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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 PATRICIA A. MCCOLM,

No. C 09-04132 SI

9 Plaintiff,

**ORDER RE: PLAINTIFF'S DISCOVERY
MOTIONS AND DEFENDANT'S
DISCOVERY LETTER**

10 v.

11 FOREMOST INSURANCE COMPANY,

(Docket Nos. 42, 44, 45, 49)

12 Defendant.
13 _____/

14 Plaintiff Patricia McColm has filed three discovery motions seeking to compel defendant to
15 produce information and documents responsive to plaintiff's interrogatories, requests for admission, and
16 document requests. In responding to these motions, defendant has made a request of its own. The Court
17 hereby rules as follows.

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19 **I. Doc. Nos. 42 & 49:**

20 Plaintiff's first discovery motion relates to the production of documents.

21 It appears from the parties' papers that defendant sent an incomplete draft response to plaintiff's
22 request for production of documents. The draft response included no actual documents; rather, it stated
23 generally that all requested documents had been produced previously, and then included a single general
24 objection copied in response to each of plaintiff's requests. Pl. Ex. B. The draft response was dated
25 July 28, 2010 but unsigned, and it was timely served on July 29, 2010. *Id.*¹

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27 ¹ Under Rule 34(b)(2)(A), answers and objections must be served within 30 days of service of
28 the requests for production (or 33 days if service was by mail, Fed. R. Civ. P. 6(d)). The requests for
production in this case were served by mail on June 26. Pl. Ex. A, Proof of Service. The original
answers were served July 29, on the thirty third day after the interrogatories were served. Pl. Ex. B,

1 Defendant has now filed a letter brief seeking the Court’s permission to serve amended
2 responses. Doc. 49.

3 According to Federal Rule of Civil Procedure (“Rule”) 6(b)(1)(B), “When an act may or must
4 be done within a specified time, the court may, for good cause, extend the time: . . . on motion made
5 after the time has expired if the party failed to act because of excusable neglect.”

6 In evaluating whether neglect is excusable, a district court must consider the four
7 factors established by the Supreme Court in *Pioneer Investment Services Co. v.*
8 *Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993): “(1) the danger of
9 prejudice to the non-moving party, (2) the length of delay and its potential impact on
judicial proceedings, (3) the reason for the delay, including whether it was within the
reasonable control of the movant, and (4) whether the moving party’s conduct was in
good faith.”

10 *Mendez v. Knowles*, 556 F.3d 757, 765 (9th Cir. 2009) (quoting *Pincay v. Andrews*, 389 F.3d 853, 855
11 (9th Cir. 2004) (citing *Pioneer*, 507 U.S. at 395)). In *Pioneer*, the Supreme Court had explained that
12 “[a]lthough inadvertence, ignorance of the rules, or mistakes construing the rules do not usually
13 constitute ‘excusable’ neglect, it is clear that ‘excusable neglect’ under Rule 6(b) is a somewhat ‘elastic
14 concept’ and is not limited strictly to omissions caused by circumstances beyond the control of the
15 movant.” 507 U.S. at 391 (footnote omitted).

16 Defendant states that the draft responses were produced inadvertently and as the result of clerical
17 errors. Defendant argues that because it had already produced all responsive documents and because
18 it had listed its objections to plaintiff’s requests in the original draft at least generally, plaintiff is not
19 prejudiced. Plaintiff opposes defendant’s request, saying that the production of the draft was not
20 inadvertent or made in good faith. To support this contention she submits a page that was attached out
21 of context to defendant’s letter brief, which appears to be a final page of a draft response. It is nearly
22 identical to the final page that was served on plaintiff and is also dated July 28, 2010; but unlike the
23 copy actually served, it is signed.

24 Although plaintiff provided some evidence that appears to undermine defendant’s explanation,
25 the Court nonetheless finds that defendant has failed to act because of excusable neglect. Defendant’s
26 request to serve the amended responses is GRANTED.

27 _____
28 Proof of Service.

1 Plaintiff also maintains some of her objections to defendant's answers, even as contained in the
2 amended responses. Plaintiff has pointed out that the amended responses also are not accompanied by
3 any documents. Under each request, the responses now state that "All documents responsive to this
4 request have been produced in the documents submitted with the Federal Rules of Civil Procedure Rule
5 26(a) disclosure in June 2010." Doc. 49, Hollins Decl. Ex. A. They also contain objections that are
6 only slightly more tailored than in the original draft response. Plaintiff argues that defendant should
7 have listed what documents are responsive to each request for production, even if defendant has already
8 produced those documents. Moreover, she notes that defendant has used the same generic statement
9 that "[a]ll documents responsive to this request have been produced" even where, in fact, no documents
10 have been produced.

