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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GWEN KRAUSE,

Plaintiff,

v.

HAWAIIAN AIRLINES, INC.,

Defendant.

No. 2:18-cv-00928 JAM AC

ORDER

This matter is before the court on plaintiff's motion to serve additional interrogatories above the standard limit. ECF No. 29. This discovery motion was referred to the undersigned pursuant to Local Rule 302(c)(1) and was taken under submission pursuant to Local Rule 230(g). Upon review of the record and the parties' joint statement and supporting papers, the motion will be DENIED for the following reasons.

I. Relevant Background

Plaintiff filed this personal injury action in state court in February 2018. ECF No. 1.1. The four-page complaint asserts a single count of negligence against defendant Hawaiian Airlines ("Hawaiian"), claiming that plaintiff was injured during a March 2016 Hawaiian Airlines flight when an interior panel on the aircraft fell from the ceiling onto her during landing. ECF No. 1.1 at 4. Plaintiff alleges that Hawaiian is liable for failing to properly maintain and inspect the aircraft. Id. In April 2018, Hawaiian answered and removed the action to this court. ECF Nos. 1, 1.2.

1 In November 2018, Hawaiian’s counsel sent two emails to plaintiff’s counsel to inform
2 them that Hawaiian would be dissolving its fleet of Boeing 767s, including the aircraft at issue in
3 this case, and that the aircraft would not be available for physical inspection after December 31,
4 2018. ECF No. 32.2 at 126. Having received no response to either email, on December 3, 2018,
5 Hawaiian’s counsel followed up again by email, fax, and mail. Id. at 125. The same day,
6 plaintiff’s attorneys responded by email, initiating a two-week-long email chain between the
7 parties as to when and where to arrange a time for plaintiff’s expert to inspect the aircraft. Id. at
8 114-23. Right away, Hawaiian’s counsel requested the number of people who would be
9 inspecting and a “detailed inspection protocol” to be agreed upon in advance. Id. at 122.
10 Plaintiff’s counsel requested a one-hour inspection in Sacramento or San Francisco, not in
11 Hawaii, as defense counsel had originally required. Id. at 122. The parties argued over whether
12 Hawaiian had a duty to preserve the aircraft past the scheduled dissolution date, and Hawaiian’s
13 counsel informed plaintiff that Hawaiian did not intend to alter its dissolution plans. Id. at 118-
14 22. On December 12, 2019, Hawaiian’s counsel emailed plaintiff’s counsel that the aircraft
15 would be arriving at the Sacramento airport on the evening of December 20. Id. at 116.

16 Five days later, on the afternoon of December 17, plaintiff’s counsel responded saying
17 that they had arranged for an expert to potentially inspect the plane on December 20. Id. at 115-
18 16. Hawaiian’s counsel immediately responded that it might be too late to schedule the
19 inspection with less than three days’ notice, observing that he had heard nothing for the past five
20 days, he had not received a formal discovery request, and that he still had not received the
21 requested inspection protocol. However, defense counsel said he would inquire with Hawaiian
22 whether the inspection could still be scheduled, adding that if December 20th was no longer an
23 option, the only alternative option would be between January 1-17 in Honolulu. Id. at 114-15.
24 The email chain concludes with a December 18 email from Hawaiian’s counsel confirming that
25 Hawaiian could not accommodate the inspection on the 20th with such late notice. Id. at 114.
26 The court is unaware of subsequent discussions between the parties about the aircraft but
27 understands that the plane has since been sold.

28 According to plaintiff, in April 2019 she served her first set of discovery requests,

1 including requests for admission, requests for production, and 33 interrogatories (ECF No. 25.1 at
2 6-33). Hawaiian contends that it did not receive any written discovery requests until May 2019,
3 less than a month before the original discovery deadline of June 21, 2019; therefore, it did not
4 respond until after the deadline was extended and a protective order was entered. Joint Statement,
5 ECF No. 32 (“JS”) at 4; see June 19, 2019 Order (ECF No. 22).

