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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAMLESH BANGA,

Plaintiff,

v.

AMERIPRISE AUTO & HOME
INSURANCE AGENCY et al.,

Defendants.

No. 2:18-cv-1072 MCE AC

ORDER

This matter is before the court on defendants’ motion to compel a second deposition of plaintiff. ECF No. 69. The parties did not file a joint statement, though plaintiff submitted an opposition (ECF No. 72) and defense counsel submitted a declaration stating plaintiff refused to participate in the process of creating a joint statement (ECF No. 77). The matter was submitted on the papers. ECF No. 70. Based on a review of the parties’ arguments and the record, the motion to compel is DENIED; defendants may pose necessary questions to plaintiff through interrogatories.

Further, the undersigned sua sponte extends the discovery deadline to March 3, 2021. All motions related to discovery must be filed no later than February 17, 2021. The dispositive motions deadline is extended to April 7, 2021. The parties shall file a Joint Notice of Trial Readiness not later than thirty (30) days after receiving this Court’s ruling on the last filed

1 dispositive Motion. Plaintiff's pending motions for an extension of discovery deadlines (ECF
2 Nos. 88 and 90) are DENIED as MOOT.

3 **I. Relevant Background**

4 This action stems from a dispute over insurance coverage for alleged water damage to
5 plaintiff's home as a result of a January 18, 2016 high windstorm. Revised Third Amended
6 Complaint ("RTAC"), ECF No. 67-3 at 1. Plaintiff alleges defendant insurers failed to properly
7 pay her claim and brings several causes of action, including breach of contract and bad faith.
8 RTAC at 3, 10-21.

9 This matter was removed from state court on April 30, 2018. ECF No. 1. On November
10 15, 2018, the matter was sent to this court's Voluntary Dispute Resolution Program ("VDRP").
11 ECF No. 20. The matter remained in VDRP until March 12, 2020, when it failed to settle and
12 was removed from the program. On March 18, 2020, a pre-trial scheduling order was issued,
13 setting a discovery deadline of November 9, 2020, and a dispositive motions deadline of
14 December 28, 2020. ECF No. 37. On September 18, 2020, by stipulation of the parties, the
15 discovery deadline was extended to January 8, 2021 and the dispositive motions deadline was
16 extended to February 26, 2021. ECF No. 56.

17 **II. Motion**

18 Defendants ask the court to require plaintiff to sit for a second deposition because plaintiff
19 failed to produce two documents responsive to discovery requests prior to her October 8, 2020
20 deposition, but used these documents while deposing defendants' expert on November 18, 2020.
21 ECF No. 69 at 2. Plaintiff contends that she "did testify she had produced almost all the
22 documents; however, if there were any documents that she had not produced, she would provide
23 them to you as soon as she locate them." ECF No. 72 at 3. At issue are two letters: one dated
24 March 2, 2017 and one dated April 26, 2017. In response to defendants' motion, plaintiff
25 submitted a declaration stating, "I represent to the Court that I had inadvertently omitted to
26 produce the documents; however, I had rectified this omission that is the subject of this motion."
27 ECF No. 72-1 at 2. Plaintiff further contends that the March 2, 2017 letter was contained in her
28 earlier request for default judgment. ECF No. 72 at 4 (referencing ECF No. 51-7). Plaintiff

1 suggests that any additional questioning related to the documents be done through interrogatories
2 and request for admission. ECF No. 72 at 4. There is no dispute as to the relevancy or
3 responsiveness of the documents.

4 III. Analysis

5 Rule 30(a)(2)(A)(ii) of the Federal Rules provides, “[a] party must obtain leave of court,
6 and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2) if the parties
7 have not stipulated to the deposition and the deponent has already been deposed in the case.”
8 “Whether to permit a second deposition lies in the court’s discretion.” Ransom v. Herrera, No.
9 1:11-cv-01709-LJO-EPG PC, 2018 WL 4008386, at *2 (E.D. Cal. Aug. 21, 2018); see also FCC
10 v. Mizuho Medy Co. Ltd., 07-cv-189 JAH (NLS), 2009 WL 10672927, at *3 (S.D. Cal. Sept. 24,
11 2009); Owino v. CoreCivic, Inc., No. 3:17-cv-1112-JLS-NLS, 2019 WL 2867278, at *2 (S.D.
12 Cal. July 3, 2019); Tramm v. Porter Memorial Hosp., 128 F.R.D. 666, 668 (N.D. Ind. 1989).
13 Rule 26(b)(2)(C) states that leave should be granted unless the discovery sought is unreasonably
14 cumulative or duplicative or can be obtained from a more convenient, less burdensome or less
15 expensive source; the party seeking the discovery has had ample opportunity to obtain the
16 information through discovery; or the burden or expense of the proposed discovery outweighs its
17 likely benefit.

18 Here, there is no dispute that the letters at issue were responsive to defendants’ discovery
19 requests and at least the April 26, 2017 document was not produced in any form before plaintiff’s
20 deposition. Defendants argue that “[r]egardless of whether this failure was inadvertent or
21 intentional, IDS should be permitted to question Banga about these previously unproduced
22 communications.” The court agrees, though requiring plaintiff to submit to a second deposition
23 for questioning related to two letters is overly burdensome, expensive, and inconvenient.
24 Defendants do not explain why the necessary questioning could not be done through
25 interrogatories. The undersigned believes it could be. The discovery deadlines will be extended
26 as described below to ensure adequate time for interrogatories to be served and answered. In
27 recognition of the fact that defendants may have already served the presumptively allowed 25

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1 interrogatories allowed by Fed. R. Civ. P. 33(a), they are granted an additional 10 interrogatories
2 to address the two letters.

3 As should go without saying, all parties are expected to participate in discovery and
4 motions practice in good faith. All parties are required to comply with the undersigned's
5 Standing Orders, located on the Court's webpage, the Local Rules of this Court, and the Federal
6 Rules of Civil Procedure. Failure to do so may result in sanctions.

7 **IV. Conclusion**

8 For the reasons explained above, the motion to compel (ECF No. 69) is DENIED, though
9 defendants are granted 10 additional interrogatories to address the late-produced letters at issue in
10 the motion.

11 Further, the undersigned sua sponte extends the discovery deadline to March 3, 2021. All
12 motions related to discovery must be filed no later than February 17, 2021. The dispositive
13 motions deadline is extended to April 7, 2021. The parties shall file a Joint Notice of Trial
14 Readiness not later than thirty (30) days after receiving this Court's ruling on the last filed
15 dispositive Motion.

16 Plaintiff's pending motions for and extension of discovery deadlines (ECF Nos. 88 and
17 90) are DENIED as MOOT.

18 IT IS SO ORDERED.

19 DATED: December 17, 2020

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21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
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