11 Defendant has provided the Court with a list of documents produced in June 2010. Hollins Decl.
12 Ex. C at 11. According to defendant, this consisted of 536 pages of non-privileged material. Generally,
13 it is not sufficient, in responding to a discovery request, to "simply refer generically to past or future
14 production of documents." *See Pulsecard, Inc. v. Discover Card Servs., Inc.*, 168 F.R.D. 295, 305 (D.
15 Kan. 1996)); *see also Helm v. Alderwoods Group, Inc.*, NO. C 08-01184, 2010 WL 2951871 (N.D. Cal.
16 July 27, 2010). However, in this case, the volume of produced documents is quite small. Given the fact
17 that the ratio of pages to requests for production is approximately 5-to-1, defendant's decision not to list
18 every page that it believes is responsive to each requests is reasonable.

19 Plaintiff asserts that no documents have been disclosed that respond to requests 5, 6, 7, 10, 11,
20 12, 13, 15, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
21 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 69, 72, 73, 74,
22 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 100, 101, 102, 103, or 104. The
23 Court has no way of knowing whether this is true, and if so why. Defendant is instructed to inform
24 plaintiff whether or not documents have been provided. If they have, defendant should explain
25 generally what the documents consist of (for example, by referring to one of the topics on the list of
26 documents produced in June 2010). If they have not, defendant should explain whether this is because
27 no such documents exist, or if it is because defendant is asserting a privilege or otherwise objects to the
28 request. Defendant should be reasonably specific about what its response is.

1 Plaintiff argues that certain requested documents have not been turned over, including some that
2 were listed as disclosed in June 2010. Among these are what defendant identified as “Underwriting
3 documents, payment records relating to payments and correspondence with George McColm,”
4 “Photographs and 8mm video taken by Vince Hubble,” and “Trinity Sheriff Department records, reports
5 and photographs.” Defendant is instructed to respond to plaintiff’s contentions. If discoverable
6 documents have not been turned over, defendant is instructed to turn them over or to explain why it is
7 not doing so.

8 Plaintiff also states that no claims handling manuals, written policies, or procedures have been
9 produced at any time, nor has anything else that defines the terms used to interpret the policy, determine
10 coverage or determine how payment of a claim is determined or the amount thereof. In response to
11 plaintiff’s request 48, for example, which asks for the production of “Any and all DOCUMENTS which
12 relate to, reflect, concern, refer, or in any way formed any part of FOREMOST claims investigation
13 manuals between 2000 and 2007,” defendant has written:

14 All documents responsive to this request have been produced in the documents
15 submitted with the Federal Rules of Civil Procedure Rule 26(a) disclosure in June 2010.
16 All other documents consisting of attorney work product or attorney client
17 communication are hereby objected to. Discovery is continuing and this party will
18 produce any other documents supporting this request and respond to any further request
19 by propounding party or in response to other requests. The term “claims investigation
20 manuals” does not identify any document known to FOREMOST. Objection attorney
21 client privilege. Overbroad, vague, ambiguous and not relevant.

22 Hollins Decl. Ex. A at 22.

23 This response is so inadequate as to be meaningless. The parties are instructed to meet and
24 confer regarding plaintiff’s requests for manuals, policies, and procedures. To the extent that the parties
25 are unable to resolve their differences over what has been requested and what is to be turned over, the
26 parties are instructed to provide the Court with a single documents, no longer than ten pages, succinctly
27 explaining the positions of the two parties with regard to the issues that have yet to be resolved.

28 The Court is aware that issues have arisen over the parties’ attempts to meet and confer. The
Court suggests that if plaintiff is unable to reach counsel for defendant directly by phone, plaintiff
should leave a message providing several times that she will be available by phone over the subsequent
several days. Defendant’s counsel should attempt to inform plaintiff when he will contact her and then

1 contact her when she is available. The parties are requested to accommodate each others'
2 needs—plaintiff’s needs as a pro se without the resources of a law firm and (it appears) without a
3 dedicated fax line or free long distance, and defendant’s counsel’s needs as a lawyer handling multiple
4 cases that also require his time and attention.

5 Plaintiff argues that defendant should produce a privilege log. The Court is not persuaded that
6 it is necessary for defendant to produce a privilege log at this time.