6 On April 19, 2019, Hawaiian served plaintiff with its expert disclosures, in compliance
7 with the original scheduling deadline. JS at 4, 11. Included therein was a detailed Preliminary
8 Report on the flight incident by Hawaiian’s liability expert, C. Dennis Moore. ECF No. 32.2 at
9 84-111. As relevant, Moore’s report identified the aircraft by model, registration, and serial
10 number; identified the interior panel by Supplemental Type Certificate number; included photos
11 of the aircraft and panel; documented the installation, inspection, and maintenance of the panel;
12 and identified and explained the applicable inspection and maintenance documents. Id. at 87, 93-
13 101. According to Moore, Hawaiian met or exceeded the inspection and maintenance
14 requirements for the panel at issue; however, he found that “latches that do not have any obvious
15 defect can release with the right motion of the ceiling panel, despite not being intentionally
16 released.” Id. at 90-91, 102.

17 On July 16, 2019, after several intervening discovery-related motions, plaintiff filed the
18 instant motion to exceed the standard number of interrogatories and serve 16 additional
19 interrogatories. ECF No. 29. On July 19, 2019, Hawaiian served amended responses to all of
20 plaintiff’s previous discovery requests. JS at 3. Hawaiian responded to plaintiff’s first 25
21 interrogatories, 58 requests for admissions, and 16 requests for production of documents. JS at
22 11; ECF No. 32.2 at 4-82. Hawaiian produced 1104 pages of documents with its responses to
23 plaintiff’s requests for production, which include “reports, maintenance records, schematics,
24 certifications,” and all the documents that its liability expert, Dennis Moore, relied upon in his
25 expert report. JS at 11. On July 29, 2019, Hawaiian also provided verifications for its amended
26 responses to Special Interrogatories Set One. JS at 3.

27 Currently, almost three months remain until the extended discovery cut-off in this case.
28 Within that time, Hawaiian has stipulated that it will produce for deposition its liability expert, a

1 Rule 30(b)(6) representative witness, and “all the fact witnesses employed by Hawaiian.” JS at 4.

2 **II. Motion**

3 Plaintiff moves to exceed the standard limit of 25 interrogatories, pursuant to Federal Rule
4 of Civil Procedure 33. As stated, Hawaiian has now responded to the first 25 of the 33
5 interrogatories plaintiff originally propounded in Special Interrogatories Set One. With this
6 motion, plaintiff requests leave to serve 16 additional interrogatories (8 of which were included
7 but not answered in Set One), for a total of 41. ECF No. 29.

8 Plaintiff argues that the additional interrogatories are necessary because of Hawaiian’s failure to
9 preserve the aircraft and the ceiling panel for inspection, and because she requires the answers to
10 prepare an anticipated motion for spoliation sanctions. JS at 2, 7. Plaintiff acknowledges that,
11 since filing this motion, Hawaiian has served amended discovery responses and verifications for
12 its existing interrogatory responses, so “some of the information contained in Special
13 Interrogatory Set Two may be duplicative.” However, plaintiff maintains that verified responses
14 to the additional interrogatories are still necessary. JS at 3.

15 **III. Analysis / Summary of the Evidence**

16 **A. Legal Standards**

17 Federal Rule 33(a)(1) states that “[u]nless otherwise stipulated or ordered by the court, a party
18 may serve on any other party no more than 25 written interrogatories, including all discrete
19 subparts. Leave to serve additional interrogatories may be granted to the extent consistent with
20 Rule 26(b)(1) and (2).” The Advisory Committee Notes specify that the aim of the limitation “is
21 not to prevent needed discovery, but to provide judicial scrutiny before parties make potentially
22 excessive use of this discovery device.” Adv. Comm. Notes to Rule 33 (1993 Amend.). Under
23 Rule 26(b)(1), “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant
24 to any party’s claim or defense and proportional to the needs of the case[.]” Under Rule 26(b)(2),
25 the court “must limit the frequency or extent of discovery” if: “(i) the discovery sought is
26 unreasonably cumulative or duplicative, or can be obtained from some other source that is more
27 convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample
28 opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is

1 outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C).

