

1 160.) The undersigned recommends Travelers’s motion to enforce be granted in part.

2 **Background**

3 Stolz originally filed this action in California state court, and on July 11, 2018, Travelers
4 removed the case to this court. (ECF No. 1.) In his Complaint, Stolz alleges that between
5 December 2016 and March 2017, his house in El Dorado Hills suffered extensive damage due to
6 severe storms and associated flooding. (ECF No. 1-1 at ¶ 2.) Because of the damage, Stolz
7 contends he was unable to continue living in the house. (Id. at ¶ 16.) Stolz asserts he submitted a
8 timely claim to Travelers under his Policy, but contends Travelers, acting in bad faith, refused to
9 pay. (Id. at ¶ 3.) Stolz asserts claims for breach of contract, breach of the implied covenant of
10 good faith and fair dealing, and unfair business practices. (Id. at ¶¶ 3–5.) The Complaint prays
11 for, among other things, compensatory, special, and consequential damages. (Id. at 15.) These
12 damages apparently include loss of use of the home, loss of rents, additional living expenses, and
13 “diminution of value” of the home—all of which are governed by the Policy. (See ECF No. 117
14 at ¶ 1.)

15 Travelers denied liability, and asserted a number of affirmative defenses, including:
16 (3) comparative fault, (5) other causes, (6) superseding causes, and (7) failure to mitigate, as well
17 as other Policy–based defenses (e.g. (10) “recovery [is] barred by the terms, conditions,
18 definitions, limitations and exclusions contained in the Policy.”). (ECF No. 1-1 at 28-38.) The
19 thrust of Travelers’s defense is that coverage under the Policy only extends to “the dwelling on
20 the ‘residence premises,’” which the Policy defines as “the one family dwelling where you reside
21 . . . and which is shown as the ‘residence premises’ in the Declarations.” (See ECF No. 160 at
22 ¶ 5.) Travelers asserts it intends to argue that the El Dorado Property was not Stolz’s “residence
23 premises,” and was likely left abandoned for a substantial portion of the coverage period.¹ (See
24 id.) Thus, Travelers intends to argue that it is not liable for “loss of use” damages (because Stolz
25 was not using the El Dorado property), “additional living expense” damages (because Stolz has
26 access to 3-5 other houses), “diminution of value” damages (because any reduction in the

27 ¹ The undersigned makes no comment on the viability of the claims and defenses, as the dispute
28 before the court merely concerns discoverable information relevant to these issues.

1 property’s value was due to Stolz’s negligence/abandonment/failure to mitigate), or “fair rent
2 value” (as Stolz had not been renting the Property). (Id. at ¶¶ 5-6.)

3 To inquire into the extent of Stolz’s use of the El Dorado Property, Travelers propounded
4 discovery on September 28, 2018—seeking among other things responses to the following:

5 Interrogatory 1: Identify the address(es) of the property that YOU
6 have resided at since January 1, 2013 to the PRESENT.

7 Interrogatory 2: State, with specificity the amount of time,
8 including but not limited to the number of days per month, YOU
9 have resided at each property identified in response to Interrogatory
10 Number 1 from January 1, 2013 to the PRESENT.

11 Interrogatory 3: State, with specificity the amount of time,
12 including but not limited to the number of days per month, YOU
13 have resided at the [El Dorado] PROPERTY from January 1, 2013
14 to the PRESENT.

15 Request for Production 4: Any and all DOCUMENTS
16 EVIDENCING YOUR business or personal trips taken from the
17 January 1, 2015 to the PRESENT, including but not limited to
18 DOCUMENTS related to airline tickets, any form of transportation,
19 hotel receipt, and/or other housing.

20 (ECF No. 106-3 at 5 and 106-4 at 6 (the “Residence Questions”).) Travelers also requested
21 information and documents regarding any “Additional Living Expenses” claims that Stolz was
22 seeking. (See id. at Interrogatory 7 and Requests for Production 11 and 12.)

23 On November 2, 2019, Stolz, aided by counsel from the Adli Law Group, responded with
24 18–19 general objections, plus the following boilerplate objections to almost all of Travelers’s
25 requests: “overbroad as to time [and] scope”; “not reasonably calculated to lead to the discovery
26 of admissible evidence”; “attorney–client privilege”; “privacy”; and “unintelligible, vague, and
27 ambiguous regarding the phrases ‘the address(es) of the property’ and the undefined word
28 ‘resided.’” (See ECF No. 106-5 and 106-6.) Travelers then filed a motion to compel. (ECF No.
22.) On December 18, Stolz supplemented his response to the Residence Questions as follows:

Response to Interrogatory 3:

[S]ince the incident . . . , [Stolz] has not resided at the [El Dorado]
PROPERTY. Prior to that, the number of days per month during
which he resided at the [El Dorado] PROPERTY fluctuated widely
and cannot be stated with specificity for the time period requested.”

1 (ECF No. 106–7 at 5.) Additionally, Stolz stated that he was “not making a claim for Additional
2 Living Expenses[.]” (Id. at 6, Interrogatory 7 Response.)

3 On January 11, 2019, the court ordered Stolz’s attorney to confer with his client on
4 multiple issues—including whether he was seeking the damages at issue here—then supplement
5 his responses to Travelers’s discovery requests. (ECF No. 43.) However, a number of events in
6 the next four months caused further delays to the case. First, Stolz’s attorney requested leave to
7 withdrawal in January, maintaining that Stolz had “failed to cooperate in the prosecution of his
8 own case,” and that if representation continued, it would require the attorney to violate his ethical
9 duty of candor toward the tribunal. The withdrawal took effect in March. (ECF Nos. 44, 57.)
10 Second, the court devoted significant time to resolving a separate discovery dispute concerning
11 Stolz’s refusal to facilitate a site inspection. (See ECF No. 104 for a thorough account of this
12 dispute.²) Third, the court’s service on Stolz (acting pro se) often returned as undeliverable, due
13 to Stolz’s failure to keep his address current. Relevant here, Stolz failed to supplement his
14 discovery responses, despite Travelers re-service of the requests. (See ECF No. 76.) On April
15 19, the court again ordered responses, due by May 9, 2019. (ECF No. 65.)

16 Ten days after that deadline, Stolz supplemented his responses to outstanding discovery.
17 (ECF No. 106-10.) He responded to the Residence Questions as follows:

18 Supplemental Response to Interrogatory 1:

- 19
20 Patterson Way, El Dorado Hills CA [the El Dorado Property];
21 Robertson Avenue, Sacramento, CA;
 San Marino Circle, Rancho Mirage, CA;
 Toscana Way, Rancho Mirage, CA.

22
23 ² In brief: between November and January, the parties quarreled over Stolz’s refusal to make the
24 Property available for a site inspection. With each scheduled inspection, Stolz offered a variety
25 of excuses as to why the Property was unavailable. In April 2019, Stolz (pro se) indicated to
26 Travelers that he opposed the site inspection, and so the court ordered Stolz to file a formal
27 opposition to Travelers’s motion to compel. Travelers then moved to have Stolz sanctioned for
28 his alleged obstruction, and in May and June, the court conducted evidentiary hearings on the
matter. In July of 2019, the court sanctioned Stolz \$20,284.16 and ordered the site inspection to
proceed. The court found “at best, plaintiff’s representations and testimony have been
disingenuous[, and] at worst, plaintiff knowingly perjured himself in an attempt to avoid paying
sanctions, after plaintiff knowingly disobeyed an order of the court [to make the property
available for inspection].” (ECF No. 104.)

1 Supplemental Response to Interrogatory 2:

2
3 . . . Stolz resided at [the El Dorado Property] approximately half
4 each month between 2013 and 2017. Since 2017, the home has not
5 been occupied as it is uninhabitable.

6 Since 2013, [Robertson] has been occupied infrequently.
7 From 2013-2017, [San Marino Circle and Toscana Way] have been
8 occupied occasionally, and occupancy has increased since 2017.

9 Supplemental Response to Interrogatory 3:

10 [Stolz] has conducted a diligent search for data which might
11 identity, with particularity, the number of days per month each
12 property has been occupied. [Stolz does] not have such data.”

13 (Id. at 3.) Additionally, Stolz again disclaimed additional living expenses. (ECF No. 106-11 at
14 3.) Stolz also filed a declaration concerning the Property that, for the first time, mentioned the
15 Ravenswood Trust—in which Stolz was purportedly a successor trustee.³ (ECF No. 68.)

