendants must clearly state
6 whether all responsive documents have been produced and whether defendants are withholding
7 any documents based on a claim of privilege or otherwise, along with an appropriate privilege
8 log. Similarly, if the parties through a meet and confer have agreed to a more limited request, the
9 defendant must state whether all responsive documents have been produced to such an agreed
10 upon modified request. However, defendants are not required to specifically designate which
11 documents correspond to a particular request. Defendants' amended responses and production
12 must further comply with the parties' agreements and orders issued at the October 14, 2010
13 hearing.

14 3. Defendants have agreed to produce documents responsive to requests
15 involving documents relating to third-party Audatex, including request for production numbers
16 47 and 98. Defendants will produce all training materials utilized by adjusters since 2003
17 regarding the use of the Audatex system generally and any materials specifically relating to
18 seatbelts. Such production shall occur on or before October 28, 2010. Defendants shall bring
19 forth any difficulties in complying with this particular order to the court's immediate attention
20 via a telephonic conference.

21 4. Except as otherwise ordered herein, plaintiff's motions to compel further
22 responses to his Requests for Production, Sets One and Two (Dkt. Nos. 145, 149) are DENIED
23 without prejudice.

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25 ⁵ As discussed at the hearing, the court expects that defendants will be working diligently
26 to gather the required information with any necessary personnel and produce amended responses
hopefully well prior to the expiration of this deadline.