2 B. Proposed Additional Interrogatories

3 Plaintiff requests leave to serve the following 16 additional interrogatories (really, 15 in light of
4 an errant duplicate), which the court has grouped into categories for ease of analysis:

5 **Interrogatories Nos. 26, 27, and 28:**

6 SPECIAL INTERROGATORY NO. 26:

7 Provide any and all facts YOU are aware of that YOU believe
8 substantiate each and every one of the affirmative defenses YOU
9 raised on YOUR Answer to the Compliant. [sic]

10 SPECIAL INTERROGATORY NO. 27:

11 Provide the name, address, and telephone number for each and every
12 witness who can substantiate YOUR response to the previous
13 interrogatory.

14 SPECIAL INTERROGATORY NO. 28:

15 IDENTIFY any and all DOCUMENTS YOU have that substantiate
16 YOUR response to Special Interrogatory No. 26.

17 **Interrogatories Nos. 29, 30, and 31:**

18 SPECIAL INTERROGATORY NO. 29:

19 Please describe in specific detail the process that goes into the safety
20 inspections YOU perform in the passenger compartment of YOUR
21 aircrafts to ensure they are safe for YOUR passengers.

22 SPECIAL INTERROGATORY NO. 30:

23 IDENTIFY any and all DOCUMENTS YOU have that substantiate
24 YOUR response to Special Interrogatory No. 29.

25 SPECIAL INTERROGATORY NO. 31:

26 IDENTIFY the person most knowledgeable with regard to the actual
27 inspection of the subject panel prior to, or subsequent to the incident.

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1 **Interrogatories Nos. 32, 33:**

2 **SPECIAL INTERROGATORY NO. 32:**

3 IDENTIFY any and all manuals pertaining to the proper maintenance
4 and inspection of the subject vehicle with specific regard to the panel
related to this incident.

5 **SPECIAL INTERROGATORY NO. 33:**

6 IDENTIFY the person most knowledgeable with regard to the proper
7 procedure with regard to the inspection of the subject vehicle, with
specific regard to the panel involved in the incident.

8 **Interrogatory Nos. 34, 36:**

9 **SPECIAL INTERROGATORY NO. 34:**

10 IDENTIFY the whereabouts of the subject aircraft to include:

- 11 (a) The name of the present owner
12 (b) The address of the planes present location [sic]
13 (c) The telephone number to contact the present owner
14 (d) The name of the point of contact for setting up an inspection of
15 the vehicle

16 **SPECIAL INTERROGATORY NO. 36:**

17 Please provide the subject planes [sic] identification number, so that
it can be used to locate the subject plane with the present owner.

18 **Interrogatory No. 35:¹**

19 **SPECIAL INTERROGATORY NO. 35:**

20 Is your response to each request for admission set one an unqualified
21 admission? If not, for each response that is not an unqualified
admission:

- 22 (a) State the number of the request;
23 (b) State all facts upon which you base your response;
24 (c) State the names, addresses, and telephone numbers for all persons
25 who have knowledge of those facts; and

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28 ¹ Plaintiff acknowledges that Interrogatories No. 35 and 37 are nearly identical and were submitted twice in error. She asks the court to grant the motion as to No. 35 only. JS at 20.

1 (d) Identify all documents and other tangible things that support your
2 response and state the name, address, and telephone number of the
person who has each document or thing.

3 **Interrogatory Nos. 38, 41:**

4 SPECIAL INTERROGATORY NO. 38:

5 Please provide the name and contact information of each and every
6 person who you are aware of that witnessed the subject incident.

7 SPECIAL INTERROGATORY NO. 41:

8 Please identify the crew that was working the subject flight. Please
provide all contact information for each member of the crew.