16 On May 30, Travelers filed a motion to enforce, asserting that Stolz’s interrogatory
17 supplements did not comply with the court’s order, and that Stolz completely failed to supplement
18 his responses to the outstanding requests for production. (See ECF No. 76.) Travelers set the
19 motion for a June 13, 2019 hearing. (Id.) The court noted Stolz’s failure to respond to
20 Travelers’s motion, ordered him to appear in person at the hearing, and served this notice on each
21 of Stolz’s residences. (ECF No. 77.) In the days before the hearing, attorney Ben Thomas
22 Hamilton filed a substitution of attorney on behalf of Stolz, as well as an untimely response to
23 Travelers’s motion to enforce.⁴ (ECF Nos. 81, 82.) Mr. Hamilton appeared alongside Stolz at the
24 hearing, and assured the court he would work with his client to supplement the responses. (See
25 ECF No. 84.) The court ordered the parties to confer on Stolz’s outstanding discovery requests,
26 ordered Stolz to respond within 21 days, and ordered that Stolz had waived all objections to these

27 _____
28 ³ Recognizing that Stolz was asserting that the Ravenswood Trust held some interest in the
Property, the parties spent additional time in the latter half of 2019 disputing whether the trust
documents were discoverable. (See, e.g., ECF Nos. 107, 111, 117 at ¶ 2.)

⁴ With Mr. Hamilton’s assistance, Stolz supplemented his responses two days before the hearing.
However, given that these responses were untimely, and that Stolz’s substitution of attorney had
not been approved, the court did not consider the responses prior to the June 13 hearing.

1 responses except as to privacy. (ECF No. 87.) The court also sanctioned Stolz personally,
2 ordering him to pay Travelers’s attorneys’ fees for having to bring the motion to enforce. (Id.)

3 In July 2019, the court reset the discovery deadlines in this case, ordering expert witness
4 disclosure by mid-August 2019, fact-discovery by September 4, rebuttal experts by September 9,
5 and expert discovery closure by October 7. (ECF No. 98.)

6 On August 15, 2019, Travelers submitted a second motion to enforce, requesting either
7 dismissal of the action in total, or dismissal of both Stolz’s breach of contract claim and any loss
8 of use damages and additional expense damages. (ECF No. 105.) Therein, Travelers noted that
9 between June and August, counsel for both parties conferred extensively over Stolz’s
10 supplemental responses, and were able to resolve many of the outstanding discovery disputes. As
11 to the Residence Questions, Stolz delivered to Travelers his cell phone records, certain utility bills
12 for the El Dorado Property, and his automobile gas receipts. (See ECF No. 106–22.) However,
13 Travelers maintained Stolz’s supplements were still deficient. Stolz stated:

14 Further Supplemental Response to Interrogatory 1:

15 I have lived at the following properties since January 1, 2013:
16 Patterson Way, El Dorado Hills CA [the El Dorado PROPERTY];
17 San Marino Circle, Rancho Mirage, CA;
 Toscana Way, Rancho Mirage, CA.

18 Supplemental Response to Interrogatory 2:

19 [El Dorado Hills] was the property that I considered my residence
20 up until the incident in 2017 My best estimate is that I spent
21 approximately ½ of my time (approximately 15 days per month) at
22 that location. I have not resided in that home since 2017 as it was
rendered uninhabitable by the incident in 2017.

23 [Toscana Way]: I do not consider this my primary residence;
24 however, I have occasionally occupied this property since 2017.
Despite a diligent search, I do not have any records which would
help me provide a more accurate estimate of time at this particular
location; and

25 [San Marino Circle]: I have occasionally occupied this property
26 since 2017. Since 2017, my occupancy of this property has
increased because of my inability to reside [in El Dorado Hills].
27 Despite a diligent search, I do not have any records which would
help me provide a more accurate estimate of time at the above-
mentioned locations. My cell phone billing statements do not
28 indicate my location in relation to cell phone calls I make or
receive. I do not keep track of my location on my cell phone. I do

1 not keep a permanent personal or business calendar. I generally
2 keep track of appointments and events via notes made on notepads
3 and then discard said notepads once the appointment or event has
4 occurred or the note is no longer needed.

5 Supplemental Response to Interrogatory 3:

6 [same as supplemental response to interrogatory 2].

7 Additional Response to [Document] Request No. 4:

8 I do not have any responsive documents in my possession, custody
9 or control relating to business or personal trips taken from the
10 January 1, 2015 to the time of the incident in 2017. Had any such
11 records existed, they no longer exist and are not in my possession.
12 Despite a diligent search, I do not have any records which would
13 help me provide a more accurate estimate of business and personal
14 trips taken from the January 1, 2015 to the time of the incident in
15 2017. My cell phone billing statements do not indicate my location
16 in relation to cell phone calls I make or receive. I do not keep track
17 of my location on my cell phone. I do not keep a personal or
18 business calendar. I generally keep track of appointments and
19 events via notes made on scraps of paper and then throw said notes
20 away once the appointment or event has occurred or the note is no
21 longer needed. I am in the process of locating and copying gas
22 receipts which I will produce in response to this request [*these were*
23 *turned over shortly after*]. I have not lived in the subject property
24 at any time since the incident in 2017 as it has been uninhabitable.

25 (ECF No. 106-17 and -18 (court comments included).) Travelers noted these responses were
26 inconsistent with testimony he gave at the summer 2019 deposition and prior written responses.
27 (See ECF No. 105.) For example, Stolz’s response inexplicably failed to mention the Robertson
28 property as well as a property in Las Vegas, which Stolz identified in his summer 2019
deposition. (See id.) Travelers also noted Stolz’s equivocation as to whether he was seeking
additional living expenses. (See id.) Stolz responded, aided by Mr. Hamilton, stating that he had
responded to the best of his abilities, and arguing that Travelers’s motion was an attempt to
punish him for not keeping better records. (ECF No. 106.)

On August 29, 2019, the court held another hearing to discuss the Residence Questions
(and other issues) with counsel. (ECF No. 115.) The court informed Mr. Hamilton he had not
conducted a thorough-enough “reasonable inquiry,” as required by Rule 26(g). Mr. Hamilton
objected to the court’s proposed inquiry as disproportionate to the needs of the case. The court

1 overruled the objection, noting that the documents Stolz provided were non-responsive, and so a
2 more-exhaustive review on Mr. Hamilton’s part was required. (See transcript of hearing, at ECF
3 No. 120.) As a compromise, Travelers proposed dropping the dispute over the Residence
4 Questions if Stolz agreed to drop his loss of use, additional living expenses, and diminution of
5 value claims; Mr. Hamilton indicated his client may be agreeable to such a stipulation. (ECF No.
6 114 at ¶ 1.) Thus, the court ordered the parties to confer and file a joint response. (Id.)

7 The following week, Stolz rejected Travelers’s compromise, and reasserted his damages
8 claims for diminution of value and loss of use; he also asserted that he intended to seek additional
9 living expenses. (ECF Nos. 117 at ¶ 1, 118.) Thus, on September 12, 2019, the court made
10 findings and ordered the following:

- 11
12 1. Stolz would be foreclosed from seeking additional living expenses as a
13 Rule 37 sanction, given that discovery had closed and Stolz consistently
14 disclaimed those damages over the past year (as contrary to his recent
15 statement that he was in fact seeking those damages).
- 16
17 2. Mr. Hamilton’s review of Stolz’s limited records, and his acceptance of
18 his client’s assertion that he has no records, did not satisfy Rule 26(g)’s
19 “reasonable inquiry” standard. Thus, Mr. Hamilton would be required to
investigate this issue more thoroughly. The court suggested Mr. Hamilton
might review where Stolz made his cash withdrawals, if he used any credit
cards in areas near the Property, which airports he used when flying
(either personally or for work), and what he told various government
agencies about his official residence. (The “Reasonable Inquiry.”)

20 (ECF No. 121.) After Mr. Hamilton conducted his Reasonable Inquiry, Stolz was to resubmit his
21 responses to Interrogatories 1-3 and Request 4. (Id.) Stolz was also ordered to pay Travelers’s
22 attorneys’ fees for having to bring the second motion to enforce. (Id.)

