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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DALE M. WALLIS, D.V.M., JAMES
L. WALLIS, and HYGIEIA
BIOLOGICAL LABORATORIES, INC.,
a California Corporation,

NO. CIV. 08-02558 WBS GGH

ORDER RE: RECONSIDERATION OF
MAGISTRATE JUDGE'S RULING

Plaintiffs,

v.

CENTENNIAL INSURANCE COMPANY,
INC., a New York corporation,
ATLANTIC MUTUAL INSURANCE,
CO., INC., a New York
corporation,

Defendants,

AND RELATED COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT.

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On February 22, 2013, counsel for plaintiffs filed a
motion seeking reconsideration of part of an order issued by the
assigned magistrate judge on February 11, 2013, (Docket No. 204).
(Docket No. 210.) Magistrate rulings on nondispositive motions
are reviewed by courts under the "clearly erroneous or contrary

1 to law" standard set forth in 28 U.S.C. § 636(b)(1)(A). See Fed.
2 R. Civ. P. 72(a); E.D. Cal. L.R. 303(f); see also Computer
3 Econs., Inc. v. Gartner Group, Inc., 50 F. Supp. 2d 980, 983
4 (S.D. Cal. 1999).


5 The magistrate judge's order sustaining Atlantic
6 Mutual's objection that it was not a proper party was supported
7 by applicable legal standards. The court notes that its February
8 28, 2013 Order dismissed all of plaintiffs' claims against
9 Atlantic Mutual for failure to state a claim. (See Feb. 28, 2013
10 Order (Docket No. 212).) Neither was the magistrate judge's
11 determination that defendants should be given a chance to file
12 supplemental responses rather than have plaintiffs' Requests be
13 deemed admitted contrary to the applicable legal standards.
14 Under Rule 36(a)(6), when the court finds that an answer is
15 insufficient it may either deem the matter admitted or order that
16 an amended answer be served. Fed. R. Civ. Pro. 36(a)(6). Thus,
17 declining to give plaintiffs their preferred relief--deemed
18 admission--was not contrary to law.

19 The magistrate judge appears to have erred, however, in
20 finding that the parties failed to meet and confer, a
21 prerequisite to awarding sanctions for discovery disputes under
22 Rule 37. See Fed. R. Civ. Pro. 37(5)(c). According to the
23 parties' Joint Statement Re: Discovery Dispute, (Docket No. 197),
24 efforts to meet and confer were attempted in November and
25 December of 2012. (J. Statement at 2-7.) Nonetheless, when a
26 discovery motion is granted in part and denied in part, the court
27 has discretion to award sanctions under Rule 37 after an
28 opportunity to be heard. Fed. R. Civ. Pro. 37(a)(5)(B). Here,

1 notwithstanding the parties' minimal efforts to meet and confer,
2 the court does not find that sanctions are warranted here.
3 Accordingly, plaintiffs' motion for reconsideration will be
4 denied.

5 IT IS THEREFORE ORDERED that plaintiffs' motion for
6 reconsideration be, and the same hereby is, DENIED.

7 DATED March 1, 2013

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9 WILLIAM B. SHUBB
10 UNITED STATES DISTRICT JUDGE

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