7 Plaintiff’s motion is GRANTED IN PART and DENIED IN PART. Because the Court has
8 granted defendant’s request to serve the amended responses, the Court denies plaintiff’s request to waive
9 any assertion of objection. **Within ten days of the date of this order**, however, defendant is instructed
10 to respond to plaintiff’s contentions that no documents have been produced that respond to the above
11 enumerated requests. **Within ten days of the date of this order**, defendant is instructed to respond to
12 plaintiff’s contentions that no documents were turned over that fall under three of the topics on the list
13 of documents produced in June 2010. **Within ten days of the date of this order**, the parties are
14 instructed to meet and confer regarding plaintiff’s requests for manuals, policies, and procedures. Both
15 parties are instructed to act in good faith to meet and confer within this time period. The remainder of
16 plaintiff’s requests are denied.

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18 **II. Doc. No. 44:**

19 Plaintiff’s second discovery motion relates to defendant’s answers to plaintiff’s requests for
20 admission. Plaintiff argues that the responses are insufficient, false, and misleading; that the objections
21 are improper; that the answers are unverified; and that they are unresponsive to the full scope of
22 plaintiff’s requests. Plaintiff asks that the requests be established as admitted, and even suggests that
23 a terminating sanction might be warranted. Defendant argues that it is in substantial compliance with
24 discovery rules.

25 Rule 36 does not require that answers to requests for admissions be verified, only that they be
26 signed by either the attorney or party. *See* Schwarzer et al., 2 Federal Civil Procedure Before Trial 11-
27 287, § 11:2061 (2010). Defendant’s answers are signed by defendant’s attorney.

28 Plaintiff complains that the answer to request number 2 is inadequate. Plaintiff’s request asks

1 defendant to admit or deny the statement that it never provided her with a complete copy of Mr.
2 McColm's insurance file. Defendant's answer states that it provided plaintiff with "all claim related
3 documents as required by California Insurance Code section 2071." Plaintiff points out that California
4 Insurance Code section 2071 is a standard form fire insurance policy. While that is true, it is also true
5 that one of the paragraphs on the form policy states:

6 The insurer shall notify every claimant that they may obtain, upon request, copies of
7 claim-related documents. For purposes of this section, "claim-related documents" means
8 all documents that relate to the evaluation of damages, including, but not limited to,
9 repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans,
10 reports, third-party findings on the amount of loss, covered damages, and cost of
11 repairs, and all other valuation, measurement, and loss adjustment calculations of the
12 amount of loss, covered damage, and cost of repairs. However, attorney work product
13 and attorney-client privileged documents, and documents that indicate fraud by the
14 insured or that contain medically privileged information, are excluded from the
15 documents an insurer is required to provide pursuant to this section to a claimant.
16 Within 15 calendar days after receiving a request from an insured for claim-related
17 documents, the insurer shall provide the insured with copies of all claim-related
18 documents, except those excluded by this section. Nothing in this section shall be
19 construed to affect existing litigation discovery rights.

20 Cal. Ins. Code § 2071. The Court reads defendant's answer to mean that it has provided plaintiff with
21 the documents that are described as available to a claimant in Section 2071, but that it has not provided
22 plaintiff with any other documents from her insurance policy. Such an answer is sufficiently responsive
23 to plaintiff's interrogatory.

24 Plaintiff complains that defendant mistranscribed the phrase "red house" as "real house" in
25 request number 3 and then objected to the question as vague. Because defendant not only objected but
26 also answered the request under the assumption that it meant to say "red house," plaintiff need not be
27 concerned with defendant's initial objection.

28 Although defendant has objected to several other of plaintiff's requests for admissions, it has
also provided plaintiff with sufficiently clear answers so as to comply with Rule 36.

Plaintiff's motion is DENIED.

III. Doc. No. 45:

Plaintiff's third discovery motion relates to defendant's answers to plaintiff's interrogatories.

1 It appears from the parties' papers that defendant sent plaintiff one set of interrogatory answers
2 that consisted almost entirely of objections. Defendant states that this set of answers was sent due to
3 office error, and as soon as the error was discovered a corrected set was mailed.