23 The Reasonable Inquiry was not completed, however, as two weeks later Mr. Hamilton
24 moved to withdraw, and the court stayed discovery. (ECF No. 122, 128.) In his withdrawal
25 declaration, Mr. Hamilton stated that if he were to continue representing Stolz, it would result in
26 numerous ethical violations, including “candor towards tribunals.” (ECF No. 122-2 at ¶ 7.) Mr.
27 Hamilton was allowed to withdraw, and soon after he filed a declaration that he had returned
28 Stolz’s client file to him—much of which was in digital format. (ECF Nos. 134, 137.)

1 The court then set a status conference for January 16, 2020, to discuss resuming
2 discovery. (ECF No. 135.) The parties filed a joint statement three days prior, wherein Stolz
3 stated he was unaware of the status of the document review regarding the Residence Questions.
4 (ECF No. 138.) At the hearing, Stolz, now acting pro se, maintained that he had not received all
5 of his documents from Mr. Hamilton—contrary to his former counsel’s declaration. (ECF No.
6 140.) The court ordered Stolz to get the documents, conduct the Reasonable Inquiry (as per the
7 September 12, 2019 Order), and supplement his responses by the end of January. (Id.)

8 On February 3, 2020 counsel for Travelers filed a declaration with the court. (ECF No.
9 143.) The declaration stated Stolz asserted he had not received a thumb drive from Mr. Hamilton,
10 and had just obtained his bankers boxes of documents—which Stolz maintained were missing
11 some documents; Stolz also stated he was close to obtaining new counsel, and would defer to this
12 new attorney on responding to discovery. (Id.) Because Stolz had not supplemented his
13 responses, or conducted the required review, Travelers renewed its second motion to enforce the
14 court order, and requested issue-dispositive sanctions. (Id.) The court ordered Stolz to file his
15 opposition by February 14, 2020. (ECF No. 145.) However, on February 12, Attorney Craig E.
16 Farmer filed a substitution of attorney. (ECF Nos. 146, 147.) The court set another status
17 conference with new counsel for March 6, and ordered a joint statement be submitted the day
18 prior. (ECF No. 149.)

19 In the joint statement, Travelers reasserted its intent to seek issue-dispositive sanctions,
20 and Mr. Farmer requested additional time to conduct the Reasonable Inquiry. (ECF No. 150.) At
21 the hearing, the court informed Mr. Farmer that he would be granted additional time, but that he
22 was bound to conduct the same inquiry as was required for Mr. Hamilton. (See ECF No. 157.)
23 The court ordered Mr. Farmer to file a declaration after Stolz’s responses were delivered to
24 Travelers, and ordered counsel for Travelers to file a responsive declaration indicating whether
25 Stolz’s latest supplemental responses resolved the Residence Questions. (See ECF No. 155.)

26 On March 20, 2020, Mr. Farmer submitted his declaration detailing his communications
27 with Stolz (and Stolz’s associates), as well as his review of Stolz’s records and supplemental
28 responses. (ECF No. 159.) Mr. Farmer stated:

1 3. I have reviewed Mr. Stolz' credit report . . . , which in fact shows
2 no credit card activities or accounts. In addition, . . . the [bank
3 account] statements do not reflect checking account transactions
4 and so may be of no real assistance in evaluating his residency
5 However, I am producing these to Travelers.

6 4. Stolz' cell phone records . . . do not indicate his location at the
7 time calls were made or received. These may neither support nor
8 contradict Mr. Stolz' prior statements of the estimated time per
9 month he typically spent at the El Dorado Property prior to the loss
10 date. Nevertheless, I am supplementing the cell phone production.

11 5. I have also been able to collect a few other items which I am
12 producing that may or may not support Stolz' contention regarding
13 his presence in the greater Sacramento area.

14 6. I am also providing . . . a brief summary of information we have
15 found concerning dates of flights to the East Coast

16 (Id.) Travelers then renewed its motion to enforce, and Stolz opposed. (ECF Nos. 160, 162.)

17 The court ordered the parties to submit documents for an in-camera review. (ECF No. 161.)

18 **Legal Standards –Discovery Requests, Responses, Reasonable Inquiry, Sanctions**

19 Under the Federal Rules of Civil Procedure, “[p]arties may obtain discovery regarding any
20 non-privileged matter that is relevant to any party's claim or defense.” Rule 26(b).⁵ Evidence is
21 relevant if it has “any tendency to make the existence of any fact that is of consequence to the
22 determination of the action more probable or less probable than it would be without the
23 evidence.” Fed. R. Evid. 401. Relevant information need not be admissible at the trial if the
24 discovery appears reasonably calculated to lead to the discovery of admissible evidence. Rule
25 26(b). Additionally, discovery must be proportional to the needs of the case, “considering the
26 importance of the issues at stake in the action, the amount in controversy, the parties’ relative
27 access to relevant information, the parties’ resources, the importance of the discovery in resolving
28 the issues, and whether the burden or expense of the proposed discovery outweighs its likely
benefit.” Id.

29 In propounding or responding to discovery, the Federal Rules require an attorney or
30 unrepresented responding-party to certify, “to the best of the person’s knowledge, information,
31 and belief formed after a reasonable inquiry,” that the request or response is:

32 ⁵ Citation to the “Rule(s)” are to the Federal Rules of Civil Procedure, unless otherwise noted.

1 (i) consistent with [the] rules and warranted by existing law or by a
2 nonfrivolous argument for extending, modifying, or reversing
existing law, or for establishing new law;

3 (ii) not interposed for any improper purpose, such as to harass,
4 cause unnecessary delay, or needlessly increase the cost of
litigation; and

5 (iii) neither unreasonable nor unduly burdensome or expensive,
6 considering the needs of the case, prior discovery in the case, the
amount in controversy, and the importance of the issues at stake in
7 the action.

8 Rule 26(g)(1)(b); see also Reinsdorf v. Skechers U.S.A., Inc., 296 F.R.D. 604 (C.D. Cal. 2013)

9 (“[T]he discovery process relies upon the good faith and professional obligations of counsel to
10 reasonably and diligently search for and produce responsive documents.”) (collecting cases).

11 However, “the Federal Rules do not demand perfection.” Id. at 615 (citing, inter alia, National
12 Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543, 555 (N.D. Cal. 1987) (“The

13 reasonableness of the inquiry is measured by an objective standard . . .”). “[I]f no responsive
14 documents or tangible things exist, [] the responding party should so state with sufficient

15 specificity to allow the court to determine whether the party made a reasonable inquiry and
16 exercised due diligence.” Uribe v. McKesson, 2010 WL 892093, at *2–3 (E.D. Cal. Mar. 9,

17 2010). “In general, a responding party is not required “to conduct extensive research in order to
18 answer an interrogatory, *but a reasonable effort to respond must be made.*” Gorrell v. Sneath,

19 292 F.R.D. 629 (E.D. Cal. 2013) (emphasis added) (quoting Haney v. Saldana, 2010 WL
20 3341939, at *3, (E.D. Cal. Aug. 24, 2010). Simply, Rule 26(g) imposes “an affirmative duty to

21 engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes
22 of Rules 26 through 37.” Rule 26(g), 1983 comm. note (“[Rule 26(g)] provides a deterrent to

23 both excessive discovery and evasion by imposing a certification requirement that obliges each
24 attorney to stop and think about the legitimacy of a discovery request, a response thereto, or an
25 objection[;] [t]his standard is heavily dependent on the circumstances of each case.”).

26 In addition to this “reasonable inquiry,” a party responding to interrogatories “is obligated
27 to respond to the fullest extent possible, and any objections must be stated with specificity.”

28 Gorrell, 292 F.R.D. at 632 (citing Rule 33(b)(3)-(4)). Responses to requests for production

1 require the responding party “to produce all specified relevant and non-privileged documents,
2 tangible things, or electronically stored information in its ‘possession, custody, or control’ on the
3 date specified.” Id. (citing Rule 34(a)). Actual possession, custody or control is not required;
4 thus the party “may be ordered to produce a document in the possession of a non-party entity if
5 that party has a legal right to obtain the document or has control over the entity who is in
6 possession of the document.” Id. (citing Soto v. City of Concord, 162 F.R.D. 603, 620 (N.D. Cal.
7 1995) and Rule 34(a)). “Control is defined as the legal right to obtain documents upon demand.”
8 U.S. Int’l Union of Petroleum and Indus. Workers, AFL–CIO, 870 F.2d 1450, 1452 (9th Cir.
9 1989) (internal citations omitted).

