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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

D.O. DANA M. WELLE,

Plaintiff,

v.
PROVIDENT LIFE AND ACCIDENT
INSURANCE COMPANY,

Defendant.

Case No.: 3:12-cv-3016 EMC (KAW)
ORDER REGARDING OCTOBER 25, 2013
JOINT DISCOVERY LETTER

Plaintiff Dana Welle brought claims against Defendant Provident Life and Accident Insurance Company for breach of contract and breach of the covenant of good faith and fair dealing after Provident denied her claim for disability insurance benefits. On October 25, 2013, the parties filed the instant joint discovery letter. The matter was referred to the undersigned.

Pursuant to Civil Local Rule 7-1(b), this matter is deemed suitable for disposition without hearing. As set forth below, the court overrules Provident's objections to Request for Production No. 65 and sustains Provident's objections to Request for Production No. 4 to Natalya Vayn's Deposition Notice.

I. Request for Production No. 65

Plaintiff requests "[a] true and correct copy of all DOCUMENTS that reflect, refer or relate to PROVIDENT's processes, protocols, procedures and/or guidelines to refer a file to [the] Special Investigations/Fraud Unit ('SIU') from 2008 to present." (Joint Ltr., Ex. A. at 5.) (capitalization in original.) Provident objects to the request on the grounds that it is overbroad, unduly burdensome, vague, ambiguous, seeks information that is not relevant to any claim or

1 defense, seeks confidential or proprietary business records, and may encompass documents
2 protected by the attorney-client or attorney work-product privileges. (*Id.*, Ex. B. at 6.)

3 The court overrules Provident's objections that the request is overbroad, vague, or
4 ambiguous. Provident should be able to easily identify the materials that relate to the referral of a
5 claim to the SIU. In that respect, the request is sufficiently detailed as to allow Provident to
6 discern the subject of Plaintiff's request. The objection that the request is unduly burdensome also
7 fails. If the materials are contained within certain manuals, as appears to be the case here, or
8 stored in an electronic format, any burden to Provident is minimal, especially given that Plaintiff
9 seeks only those materials respecting the "refer[al of] a file to" the SIU.

10 As for Provident's objections that the materials sought are confidential, proprietary, or
11 protected by the attorney-client or attorney work-product privileges, Provident has made no
12 showing supporting such characterizations of the materials at issue nor has it attached a privilege
13 log to the parties' joint letter. Instead, Provident only asserts the position that because this court
14 has concluded that certain documents in the SIU file prepared in connection with the investigation
15 of Plaintiff's claim are entitled to work-product protection, the materials Plaintiff seeks here are
16 also protected by the attorney-client and work-product privileges. *See* Joint Ltr. at 7. This
17 position is unavailing. Insofar as Provident asserts that the materials are confidential or
18 proprietary, Provident has not explained why the stipulated protective order in place does not
19 adequately preserve the confidential or proprietary nature of the information at issue.

20 Provident's objection on the grounds of relevancy also fails. Federal Rule of Civil
21 Procedure 26(b)(1) permits "discovery regarding any nonprivileged matter that is relevant to any
22 party's claim or defense." The information sought "need not be admissible at the trial" so long as
23 it "appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* The
24 policies and procedures governing the referral of Plaintiff's claim to the SIU are relevant insofar
25 as they shaped the investigation which culminated in the denial of Plaintiff's claim. Even if
26 Provident's assertion that the claims department, not the SIU terminated Plaintiff's claim is
27 accurate, whether the investigation of Plaintiff's claim adhered to established policies and
28 procedures governing the referrals of similar claims speaks to the overall handling of Plaintiff's

1 claim, and ultimately, whether Provident properly denied her claim. While Plaintiff seeks
2 materials dating back to 2008, she does not state why materials from that date are relevant. The
3 court therefore finds that the materials are only relevant as of April 7, 2009, when Plaintiff first
4 sought disability benefits under the policy.

5 Accordingly, Provident shall supplement its responses to Request for Production No. 65
6 within 30 days of this order.¹ Such supplemental responses shall include information dating back
7 to April 7, 2009, when Plaintiff first submitted a claim for disability insurance benefits.