9 **Interrogatories Nos. 39, 40:**

10 SPECIAL INTERROGATORY NO. 39:

11 At the time of the INCIDENT, was there in effect any policy of
12 insurance through which you were or might be insured in any manner
(for example, primary, pro-rata, or excess liability coverage or
13 medical expense coverage) for the damages, claims, or actions that
have arisen out of the INCIDENT? If so, for each policy state:

- 14 (a) the kind of coverage;
- 15 (b) the name and ADDRESS of the insurance company;
- 16 (c) the name, ADDRESS, and telephone number of each named
17 insured,
- 18 (d) the name and ADDRESS of the insurance company;
- 19 (e) the policy number;
- 20 (f) the limits of coverage for each type of coverage contained in the
policy;
- 21 (g) whether any reservation of rights or controversy or coverage
22 dispute exists between you and the insurance company; and
- 23 (h) the name, ADDRESS, and telephone number of the custodian of
the policy.

24 SPECIAL INTERROGATORY NO. 40:

25 Are you self-insured under any statute for the damages, claims, or
26 actions that have arisen out of the INCIDENT? If so, specify the
statute.

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1 C. Discussion

2 Many courts considering requests to exceed the standard limits for the number of
3 interrogatories or depositions—including this court—have required the party requesting
4 additional interrogatories or depositions to “make a ‘particularized showing’ as to why additional
5 discovery is necessary” before proceeding to evaluate whether the request is consistent with
6 Rule 26(b)(2). Waterbury v. Scribner, No. 1:05-CV-0764 OWW DLB PC, 2008 WL 2018432, at
7 *8 (E.D. Cal. May 8, 2008) (citing Archer Daniels Midland Co. v. Aon Risk Servs., Inc. of
8 Minnesota, 187 F.R.D. 578, 586 (D. Minn. 1999)); see, e.g., Aerojet Rocketdyne, Inc. v. Glob.
9 Aerospace, Inc., No. 2:17-CV-01515-KJM-AC, 2019 WL 1437767, at *2 (E.D. Cal. Apr. 1,
10 2019) (“A party seeking leave of court to exceed 10 depositions must make a “particularized
11 showing” why the discovery is necessary under Rule 26.”); Aerojet Rocketdyne, Inc. v. Glob.
12 Aerospace, Inc., No. 2:17-CV-01515-KJM-AC, 2018 WL 5993585, at *1, 4 (E.D. Cal. Nov. 6,
13 2018) (same); Couch v. Wan, No. 1:08-CV-1621 LJO DLB, 2011 WL 4499976, at *1 (E.D. Cal.
14 Sept. 27, 2011).

15 However, recognizing that this “particularized showing” standard does not appear in the
16 text of the rules themselves, many courts have also eschewed imposing this heightened burden on
17 parties seeking to exceed the default discovery limits. See City of Lincoln v. United States, No.
18 2:16-CV-01164-KJM-AC, 2018 WL 3917711, at *8 (E.D. Cal. Aug. 16, 2018) (noting that
19 “many courts have not relied on a ‘particularized showing’ standard, a standard developed by
20 federal district courts,” and collecting cases; further finding that, regardless, the requesting party
21 in that case had made a particularized showing); Vazquez v. Kraft Heinz Foods Co., No. 16-CV-
22 2749-WQH (BLM), 2018 WL 1898558, at *3 (S.D. Cal. Apr. 19, 2018); Pitkin v. Corizon Health,
23 Inc., No. 3:16-CV-02235-AA, 2018 WL 1336047, at *2 (D. Or. Mar. 13, 2018). These courts
24 rely, as does plaintiff, on Laryngeal Mask Co. Ltd. v. Ambu A/S, No. 3:07-CV-01988 DMS NLS,
25 2009 WL 10672436 (S.D. Cal. July 17, 2009), in which the court declined to adopt a
26 “particularized showing” requirement. Id. at *4. In Laryngeal, the court noted that “[t]he plain
27 language of the Rules and the Advisory Committee Notes do not require a particularized
28 showing,” but rather “consisten[cy] with Rule 26(b)(2).” Id.; see also Fed. R. Civ. P. 33(a)(1)

1 (leave to serve additional interrogatories “may be granted to the extent consistent with
2 Rule 26(b)(1) and (2)”). Rule 26(b)(2), in turn, “requires that the court apply a benefits versus
3 burden approach and ensure that the discovery is not unreasonably cumulative or duplicative.”
4 Laryngeal, 2009 WL 10672436 at *4.