4 Plaintiff argues that the corrected responses were submitted past the deadline to answer her
5 interrogatories and therefore defendant has waived its right to rely on any objections contained in the
6 answers.² The Court is not sure why defendant sought the Court's permission to file a tardy amended
7 response to plaintiff's production request, discussed above, but did not request permission from plaintiff
8 or the Court to file its amended interrogatory answers. Nonetheless, the Court excuses defendant's
9 tardiness for good cause shown. The Court will not strike defendant's objections from the
10 interrogatories.³

11 Plaintiff argues that the new answers were not properly verified. Rule 33 requires that a party
12 (or a party's officer or agent) answer interrogatories under oath and sign them personally. Fed. R. Civ.
13 P. 33(b)(1)(A), 33(b)(3), 33(b)(5); *see also Greene v. United States*, 447 F. Supp. 885, 890 n.2 (N.D.
14 Ill. 1978). The answers are dated August 4, whereas the verification is dated July 29. Def. Ex. E.
15 Plaintiff rightly points out that it is impossible to review something six days before it exists. The
16 interrogatory answers are not properly verified.

17 Plaintiff argues that defendant improperly re-defined the words "you" and "your" to refer to
18 plaintiff when plaintiff had originally designated them to refer to defendant. Plaintiff is correct that
19 defendant has redefined the terms "you" and "your" to mean "plaintiff PATRICIA A. MCCOLM and/or
20 any of her employees, agents, representatives, attorneys, and anyone else acting on her behalf," and
21 plaintiff is correct that defendant inserted its definition into the text of plaintiff's first interrogatory. *See*
22 Def. Ex. E at 3. However, it is clear that defendant has answered the interrogatories as written and only

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24 ² Under Rule 33(b)(2), answers and objections must be served within 30 days of service
25 of the interrogatories (or 33 days if service was by mail, Fed. R. Civ. P. 6(d)). "Any ground not stated
26 in a timely objection is waived unless the court, for good cause, excuses the failure." Fed. R. Civ. P.
27 33(b)(4). The interrogatories in this case were served by mail on June 26. Pl. Ex. A, Proof of Service.
The original answers were served July 29, on the thirty third day after the interrogatories were served.
Pl. Ex. B, Proof of Service. The replacement answers were not served until August 4. Def. Ex. E, Proof
of Service.

28 ³ The Court will not look favorably on a further defense request to be excused from this
type of mistake.

1 redefined the terms “you” and “your” for use in its answers. Plaintiff also complains that defendant’s
2 answers are unclear to the extent that the terms “you” and “your” refer both to plaintiff and to her late
3 father, George L. McColm. Although defendant sometimes refers to Mr. McColm as “GEORGE,” it
4 is not clear from the answers whether the words “you” or “your” occasionally refer to individuals other
5 than plaintiff. Plaintiff is not a corporation with agents, employees, and representatives. She is an
6 individual. Although it is true that an individual can have people act on her behalf, it is also true that
7 the interrogatory answers are unclear to the extent that defendant employed an overly broad definition
8 of “you” and “your.” Defendant should refer to individuals clearly and by name.

9 Plaintiff also argues that many of the answers are hearsay, are false, are nonresponsive, or do
10 not contain facts. The Court does not find that defendant’s answers are improper or otherwise fail to
11 comply with civil discovery rules.

12 Plaintiff’s motion to compel is GRANTED IN PART and DENIED IN PART. **Within ten days**
13 **of the date of this order**, defendant shall serve a new, properly verified set of answers to plaintiff’s
14 interrogatories in which it refers to individuals clearly and by name.

15 16 CONCLUSION

17 For the foregoing reasons, plaintiff’s motion contained in docket number 42 is GRANTED IN
18 PART and DENIED IN PART. Defendant’s request contained in docket number 49 is GRANTED.
19 Plaintiff’s motion contained in docket number 44 is DENIED. Plaintiff’s motion contained in docket
20 number 45 is GRANTED IN PART and DENIED IN PART. The parties shall comply with all of the
21 instructions listed in this order.

22 The Court has taken the remainder of plaintiff’s and defendant’s discovery requests under
23 advisement. In the mean time, if plaintiff and defendant are in need of extensions of time, either because
24 they are unable to meet a deadline or because they have made a mistake in a late-served document, they
25 are urged to stipulate to extensions of time. Plaintiff and defendant are both urged to be understanding
26 about small timing issues and accidental miscommunications. If stipulations are not possible, the parties
27 are urged to request extensions from the Court as soon as it becomes clear that they will be necessary.
28 The parties are also urged to be diligent in their duties to respond fully, accurately, and in a timely

1 manner to discovery requests.

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3 **IT IS SO ORDERED.**

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5 Dated: December 3, 2010

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SUSAN ILLSTON
United States District Judge