8 **II. Request for Production No. 4 to Deposition Notice of Natalya Vayn**

9 Natalya Vayn is the SIU investigator who was responsible for the investigating Plaintiff.
10 (*Id.* at 4.) Plaintiff served Natalya Vayn with a deposition notice on August 26, 2013. (Joint Ltr.,
11 Ex. C.) Included with that notice was a list of documents requested. (*Id.*, Ex. C at 5.) In item
12 four on that list, Plaintiff requests:

13 True and correct copies of the following items which have been kept in the
14 regular course of business: the complete CLAIMS manuals and/or procedures
15 manuals, POLICY statements, bulletins, DOCUMENTS, COMMUNICATIONS
16 or memoranda which set forth company practices or policies regarding the
17 handling, processing and/or INVESTIGATION of CLAIMS submitted by YOUR
insured and which were in effect or which were utilized by YOU, and/or any
claims administrator at the time WELLE's CLAIM(s), submitted pursuant to the
above-referenced POLICY, was handled, processed and/or investigated[.]

18 (*Id.* (capitalization in original).) Provident objects to the request, asserting that it is compound,
19 overly broad, unduly burdensome, oppressive, vague, ambiguous, and unintelligible. (*Id.*, Ex. D
20 at 8.) Provident also objects on the grounds that the request concerns documents protected by the
21 attorney-client and attorney work-product privileges as well as confidential, proprietary, or trade
22 secret information. (*Id.*) Provident further objects that the request seeks information that is not
23 relevant to any claim or defense and is outside the scope of the following deposition category:
24 "Pursuant to FRCP 30(b)(6), the person most knowledgeable from Provident Life and Accident

25
26 _____
27 ¹ Provident states that "[p]rocedures to refer a file to SIU are contained in the claims manual that
28 has already been produced," however, it appears that this production of documents may have been
limited to some, but not all, of the materials requested. *See* Joint Ltr. at 9. If Provident has
produced all such materials, it may clarify that in its supplemental responses.

1 Insurance Company's Special Investigations Unit ("SIU") regarding Provident's investigation of
2 Dana Welle." (*Id.* at 3.)

3 "A party who wants to depose a person by oral questions must give reasonable written
4 notice to every other party." FED. R. CIV. P. 30(b). "The notice to a party deponent may be
5 accompanied by a request under Rule 34 to produce documents and tangible things at the
6 deposition." *Id.* Federal Rule of Civil Procedure 34(a) provides:

7 A party may serve on any other party a request within the scope of Rule
8 26(b):

9 (1) to produce and permit the requesting party or its representative to
10 inspect, copy, test, or sample the following items in the responding party's
11 possession, custody, or control:

12 (A) any designated documents or electronically stored information--
13 including writings, drawings, graphs, charts, photographs, sound recordings,
14 images, and other data or data compilations--stored in any medium from which
15 information can be obtained either directly or, if necessary, after translation by the
16 responding party into a reasonably usable form

17 Such request "must describe with reasonable particularity each item or category of items to be
18 inspected." FED. R. CIV. P. 34(b)(1)(A).

19 The court sustains Provident's objection that the above request is overbroad, vague and
20 ambiguous, and unduly burdensome. In the request, Plaintiff does not identify any particular set
21 of documents or materials. Instead, Plaintiff asks that Provident produce the universe of materials
22 that may or may not have affected the resolution of her claim at any point in time. In the parties'
23 joint letter, Plaintiff urges that the court read this request as one for the "Special Investigative
24 Unit Policy and Procedures [Manual]" Natalya Vayn referenced in her September 24, 2013
25 deposition. *See* Joint Ltr. at 4. Plaintiff argues that prior to Natalya Vayn's deposition, she did
26 not know that the manual existed. It appears, however, that Plaintiff was aware that Provident
27 had investigated her claim, *see* Compl. ¶ 17 ("Then, in the beginning of 2011, Provident ordered
28 surveillance as part of its claims investigations.), and with that knowledge, she could have
appropriately tailored her requests for production to seek materials governing that investigation
and other investigations of its kind.

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For these reasons, the court sustains Provident's objections that above request is overbroad, vague and ambiguous, and unduly burdensome.

III. CONCLUSION

As set forth above, Provident shall supplement its responses to Request for Production No. 65 within 30 days of this order.

IT IS SO ORDERED.

Dated: October 30, 2013


KANDIS A. WESTMORE
United States Magistrate Judge