5 Regardless, in this motion plaintiff has failed to satisfy even the baseline standard of
6 consistency with Rule 26(b)(2)(C). The court concludes that the proposed additional
7 interrogatories would be unreasonably cumulative and duplicative, the information requested can
8 be obtained from other sources (if it has not already been obtained), and plaintiff has had ample
9 opportunity to obtain the information already in this action.

10 Initially, the court finds disingenuous plaintiff’s stated reasons for requiring additional
11 interrogatories. Only two of the sixteen proposed interrogatories (Nos. 34 and 36) relate to the
12 alleged spoliation, i.e., the aircraft’s transfer of ownership. The remainder are of a more typical
13 sort, and the court cannot see why increased difficulty with inspecting the aircraft should warrant
14 their allowance. Further, even if the aircraft were readily available for inspection, the court has
15 already stricken the aviation/liability expert plaintiff attempted to designate, and the expert
16 witness deadline has expired for plaintiff. ECF No. 26. Therefore, the availability or
17 unavailability of the aircraft does not factor into the court’s decision of this motion.

18 1. *Interrogatory Nos. 26, 27, and 28*

19 As to Interrogatory Nos. 26, 27, and 28, which seek information regarding Hawaiian’s
20 affirmative defenses, the court finds these interrogatories unwarranted because plaintiff had
21 ample opportunity to inquire after this information in its initial set of interrogatories. See
22 Rule 26(b)(2)(C)(ii). While it is true that Hawaiian did not provide any information as to its
23 affirmative defenses in its Amended Responses to Interrogatories Set One, that is because
24 plaintiff *did not ask* for such information in its first 25 interrogatories. See Phillips & Stevenson,
25 *Fed. Civ. Pro. Before Trial*, 11:1694-95 (Rutter Group 2019) (when challenging excess
26 interrogatories, the “most practical approach is for the responding party to answer the first 25
27 interrogatories and then object to the balance”). Plaintiff has had Hawaiian’s answer since April
28 2018 and could easily have included questions about its affirmative defenses in the initial set of

1 interrogatories. See Sterr v. Baptista, No. S CIV 08-2307 DOC, 2009 U.S. Dist. LEXIS 134162,
2 at *3 (E.D. Cal. June 26, 2009) (denying motion for additional interrogatories about affirmative
3 defenses where plaintiff had defendant’s answer before sending interrogatories and should have
4 included the interrogatories in the initial set).

5 *2. Interrogatory Nos. 29-33*

6 Interrogatory Nos. 29-33 are all directed toward determining Hawaiian’s safety
7 inspections and procedures, both generally and with respect to the subject panel, as well as
8 seeking to identify “the person most knowledgeable” (PMK) regarding those subjects. The court
9 finds these interrogatories overbroad and unreasonably duplicative. See Fed. R. Civ.
10 P. 26(b)(2)(C)(i), (iii). Nos. 29 and 30 address the process for safety inspections of passenger
11 cabins in all of Hawaiian’s flights, without limitation—a very broad request. Moreover,
12 Hawaiian has already addressed Nos. 29, 30, and 32 (regarding manuals identification) both in its
13 April 2019 expert report and in its detailed Amended Response to Interrogatory No. 9. ECF No.
14 32.2 at 11-12, 87-103. As to the requested identification of a PMK about these subjects in Nos.
15 31 and 33, the court expects that Hawaiian’s designated Rule 30(b)(6) representative deponent
16 will be able to speak to those topics adequately.