10 Under Rule 37, a court may order further responses if a responding party fails to answer
11 an interrogatory or to produce documents. See Rule 37(a)(3)(B). “[A]n evasive or incomplete []
12 response must be treated as a failure to [] respond.” Rule 37(a)(4). “The moving party bears the
13 burden of demonstrating ‘actual and substantial prejudice’ from the denial of discovery.” Gorrell,
14 292 F.R.D. at 633 (citing Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)). Additionally,
15 the court may “issue further just orders,” if the party fails to obey the discovery order, including:

- 16 (i) directing that the matters embraced in the order or other designated facts be
taken as established for purposes of the action, as the prevailing party claims;
- 17 (ii) prohibiting the disobedient party from supporting or opposing designated
claims or defenses, or from introducing designated matters in evidence;
- 18 (iii) striking pleadings in whole or in part;
- 19 (iv) staying further proceedings until the order is obeyed;
- 20 (v) dismissing the action or proceeding in whole or in part;
- 21 (vi) rendering a default judgment against the disobedient party; or
- 22 (vii) treating as contempt of court the failure to obey any order except an order to
submit to a physical or mental examination.

22 Rule 37(b)(2)(A). Further, the court must order an abusive party to pay the moving party’s
23 reasonable expenses, including attorneys’ fees, regarding the discovery abuse. Rule 37(b)(2)(C).

24 **Parties’ Arguments**

25 Travelers has consistently maintained that despite its attempts to inquire as to where Stolz
26 resided prior to the winter of 2017, and despite the court’s numerous orders directing Stolz to
27 supplement his responses to the Residence Questions, Stolz has not responded in a meaningful
28 fashion. (See ECF Nos. 105, 160.) Travelers contends:

- 1 I. Stolz’s disclaiming of damages for additional living expenses and failure to
2 claim loss of rents over the first year and a half of the case should bar any
3 subsequent attempt to seek those damages;
- 4 II. Stolz’s responses to Interrogatory 1 have been inconsistent and evasive; his
5 response to Interrogatories 2 and 3—his simple estimation that he “spent
6 approximately ½ of [his] time (approximately 15 days per month)” at the El
7 Dorado Property—is vague, incomplete, and inconsistent; and his document
8 production for Request for Production 4 has been non-responsive or, at best,
9 evasive. These non-responses impede Travelers’s ability to calculate damages
10 for loss of use or diminution of the Property’s value due to the winter 2017
11 storms (which would be lessened or negated if Stolz failed to mitigate any
12 earlier damage to the Property or had left the property abandoned).

9 Thus, Travelers requests an order sanctioning Stolz. Travelers requests that Stolz’s damages
10 claims for loss of use, diminution of value, additional living expenses, and loss of rents be
11 dismissed. (ECF No. 105 at 9; 160 at ¶ 43.)

12 Counsel for Stolz asserted that he conducted a review of Stolz’s documents in order to
13 assist his client in supplementing responses to the Residence Questions, as called for in the
14 court’s September 12, 2019 order.⁶ (ECF Nos. 159 at ¶¶ 2-6; 161 at ¶ 11.) Specifically:

- 15 I. As to additional living expenses, Stolz argued he did not disclaim these
16 damages per se. Instead, he had previously informed Travelers he was not
17 seeking them “at that time,” but that he might amend his answer in the
18 future.⁷ (ECF No. 106 at 9.)
- 19 II. For the responses to Interrogatories 1-3, Stolz argues that he has, in fact,
20 “explained in the discovery process where he has resided.” (ECF No. 159
21 at ¶ 12.) Counsel states he conducted a reasonable inquiry under Rule

21 ⁶ After Travelers renewed its second motion to enforce, Stolz’s counsel submitted a counter-
22 declaration in opposition. (ECF No. 162.) Travelers correctly notes the court did not grant Stolz
23 leave to submit this declaration, and so requests the court strike the submission from the record.
24 (ECF No. 162.) However, since the time Travelers originally moved to enforce, Stolz retained
25 and lost one attorney, then retained his current counsel. Stolz’s prior counsel never officially
26 opposed the motion to enforce, as the parties appeared open to resolving the issue informally.
27 Thus, the court believes due process would not be satisfied if Stolz was not given an opportunity
28 to oppose Travelers’s motion on the merits. Given this, and given that the court intended to order
opposition, Travelers’s motion to strike Stolz’s counsel’s declaration in opposition is denied.

⁷ This issue was not addressed in the most recent declarations, as the court had previously found
Stolz’s prior responses had foreclosed his ability to seek those damages. (See ECF No. 121 at
Section I.) These findings, however, were never formally submitted to the district judge, and so
will be repeated below—alongside the court’s formal recommendation.

1 26(g) by reviewing many of Stolz’s documents, and detailing his process
2 by declaration. (See *id.* at ¶¶ 1-7; 162 at ¶¶ 10-12.) For the response to
3 document production 4, Stolz maintains he has submitted his gas receipts,
4 as well as a “brief summary of information we have found concerning
5 dates of flights to the East Coast.” (ECF Nos. 159 at ¶ 6; 162 at ¶ 11.)

6 In sum, Stolz has consistently contended he has supplemented his responses to the best of his
7 ability, and has provided all information and documentation he has; he believes Travelers is
8 merely attempting to punish him via discovery sanctions for a perceived lack of evidence. (See
9 ECF No. 106 at 1-2.) Stolz further argues that Travelers is not without evidence of his
10 whereabouts, or of the state of the Property, prior to the winter of 2017, and implicitly argues that
11 the issue of damages is one for summary judgment or trial—not for resolution as a discovery
12 sanction. (ECF No. 162 at ¶¶ 3, 6-13.) Finally, Counsel for Stolz states that given the current
13 “shelter at home” order, he will supplement documents if any become available. (*Id.* at ¶ 5.)

14 Analysis

15 **I. Rule 37(b) sanctions are warranted on “additional living expenses” damages, and 16 to the extent Stolz attempts to seek loss of rents, these damages are barred.**

17 In September of 2019, the court found that Stolz’s about face on his intent to seek
18 damages for additional living expenses “cannot be tolerated.” (ECF No. 121 at Section I.) The
19 undersigned found that sanctions were appropriate as to this set of damages, and informed the
20 parties as much. (*Id.*) However, the court never formally submitted these findings to the assigned
21 district judge, as there remained multiple other areas of dispute. Thus, the court now repeats its
22 findings, and formally enters a recommendation for the district court’s consideration.

23 Maisonville v. F2 Am., Inc., 902 F.2d 746, 747 (9th Cir. 1990) (“[T]he magistrate's jurisdiction to
24 order sanctions, rather than recommend sanctions to the district court, is dependent upon whether
25 . . . sanctions are characterized as dispositive or non-dispositive of a claim or defense of a party.”)
26 see also Grimes v. City & Cty. of San Francisco, 951 F.2d 236, 240 (9th Cir. 1991) (analyzing a
27 magistrate judge’s authority to enter sanctions under Rule 37, and counseling the magistrate judge
28 to “confine herself to entering a recommendation for the disposition of the [dispositive] matter.”)

In September 2018, Travelers queried whether Stolz was seeking “additional living
expenses.” (ECF No. 106-4.) On December 7, 2018, Stolz gave a qualified response that he was

1 “not making a claim for Additional Living Expenses” (ECF No. 106-7 at 8, Response to
2 Interrogatory 7.) In May 2019, Stolz plainly stated he was not seeking additional living expenses.
3 (ECF No. 106-11 at 3, Supplemental Response to Interrogatory 7.) However, in September 2019,
4 Stolz notified Travelers in an email (and corresponding court filing) that he intended to seek
5 additional living expenses. (See ECF No. 106-20 at 3: “Stolz is making a claim for additional
6 living expenses under his policy.”; see also ECF No. 118 at 2.)

