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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLONY INSURANCE COMPANY,
Plaintiff,
v.
MT. HAWLEY INSURANCE COMPANY,
et al.,
Defendants.

Case No. [18-cv-00519-SI](#)

ORDER RE: DISCOVERY

Re: Dkt. Nos. 60, 61

Plaintiff Colony Insurance Company and defendant Mt. Hawley Insurance Company have submitted a discovery dispute to the Court for resolution. The dispute concerns defendant’s responses to requests for admissions (“RFAs”) asking whether defendant “obtained” various documents after denying the insurance claim, and related interrogatories asking for facts supporting every denial. It appears from the parties’ filings that plaintiff believes that defendant should have admitted the RFAs instead of denying them, and that plaintiff takes issue with how defendant has interpreted “obtained” in both responding to the RFAs and the related interrogatories.¹ Plaintiff asserts that defendant’s discovery responses are inconsistent with statements made by defense counsel in which defense counsel admitted that the documents were “obtained” after the denial of the claim.

Federal Rule of Civil Procedure 36(a) provides that “[a] party may serve on any other party a written request to admit . . . the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, the application of law to fact, or opinions about either” Fed. R. Civ. Proc. 36(a)(1)(A). Rule 36 further provides, “If a matter is not admitted, the answer must specifically

¹ The parties did not provide the Court with a copy of the discovery requests and responses. Plaintiff states that defendant “reinterpreted” “obtained” to mean reviewing certain documents online as opposed to physically having the documents.

1 deny it or state in detail why the answering party cannot truthfully admit or deny. A denial must
2 fairly respond to the substance of the matter; and when good faith requires that a party qualify an
3 answer or deny only part of a matter, the answer must specify the part admitted and qualify or
4 deny the rest. . . .” *Id.* at 36(a)(4). “[A]n evasive denial one that does not ‘specifically deny the
5 matter,’ or a response that does not set forth ‘in detail’ the reasons why the answering party cannot
6 truthfully admit or deny the matter, may be deemed an admission.” *Asea, Inc. v. Southern Pacific*
7 *Transp. Co.*, 669 F.2d 1242, 1245 (9th Cir. 1982) (citation omitted).

8 It is unclear to the Court what relief plaintiff is seeking. Defendant interprets plaintiff’s
9 filing as a request for leave to file a motion to compel defendant to change its responses to the
10 RFAs from denials to admissions. If that is the relief plaintiff seeks, the request is DENIED. “A
11 proper response to a Request for Admission can be an admission or denial. When a matter is
12 completely denied, the truth of the matter must be proved at trial. That Plaintiff disagrees with the
13 response is not grounds to compel a different response.” *Noble v. Adams*, No. CV F 03-5407 AWI
14 SMS P, 2006 WL 3028543, at *3 (E.D. Cal. Oct. 24, 2006); *see also Michael v. Wes Banco Bank,*
15 *Inc.*, No. CIVA 5:04CV46, 2006 WL 1705935, at *2 (W.D. Va. June 16, 2006) (“[A]
16 consideration of ‘sufficiency’ [of a response to an RFA] should focus on the specificity of the
17 response and not on whether the response was accurate.”). If plaintiff believes that defendant has
18 provided untruthful answers about what documents the insurance company relied on when it
19 denied the claim, plaintiff can propound additional discovery, including taking depositions, to
20 explore that issue.

21 However, if plaintiff contends that defendant’s RFA answers do not comply with the
22 requirements of Rule 36, plaintiff may file a motion to compel amended answers. If plaintiff
23 wishes to file a motion to compel, plaintiff must first meet and confer with defendant regarding the
24 specific ways in which plaintiff contends defendant’s answers do not comply with the rules, and
25 plaintiff must attach a copy of the discovery requests and responses to the motion to compel.

26 **IT IS SO ORDERED.**

27 Dated: October 30, 2018



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SUSAN ILLSTON
United States District Judge