17 As to Interrogatory Nos. 31 and 33, the motion will be denied without prejudice to
18 renewal, should the Rule 30(b)(6) deposition not provide information as to the actual inspection
19 of the subject panel or the proper procedure for its inspection. See E.E.O.C. v. Dawes Cty., No.
20 8:07-CV-376, 2008 WL 2513755, at *3 (D. Neb. June 19, 2008) (denying leave without
21 prejudice, should Rule 30(b)(6) deposition prove insufficient to allow plaintiff opportunity to
22 obtain all the information it seeks).

23 *3. Interrogatory Nos. 34 & 36*

24 Interrogatory Nos. 34 and 36 have both been sufficiently answered by Hawaiian’s
25 amended responses to plaintiff’s discovery requests. Plaintiff now has the name, address, and
26 phone number of the entity that currently owns the aircraft, as well as the aircraft’s registration
27 and serial numbers. JS at 18, 21. The undersigned does not see the necessity of an oath as to the
28 accuracy of this information, but to the extent plaintiff required verification, counsel’s signature

1 on the joint statement should alleviate any concerns regarding its veracity. See Fed. R. Civ.
2 P. 11(b).

3 *4. Interrogatory No. 35*

4 Interrogatory No. 35 requests—as to all of plaintiff’s 58 requests for admissions that are
5 not unqualified admissions²—all supporting facts, witnesses to those facts, and supporting
6 documents and contact information for the documents’ possessor. “Allowing service of an
7 interrogatory which requests disclosure of all of the information on which the denials of each of
8 50 requests for admissions were based . . . essentially transforms each request for admission into
9 an interrogatory. This is not the purpose requests for admissions were intended to serve, and
10 because Rule 36 imposes no numerical limit on the number of requests for admissions that may
11 be served, condoning such a practice would circumvent the numerical limit contained in
12 Rule 33(a).” Safeco of Am. v. Rawstron, 181 F.R.D. 441, 445 (C.D. Cal. 1998) (citing 8A
13 Wright, Miller & Marcus, Fed. Prac. & Pro. § 2252, at 524–25). This interrogatory is improper
14 and unreasonably burdensome.

15 *5. Interrogatory Nos. 38 & 41*

16 Interrogatory Nos. 38 and 41 request the names and contact information for all crew
17 members working the subject flight, and for any person who it is aware of having witnessed the
18 incident. In response, Hawaiian states that it has produced the incident report setting forth the
19 names of the crew members, and that plaintiff may contact these crew members through
20 Hawaiian’s counsel. JS at 22, 25. In its amended response to Interrogatory No. 1, Hawaiian
21 stated that “no one from Hawaiian Airlines’ crew witnessed the subject panel fall on plaintiff’s
22 head.” ECF No. 32.2 at 5. While this response does not answer the question of whether
23 Hawaiian is aware of any passengers who may have witnessed the incident, the court declines to
24 permit No. 38 in light of the upcoming depositions of further Hawaiian fact witnesses.

25 *6. Interrogatory Nos. 39 & 40*

26 Interrogatory Nos. 39 and 40 request specific information regarding Hawaiian’s insurance
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28 ² Based on the court’s brief review, it appears there are few, if any, unqualified admissions.

1 policies and whether Hawaiian self-insured. Plaintiff argues that Hawaiian’s insurance coverage
2 is “highly relevant to this personal injury case,” but does not substantiate that statement. The
3 court notes that in its amended responses to plaintiff’s requests for production, Hawaiian
4 responded to a request for insurance documents “that it has sufficient liability insurance to satisfy
5 any judgment which may be entered against it in this action.” ECF No. 32.2 at 35. As plaintiff
6 has not explained the relevance, the court does not find these interrogatories consistent with Rule
7 26(b)(2).

8 **Conclusion**

9 For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff’s motion to exceed
10 discovery limitations (ECF No. 29) is DENIED. The motion is denied without prejudice with
11 respect to Interrogatory Nos. 31 and 33.

12 IT IS SO ORDERED.

13 DATED: August 7, 2019

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15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE
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