7 As the court informed Stolz in September of 2019, this about-face cannot be tolerated.
8 Stolz had a year to consider whether to seek these damages, but he disclaimed them at every turn.
9 His assertion that he was “continuing” to seek those damages is inconsistent with the spirit and
10 purposes of the discovery rules. See 1983 comm. note. to Rule 26. This result is especially so
11 given that fact that, on the day Stolz filed his notice with the court claiming he was requesting
12 those damages, fact discovery closed. (See ECF No. 117.) Travelers has adequately
13 demonstrated ‘actual and substantial’ prejudice to Stolz’s failures, as it cannot now conduct
14 further discovery on this set of damages. See Payne v. Exxon Corp., 121 F.3d 503, 508 (9th
15 Cir.1997) (“Many of the discovery responses eventually tendered by the plaintiffs came only as
16 the discovery period was drawing to a close, or after it had already closed. [Defendants] were
17 therefore deprived of any meaningful opportunity to follow up on that information, or to
18 incorporate it into their litigation strategy.”).

19 Further, Travelers recently began arguing that Stolz should be barred from seeking
20 damages for any loss of rents, as under the Policy. The court finds no reference in any of Stolz’s
21 discovery responses that he is in fact seeking compensation for any loss of rents, and thus,
22 Travelers’s request appears inapposite. (See ECF No. 106-18 at 5-6, Response to Request 12,
23 indicating Stolz has no documents evincing a lease or rental agreement.) However, given Stolz’s
24 previous history of offering equivocal and evasive answers in discovery, (most notably his
25 answers to the additional-living-expenses question), the court agrees that because fact-discovery
26 is now closed, Stolz should not be allowed to seek remuneration for any loss of rents. Any such
27 allowance would similarly be actually and substantially prejudicial to Travelers.

28 ///

1 Conclusion – No damages for additional living expenses or loss of rents.

2 Considering the relevant factors, the undersigned finds the public policy favoring a
3 disposition of these damages on the merits is severely outweighed by the lack of an expeditious
4 resolution in this case, the courts need to manage its docket, the prejudice to Travelers, and the
5 unavailability of less-drastic sanctions. See Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d
6 1007, 1022 (9th Cir. 2002) (laying out the five-factor test regarding dispositive sanctions). This
7 discovery dispute has eaten up over a year and a half of the parties' time. Discovery is now
8 closed, and reopening it for the parties to begin investigating these two 'new' lines of damages is
9 the antithesis of expedience. The court has already issued monetary sanctions against Stolz, but
10 this has not deterred him from submitting inconsistent answers in his responses. Thus, Stolz
11 should be barred from asserting damages claims for "additional living expenses" and "loss of
12 rents." Rule 37(b)(2)(A)(i); cf. Hawecker v. Sorenson, 2012 WL 2466615, at *3 (E.D. Cal. June
13 27, 2012) (where defendants caused five-month delay in responding to discovery requests,
14 pushing past the close of fact discovery, and where defendants failed to follow the court's order to
15 respond to discovery, issue sanctions were warranted under Rule 37(b)); with Silver Textile, Inc.
16 v. D Lux Brands, 2013 WL 12138985, at *2 (C.D. Cal. Oct. 9, 2013) (monetary sanctions
17 appropriate for discovery abuses, but not harsher sanctions, where discovery had not yet closed
18 and the court issued specific order requiring compliance).

19 **II. Stolz's responses to the Residence Questions are deficient, warranting sanctions.**

20 The court has overseen this discovery dispute since January of 2019, and has observed
21 Stolz continually give evasive answers to the Residence Questions—despite the court's
22 considerable guidance on how he might answer in a way that respects the spirit and purposes of
23 the federal discovery rules. After over a year of overseeing this dispute, the undersigned has
24 concluded Stolz is unwilling to provide full and fair answers to the Residence Questions and is
25 unwilling to assist his counsel in a reasonable inquiry. Thus, the undersigned concludes that Rule
26 37 sanctions are warranted.

27 From the beginning, the undersigned has attempted to be mindful of the scope of this
28 lawsuit—a bad-faith insurance case. Stolz maintains that in the winter of 2017, the Property was

1 damaged due to severe storms and flooding. (ECF No. 1-1 at ¶ 2.) A review of Travelers’s
2 Denial of Coverage Letter (submitted for in-camera review) indicates that Travelers denied
3 coverage based on its expert’s inspection of the Property. This expert opined that much of the
4 damage existed prior to the winter 2017 storms, and was likely caused by “wear and tear,
5 deterioration, inadequate maintenance and faulty design,”—all of which are purportedly excluded
6 from the Policy. Stolz contends Travelers’s failure to pay is a breach of the Policy, done in bad
7 faith, as an unfair business practice. (ECF No. 1.) Thus, Stolz’s use of the property, and his
8 ability to observe any damage, appears directly relevant to whether Travelers rightfully refused to
9 pay for the damage under the Policy—including loss-of-use and “diminution of value” damages.

10 To this end, Travelers asked Stolz a series of simple questions premised on a simple
11 inquiry: how much time did Stolz spend at the El Dorado Property? (See ECF No. 106-3.)
12 Knowing Stolz would dispute that he had abandoned the place, and knowing he owned multiple
13 properties, Travelers asked for proof of usage of the El Dorado Property prior to the winter 2017
14 storms. (See, e.g., ECF No. 106-4 at Request 1, requesting utility bills for the Property). Further,
15 knowing Stolz owned multiple radio stations across the country, Travelers asked Stolz to account
16 for his whereabouts over a two-year period; this could further indicate how much time Stolz spent
17 in the Sacramento area—including at the El Dorado Property. (See *id.* at Request 4, asking for
18 documents related to Stolz’s business or personal trips.) Under the Rules, Stolz was obligated to
19 respond to the interrogatories “to the fullest extent possible,” produce the requested documents
20 under his control,” and lodge objections “with specificity.” See *Gorrell*, 292 F.R.D. 632 (quoting
21 Rules 33 and 34). Further, the rules impart an obligation to conduct a reasonable inquiry into the
22 matters before responses are submitted. See Rule 26(g).

23 Instead, Stolz raised multiple boilerplate objections, and a month later supplemented with
24 the following vacuous statement: “[T]he number of days per month during which [Stolz] resided
25 at the [El Dorado] PROPERTY fluctuated widely and cannot be stated with specificity for the
26 time period requested.” (ECF No. 106-5; 106-7 at 7.) Over the next five months, the court gave
27 Stolz a chance to rethink his answer, then another chance after he failed to respond. (See ECF
28 Nos. 43; 65.) Stolz’s pro se supplemental responses identified four properties he considered his

1 residence, claimed that he occupied the El Dorado Property “about half each month” in the years
2 leading up to the storms, and stated that despite his “diligent search for data which might identify,
3 with particularity, the number of days per month each property has been occupied[, he does] not
4 have such data.” (ECF No. 106-10.) Stolz turned over no documents during this time. At this
5 point, it was obvious to the court that Stolz’s responses to Interrogatories 2 and 3 were evasive,
6 and his response to Document Production 4 was completely non-responsive. See Wanderer v.
7 Johnston, 910 F.2d 652, 655 (9th Cir. 1990) (finding issue sanctions warranted by the offending
8 party’s “complete indifference” to discovery requests, their obligations, and the court’s orders,
9 “thereby thwarting plaintiffs’ every attempt to secure basic, legitimate discovery.”); see also, e.g.,
10 Houston v. C.G. Sec. Servs., Inc., 820 F.3d 855, 859 (7th Cir. 2016) (affirming district court’s
11 imposition of sanctions for bad-faith discovery conduct, where party initially failed to respond,
12 failed to begin conducting an inquiry until months later, eventual response was vague, and latter
13 responses were inconsistent); Embassy of Fed. Republic of Nigeria v. Ugwuonye, 292 F.R.D. 53,
14 56 (D.D.C. 2013) (sanctions justified for, among other reasons, party’s delay in responding and
15 failure to disclose all relevant documents); Carlson v. Freightliner LLC, 226 F.R.D. 343, 368 (D.
16 Neb. 2004) (finding discovery sanctions warranted due to defendant’s consistent failure to
17 respond to discovery requests, a disregard of court’s prior order without an adequate or timely
18 explanation, and insufficient and defective offers of discovery eventually made even after
19 numerous extensions of time) (adopted, 226 F.R.D. 385).

20 Travelers moved to enforce, and Stolz retained his second attorney. (ECF Nos. 76, 79,
21 and 81.) The court, reassured by counsel’s promise to thoroughly review his client’s records,
22 gave Stolz yet another opportunity to respond. (ECF No. 87.) And indeed, Stolz did supplement
23 his response to Travelers’s requests for production, turning over among other things his utility
24 bills and cell phone records, and automobile gas receipts. (See ECF No. 106-22.) However,
25 Stolz’s responses to the Residence Questions were still deficient. Stolz inexplicably removed one
26 of his residences from his list (despite mentioning in a deposition another residence in Las
27 Vegas), reasserted his statement that he lived at the El Dorado Property approximately half of his
28 time, and stated he could not find any documents indicating his whereabouts—despite a “diligent

1 search.” (ECF No. 106-17 and -18.) He stated that neither his cell phone or the billing statements
2 tracked his location, and that he kept track of his calendar on notes that he discards. (Id.)

3 The court agreed with Travelers that latest responses were still evasive, and was
4 concerned Stolz was not grasping the level of inquiry being required. Thus, at the August 2019
5 hearing, the undersigned provided specific examples to Stolz’s counsel on what might constitute a
6 “diligent search”; further supplemental responses were ordered. (ECF No. 115.) Shields v.
7 Koelling, 2012 WL 1435029 (E.D. Cal. April 25, 2012) (stating that in responding to discovery,
8 the responding party “shall use common sense and reason.”) The court overruled Stolz’s
9 proportionality objections, reasoning that even though the “forensic review” being required was
10 above and beyond what might be required in a typical “reasonable inquiry” under Rule 26(g),
11 Stolz’s abject failure to make efforts responsive to the questions necessitated a more-thorough
12 review. (See ECF No. 121.)

13 Six more months passed. Stolz retained his third attorney, and was given three additional
14 opportunities to supplement. (ECF Nos. 122, 128, 134, 135 137, 138, 140, 143, 145, 146, 147,
15 149, 150, 155, 157.) Stolz merely reiterated his evasive answers. A simple comparison between
16 Stolz’s March 20, 2020 submissions to Travelers and the documents Stolz provided to his counsel
17 (the latter of which was reviewed in camera) highlights Stolz’s failures.

18 First, the court is concerned at current counsel’s resubmission of objections that had been
19 previously overruled, including on relevance grounds. (See ECF Nos. 84, 87, 115, and 120; see
20 also ECF 121 at 5.) Simply, Stolz’s whereabouts, and documents evidencing his travels, is at
21 least circumstantial evidence as to whether Stolz was ever present at the El Dorado Property to
22 observe any damage prior to the winter 2017 storms. If Stolz was never in the El Dorado area, it
23 arguably lessens the amount Travelers owes in damages. The court is aware that counsel had a
24 limited amount of time to review the record, and accepts the resubmission of these objections as
25 an oversight on counsel’s part. Stolz, however, is not excused from this failure to refrain from
26 asserting these objections, as the court has had multiple hearings on the subject—some with Stolz
27 physically present. Thus, the court imputes Stolz with knowledge of the prior proceedings, and
28 finds his certification of the supplemental responses makes him responsible for the resubmission

1 of these frivolous objections. See Computer Task Grp., Inc. v. Brotby, 364 F.3d 1112, 1115 (9th
2 Cir. 2004) (sanction warranted where offending party engaged in consistent, intentional, and
3 prejudicial practice of obstructing discovery, including asserting “repeated groundless
4 objections.”); see also, e.g., Ugwuonye, 292 F.R.D. at 56 (sanctions justified for, among other
5 reasons, persisting in filing objections despite any authority to do so).

6 Second, as to the substance of Stolz’s most-recent responses, they are as deficient as his
7 previous answers—and are, in fact, essentially the same as the responses from May, June and
8 August of 2019. (Compare ECF Nos. 106-10, 106-17, and 106-18 with ECF No. 160 at ¶ 30.⁸)
9 These responses indicate that Stolz only intends to offer a “best estimate,” that he resided at El
10 Dorado Property of “approximately 15 days per month.” However, this answer, and the details
11 listed in support thereof, do not reflect that he has taken seriously his duty to “respond to the
12 fullest extent possible.” Gorrell, 292 F.R.D. at 632. This deficiency is especially evident when
13 weighed against the absence of support for his “best estimate” in his documents, including both
14 those he submitted to Travelers and those identified by the court that Stolz did not bother to
15 obtain (as observed during the court’s in-camera review). For example:

- 16 • Stolz submitted to Travelers copies of his utility bills for the El Dorado Property, but no
17 effort was made to compare those documents to the utility statements of his other
18 properties;
- 19 • Stolz also indicated to the court that he primarily uses cash for his personal transactions.
20 Thus, the court indicated that a review of Stolz’s account statements might be in order, to
21 demonstrate where he made cash or ATM withdrawals. In response, Stolz submitted to
22 his current counsel statements from a single bank account. It is a checking account jointly
23 held with his mother, which appears to be used primarily to satisfy someone’s private-debt
24 obligations. This account does not show any cash withdrawals, and is completely non-
25 responsive to the court’s suggested inquiry. Presumably, Stolz has other bank accounts

26 ⁸ Par. 30 is Counsel for Travelers’s assertion as to Stolz’s March 2020 supplemental responses.
27 The originals were submitted to the court as part of its in-camera review, and have been verified
28 against Counsel’s declaration.

1 (whether in his own name, business accounts, or the Ravenswood Trust), but no effort was
2 made to obtain those records to see if they reflected cash withdrawals near the El Dorado
3 Property;

- 4 • The court suggested that Stolz's credit report might show whether he had other bank
5 accounts, or potentially any credit cards. Counsel asserted he reviewed the credit report,
6 and it did not show any other accounts. This credit report was not, however, turned over
7 to the court as part of the in-camera review, so the court has no idea what information may
8 or may not be on this document;
- 9 • The court did observe, from Stolz's gas receipts, that he makes use of prepaid cards to
10 purchase gas for his car. No effort appears to have been made to obtain the account
11 statements from these accounts (or where he is withdrawing the cash to purchase the
12 prepaid cards);
- 13 • The billing statements for Stolz's cell phone, electric and gas, and water and sewer all
14 show that payments were made for those services, yet no effort was made to determine
15 how those bills were paid. When those paying accounts were identified, statements could
16 have been produced demonstrating cash withdrawals, returned checks, etc.;
- 17 • Additionally, Stolz has made numerous assertions that the Ravenswood Trust holds some
18 interest in the Property. Assuming the trust has some funds to pay, for example, the
19 mortgage or insurance premiums, these account statements could have been obtained and
20 reviewed, in order to give some substance to Stolz's assertions;
- 21 • Finally, all parties are aware that Stolz owns multiple radio stations, and assumes Stolz
22 has some expenditures that could have been identified in the corporate account.
23 Examination of any of these accounts may have provided further information about
24 Stolz's spending habits, and thus his whereabouts.

25 Further, Stolz's supplemental response to Travelers's Request for Production 4 is wholly
26 inadequate. For example:

- 27 • Stolz indicated he drives to his various radio stations, and to his credit submitted a number
28 of gas receipts. However, when it came to his business flights to his radio stations, Stolz

1 merely produced a half-page email forwarded from someone purportedly from his
2 company that listed where he flew to on what dates, with no indication of his departing
3 city (which, again, was the primary reason why Travelers requested the documents—to
4 determine how often Stolz was in the Sacramento area). Further, there is no indication of
5 how he paid for the flights, and the half-page email specifically references other
6 documents that were not produced;

- 7 • In addition to that flagrant disregard for his duty to respond, Stolz made no effort to
8 submit any actual documents, receipts, emails—nothing—from his company, and it does
9 not appear Stolz even attempted to contact any airlines, hotels, or car-rental outfits to
10 obtain records from those entities (which could have shown location and other accounts).

11 The undersigned does not maintain that all of the things associated with the interrogatory
12 responses needed to be examined (though the document production should have been). However,
13 when the documents Stolz did produce failed to support his “best estimate,” any one of these
14 avenues could have lent support to his assertions. The absence of these things evinces his
15 willfulness in evading his responsibility to fully respond. Gorrell, 292 F.R.D. at 632.

16 Third, despite the numerous documents reviewed by Stolz’s current counsel, it cannot be
17 said that a “reasonable inquiry” has been conducted — as under the peculiar circumstances of this
18 case. See Rule 26(g), 1983 comm. note (“[Rule 26(g)] provides a deterrent to both excessive
19 discovery and evasion by imposing a certification requirement that obliges each attorney to stop
20 and think about the legitimacy of a discovery request, a response thereto, or an objection[;] [t]his
21 standard is *heavily dependent on the circumstances of each case.*”) (emphasis added). Simply, it
22 is clear from the court’s in-camera review that many of the documents Stolz supplied to counsel
23 affirmatively indicate that Stolz was not making purchases anywhere near the El Dorado
24 Property—which should give counsel pause when certifying that his client’s answers are “not
25 interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly
26 increase the cost of litigation[.]” Rule 26(g)(1)(b). In addition to the multiple holes identified in
27 the bullet-points above, the court notes these additional facts that demonstrate a failure to
28 question Stolz’s “best estimate”:

- 1 • None of Stolz’s official government documents (driver’s license, voter registration,
2 mailing address) show him residing in El Dorado County;
- 3 • Stolz failed to submit the registration for any of his vehicles—which may have provided
4 some clue as to which of his properties Stolz considered his residence⁹;
- 5 • The gas receipts submitted by Stolz cover the relevant periods, but do not show any
6 purchases near the El Dorado Property—and in fact only show transactions near the
7 Robertson property (which Stolz has inexplicably removed from his most-recent
8 responses) and his other properties (which are hundreds of miles away from the
9 Sacramento area);
- 10 • The returned checks from the checking account show a different address than the El
11 Dorado Property.

12 A client cannot be allowed to submit only non-responsive documents for review, especially when
13 common sense dictates that there are many other commonly-available documents that could
14 support an assertion of Stolz’s whereabouts. See Reinsdorf, 296 F.R.D. at 604 (“[T]he discovery
15 process relies upon the good faith and professional obligations of counsel to reasonably and
16 diligently search for and produce responsive documents.”); Shields, 2012 WL 1435029 (stating
17 that in responding to discovery, the responding party “shall use common sense and reason.”).
18 Ultimately, the court will not fault Stolz’s current counsel for this shortcoming in the Reasonable
19 Inquiry. After a year and a half of Stolz’s non-responsiveness—which included the withdrawal of
20 Stolz’s first two attorneys for, among other reasons, ethical issues with Stolz’s candor—it is
21 highly unlikely current counsel could utter any magic words that would convince Stolz to act
22 otherwise. (See ECF Nos. 44, 122, 159.) Thus, it appears current counsel’s efforts were to just
23 diligently review every single document submitted by Stolz, and attempt to move this case
24 forward. However, the court *does* hold Stolz responsible for this failure. The court has informed
25 him multiple times that he cannot rely on the non-responsive documents and otherwise disregard
26

27 ⁹ Travelers contends the vehicles are not registered in El Dorado, as per information contained in
28 Stolz’s auto policies. The court, however, could not verify this fact in its in-camera review, as
these documents were not provided.

1 his duty to obtain other, commonly-available documents. The court finds that Stolz’s evasiveness
2 has impeded his counsel’s ability to conduct a reasonable inquiry, and thus imputes the failure
3 onto Stolz personally. See, e.g., Bryant v. Armstrong, 285 F.R.D. 596, 612 (S.D. Cal. 2012)
4 (party’s interrogatory responses that he did not know the answer, nor did he have possession,
5 custody, or control over the documents that may assist in answering the interrogatory, was
6 insufficient) (citing Moore's Federal Practice, § 33.102[3], at 33–75 (noting that a responding
7 party must state under oath that he is unable to provide the information and must describe the
8 efforts he used to obtain the information); Nat'l Ass'n of Radiation Survivors v. Turnage, 115
9 F.R.D. 543, 555 (N.D. Cal. 1987) (noting that it may be appropriate under the circumstance of a
10 case to impose a sanction on the client for a Rule 26(g) violation) (quoting Rule 11 Advisory
11 Committee's Note (“This modification brings Rule 11 in line with practice under Rule 37, which
12 allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or
13 both.)).

14 Fourth, as the court indicated above in the background section, this is not the only
15 discovery dispute Stolz has instigated in this case. In the first half of 2019, Stolz put off allowing
16 Travelers to conduct a site inspection of the Property, disregarded a court order to allow the
17 inspection, then attempted to cover up his abuse during the sanctions proceedings. (See fn. 2,
18 above; see also ECF No. 104.) Moreover, Stolz, for some unknown reason, filed a document on
19 behalf of the Ravenswood Trust, then fought Travelers’s attempts to learn more about this entity
20 that purportedly held some interest in the Property. These events do not lend credibility to Stolz’s
21 assertion that he has tried to respond “to the best of his abilities.” Thomas v. Kaiser Found.
22 Hosps., 2007 WL 214441, at *2 (E.D. Cal. Jan. 26, 2007) (“The district court may properly
23 consider all of a party's discovery misconduct in weighing a motion to dismiss, including conduct
24 which has been the subject of earlier sanctions.”) (quoting Payne, 121 F.3d 503 at 508).

25 In sum, the court finds Stolz’s responses to Interrogatories 1-3 and Request for Production
26 4 to be conclusory and evasive. They were crafted for the sole purpose of bringing about a legal
27 conclusion—that El Dorado was Stolz’s primary residence, that he would have observed damage
28 to the home prior to the winter 2017 storms, and therefore Travelers’s failure to pay for any

1 damage to the Property was done in bad faith. This kind of evasiveness is unjust, which is why
2 the Rules equate evasiveness with non-responsiveness. See Rule 37(a)(4) (“[A]n evasive or
3 incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or
4 respond.”). Given Stolz’s multiple opportunities to supplement, the court can only conclude his
5 evasiveness is willful. Thus, discovery sanctions are warranted.¹⁰ Rule 37(b)(2)(A) (“If a party .
6 . . fails to obey an order to provide . . . discovery, including an order under Rule . . . 37(a), the
7 court where the action is pending may issue further just orders.”); Toth v. Trans World Airlines,
8 Inc., 862 F.2d 1381, 1385 (9th Cir. 1988) (finding terminating sanctions warranted by continued
9 and unjustified refusal to respond, even after court had ordered responses and attempted less
10 drastic sanctions for earlier noncompliance); see also Mulero-Abreu v. Puerto Rico Police Dep’t,
11 675 F.3d 88, 93–94 (1st Cir. 2012) (finding the district court’s dismissal of claims under Rule
12 37(b) within its discretion, where plaintiff’s “failure to provide the required responses to both
13 interrogatories and requests for production was in flagrant disregard of multiple court orders.”).

14 Conclusion – Issue sanctions are warranted on Stolz’s loss of use claim, and evidentiary
15 sanctions are warranted for Stolz’s diminution of value claim.

16 Rule 37 provides that any sanctions for discovery abuses may include:

17 (i) directing that the matters embraced in the order or other
18 designated facts be taken as established for purposes of the action,
as the prevailing party claims;

19 (ii) prohibiting the disobedient party from supporting or opposing
20 designated claims or defenses, or from introducing designated
matters in evidence; [and]

21 ***

22 (v) dismissing the action or proceeding in whole or in part[.]

23 Rule 37(b)(2)(A). The Ninth Circuit has counseled that if lesser sanctions have the potential to
24 remedy any abuse, this is preferable to dispositive sanctions. Rio Properties, 284 F.3d at 1022
25 (the “availability of less drastic sanctions” is often determinative of whether dispositive sanctions
26

27 ¹⁰ In no way should Stolz or counsel take the comments above to indicate that Stolz should have
28 another opportunity to supplement. The undersigned has provided ample guidance over the past
year, and Stolz has remained steadfast in his non-responsiveness. Simply, that ship has sailed.

1 should lie). However, the Court has also stated that “[w]hat is most critical for case-dispositive
2 sanctions, regarding risk of prejudice and of less drastic sanctions, is whether the discovery
3 violations threaten to interfere with the rightful decision of the case.” Connecticut Gen. Life Ins.
4 Co. v. New Images of Beverly Hills, 482 F.3d 1091, 1097 (9th Cir. 2007)). Further, “the court
5 must order the disobedient party, the attorney advising that party, or both to pay the reasonable
6 expenses, including attorney's fees, caused by the failure, unless the failure was substantially
7 justified or other circumstances make an award of expenses unjust.” Rule 37(b)(2)(C).

8 The court has spent considerable time outlining Stolz’s abuses, and finds them prejudicial
9 to Travelers’s ability to defend its interests. Stolz spent a year and a half attempting to evade
10 having to answer, and any further attempts to get Stolz to comply would be a waste of the court’s
11 time. See Tacori Enterprises v. Beverly Jewellery Co., 253 F.R.D. 577, 582 (C.D. Cal. 2008).
12 (reciting the rule that when a court order is violated, the public’s and court’s interests in
13 expeditiously managing the litigation is counterbalanced by the public policy in favor of a merits
14 determination—making ‘prejudice’ and ‘availability of lesser sanctions’ dispositive). As
15 described throughout this Section, Stolz’s evasive responses prejudices Travelers’s ability to
16 pursue its defenses. Thus, the court turns to tailoring an appropriate sanction.

17 Travelers seeks an issue-dispositive sanction, that Stolz be precluded from seeking
18 damages for loss of use or diminution of value. On Stolz’s claim for loss of use of the property,
19 the court agrees to this approach. It is clear that Stolz is attempting to manufacture a legal
20 conclusion in asserting he used the El Dorado Property at least 15 days per month—despite the
21 absolute absence of any evidence supporting such an assertion. In reviewing pleadings, or in
22 examining a self-serving declaration as part of a Rule 56 proceeding, the court need not accept
23 such conclusory assertions as factual. The court need not do so here, either. Thus, the
24 undersigned recommends any claim of Stolz’s for loss of use of the property be dismissed as a
25 sanction for his abusive actions. Rule 37(b)(2)(A)(v).

26 However, as to Stolz’s diminution of value claim, the court lends considerable weight to
27 Stolz’s argument that this sanction strikes too broadly. Counsel for Stolz indicates that Travelers
28 is in possession of its own documents indicating that the company may have been aware of the

1 state of the Property prior to the winter 2017 storms, as indicated by Travelers’s document
2 production to Stolz. (ECF No. 162 at ¶ 7.) Thus, the undersigned concludes that an issue-based
3 sanction would not be appropriate in this case. See, e.g., Bluestein v. Central Wisconsin
4 Anesthesiology 296 F.R.D. 597, 603 (W.D. Wis. 2013) (finding that even though evidentiary
5 sanction would make plaintiff’s case near impossible to prove, defendant’s ‘absence of evidence’
6 argument was more appropriate for summary judgment).

7 Instead, the court concludes that an evidentiary-based discovery sanction is warranted, as
8 per Rule 37(b)(2)(A)(i) and (ii). Stolz’s abuse is that he is evading the question of how much
9 time he spent at the El Dorado Property. Thus, for Stolz’s claim of “diminution of value” of the
10 Property, the court recommends the following sanction be issued:

11 (i) It be presumed that Stolz did not reside at the El Dorado
12 Property from January 1, 2013 onward, and that Stolz did not travel
13 to or from the El Dorado Property, for business or personal reasons,
14 during this time. Thus, Stolz had no ability to observe any damage
15 to the property during this time;

16 (ii) In support of his diminution of value claim, Stolz may rely on
17 any documents already exchanged between the parties. However,
18 Stolz may not rely on his own self-serving statements—whether
19 written in his interrogatory responses or stated at any deposition—
20 as to his observations about the state of the Property.

21 The undersigned believes that this evidentiary sanction is the most expedient and just way of
22 resolving this long-running discovery dispute, as it places the issue of interpreting the Policy
23 language and the assessment of the Property’s “diminution in value,” before the district court in
24 the summary judgment phase.¹¹ See, e.g., Karimi v. Golden Gate Sch. of Law, 361 F. Supp. 3d
25 956 (N.D. Cal. 2019) (finding discovery sanction appropriately tailored, where offending party
26 was non-responsive, and monetary sanctions would have been ineffective, thus leading district
27 court to preclude injection of the party’s own subjective testimony into case) (aff’d, 796 F. App’x

28 ¹¹ This is particularly fair given that, at times, Travelers has requested a sanction deeming the El
Dorado Property to not be his “residence premises.” Conversely, Counsel for Stolz argues that,
legally, there is no requirement that the El Dorado Property be Stolz’s “Primary Residence” in
order for the Policy to take effect. (ECF No. 162 at ¶ 3.) The scope of the Policy is not—nor has
it ever been—before the undersigned. Instead, the undersigned has simply been endeavoring to
have Stolz comply with the spirit and purposes of the rules of discovery. Thus, any sanction that
relies on interpreting the Policy’s language would be inappropriate.

1 462 (9th Cir. 2020)); Raimey v. Wright Nat. Flood Ins. Co., 76 F. Supp. 3d 452, 474 (E.D.N.Y.
2 2014) (finding no abuse of discretion in the imposition of evidentiary sanctions under Rule
3 37(b)(2)(A)(ii) that “merely limits [the party] to presenting the ample expert testimony it already
4 possesses in support of its defense”; sanction could not be construed as estopping offending party
5 from presenting one of its defenses, and magistrate judge did not assess the most severe sanctions,
6 but took measured step of preventing the party from further supplementing its defense; thus,
7 sanction was narrowly tailored to the purpose of preventing carrier from further delaying the
8 proceedings by engaging in additional discovery).

9 Finally, the undersigned finds Stolz’s repeated failures to supplement his responses to be
10 unjustified, and no just reason exists to deny Travelers its reasonable expenses. Thus, under Rule
11 37, the court is obligated to order Stolz to pay Travelers’s reasonable expenses, including
12 attorneys’ fees, caused by Stolz’s failures. Rule 37(b)(2)(C); Richmark Corp. v. Timber Falling
13 Consultants, 959 F.2d 1468, 1482 (9th Cir. 1992) (finding district court properly awarded fees
14 and costs incurred in obtaining court order compelling discovery and in litigating issues
15 pertaining to sanctions motions under Rule 37(b)(2)). The court already issued monetary
16 sanctions against Stolz in its September 2019 order, which Stolz has paid. Thus, Travelers’s fee
17 request should be based on the time Counsel for Travelers has spent on this issue since September
18 2019. Because these findings and recommendations will be submitted to the presiding district
19 judge for review, Travelers shall submit a declaration during the objections period with its
20 requested fee amount; the declaration shall detail Counsel’s hours and rate, and include any other
21 relevant legal authority. This will allow Stolz to raise any objections to the amount sought
22 (should he wish to do so) during the objections period, and will allow the district judge to review
23 the reasonableness of Travelers’s request and, if granted, tally the final award.

24 **RECOMMENDATIONS**

25 Accordingly, it is hereby RECOMMENDED that:

- 26 1. Defendant’s second motion to enforce (ECF No. 105, as renewed by ECF No. 158) be
27 GRANTED IN PART;
- 28 2. Plaintiff be SANCTIONED for his evasive and non-responsive answers to defendant’s

1 second set of interrogatories, questions one, two and three, and its first set of requests
2 for production of documents, question four;

3 3. The following sanctions be ENTERED:

4 a. That plaintiff be barred from seeking damages for additional living expenses,
5 loss of rents, or loss of use of the Property; and

6 b. For purposes of plaintiff's claims in this action, it be presumed that Stolz did
7 not reside at the El Dorado Property from January 1, 2015 onward, and that he
8 did not travel to or from the El Dorado Property, for business or personal
9 reasons, during this time. Plaintiff may rebut this presumption by relying on
10 any documents already exchanged between the parties. However, plaintiff
11 may not rely on his own self-serving statements—whether written in his
12 interrogatory responses, stated at any deposition, or offered at trial—that he
13 resided at the El Dorado Property.

14 c. That plaintiff be required to pay the reasonable expenses of Travelers's
15 attorneys' fees for having to bring, and renew, a motion to enforce.

16 4. After this discovery dispute is resolved, this case be referred back to the assigned
17 district judge for further proceedings, including the scheduling of dispositive motions.

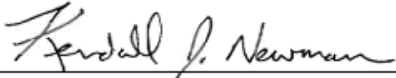
18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

20 Within **seven (7) days** of being served with these findings and recommendations,
21 defendant shall file its statement of reasonable expenses to the court, and shall serve this
22 statement on plaintiff.

23 Within fourteen (14) days after being served with these findings and recommendations,
24 any party may file written objections with the court and serve a copy on all parties. Such a
25 document should be captioned "Objections to Magistrate Judge's Findings and
26 Recommendations." Any reply to the objections shall be served on all parties and filed with the
27 court within fourteen (14) days after service of the objections. The parties are advised that failure
28 to file objections within the specified time may waive the right to appeal the District Court's

1 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153,
2 1156-57 (9th Cir. 1991).

3 Dated: April 28, 2020

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6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

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