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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 JEHAN ZEB MIR, M.D.,

12 Plaintiff,

13 v.

14 KIMBERLY KIRCHMEYER, et al.

15  
16 Defendants.

Civil No. 12cv2340-GPC (DHB)

**ORDER REGARDING  
PLAINTIFF'S *EX PARTE*  
APPLICATION TO COMPEL  
DEFENDANT LEVINE TO  
ANSWER PLAINTIFF'S  
REQUEST FOR ADMISSIONS**

[ECF No. 154]

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19 On April 22, 2016, Plaintiff Jehan Zeb Mir, M.D. ("Plaintiff") filed an *ex parte*  
20 motion requesting the Court compel Defendant Sharon Levine ("Levine") to answer  
21 Plaintiff's first set of request for admissions and request to admit genuineness of  
22 documents. (ECF No. 154.) Kirchmeyer filed an opposition to Plaintiff's *ex parte* motion  
23 on May 13, 2016. (ECF No. 160.) For the reasons set forth below, Plaintiff's motion is  
24 **DENIED.**

25 **I. BACKGROUND**

26 Plaintiff initiated this action on September 25, 2012, alleging Defendants wrongfully  
27 took disciplinary action against Plaintiff's physician's and surgeon's certificate. (ECF No.  
28 1.) On October 19, 2015, Plaintiff served a First Set of Request for Admissions on Levine.

1 (ECF No. 154 at 32-53.) On December 18, 2015, Levine responded. (ECF No. 154 at 55-  
2 75.)

3 Subsequently, on April 22, 2016, Plaintiff filed the instant *ex parte* motion  
4 requesting the Court to compel Levine to admit each of the 167 Request for Admissions he  
5 propounded.<sup>1</sup> (ECF No. 154.)

## 6 II. ANALYSIS

### 7 A. Failure to Comply with the Court’s Procedures for Discovery Disputes

8 Plaintiff has failed to comply with this Court’s procedures for filing discovery  
9 motions. First, Plaintiff has not complied with Section IV.C. of the undersigned Magistrate  
10 Judge’s Civil Chambers Rules which requires the filing of a Joint Motion for Determination  
11 of Discovery Dispute.<sup>2</sup> Second, Plaintiff has not shown he adequately met and conferred  
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14 <sup>1</sup> The Court finds Plaintiff has only moved to compel responses to his Request for  
15 Admissions and not any Interrogatories that may have been served on Levine. In Plaintiff’s  
16 motion, the opening paragraph states Plaintiff served Request for Admissions on Levine,  
17 and that “[o]n December 18, 2015, Defendant served Responses to Plaintiff’s Request for  
18 Admissions and Request to Admit Genuineness of Documents.” (ECF No. 154 at 2.) Then,  
19 in the next sentence, Plaintiff wrote “Defendant Levine did not answer any of the  
20 interrogatories, instead made same boiler-plate frivolous objections to each and every  
21 request for Interrogatory as a delaying and harassing tactic.” (*Id.*) Thereafter, Plaintiff  
22 resumed referring to Requests for Admissions. (*Id.*) Plaintiff does not mention  
23 Interrogatories anywhere else in his motion, and Plaintiff has not attached any  
24 Interrogatories to the motion for the Court’s consideration. Moreover, Plaintiff only  
25 requests the Court compel answers to his Request for Admissions. (*See id.* at 29 (“The  
26 Defendant should be ordered to answer Plaintiff’s request to admit the genuineness of the  
27 documents and request to admit each of the 155 requests for admissions.”).) It appears  
28 Plaintiff erroneously used the term “Interrogatories” in his opening paragraph to refer to  
his Requests for Admissions. Accordingly, the sufficiency of Levine’s responses to  
Plaintiff’s Interrogatories are not properly before the Court. Therefore, the Court will  
disregard Levine’s arguments regarding the Interrogatories.

<sup>2</sup> The Chambers Rules are available at:

<https://www.casd.uscourts.gov/Rules/Lists/Rules/Attachments/17/Bartick%20Civil%20Chambers%20Rules.pdf>

1 with Levine prior to filing the instant motion. The duty to meet and confer prior to bringing  
2 a discovery motion is required not only by this Court’s Chambers Rules and the Southern  
3 District’s Civil Local Rules, but also by the Federal Rules of Civil Procedure. *See* Fed. R.  
4 Civ. P. 37(a); Civ. L.R. 26.1(a). Plaintiff also failed to comply with the Court’s rules  
5 governing *ex parte* applications. *See* Civ. L. R. 83.3(h)(2).

6 Further, Plaintiff’s motion is untimely. Pursuant to this Court’s Chambers Rules, all  
7 discovery motions must be filed “within forty-five (45) days of the date upon which the  
8 event giving rise to the dispute occurred.” Judge Bartick’s Civil Chambers Rules IV(C).  
9 For written discovery, the event giving rise to the dispute is the date of the service of the  
10 initial response. *Id.* Here, the event giving rise to the dispute was the date Levine  
11 responded to Plaintiff’s Request for Admissions, which was December 18, 2015. (ECF  
12 No. 154 at 55-75.) Therefore, the deadline for this discovery motion to be filed was  
13 February 1, 2016. Plaintiff’s motion to compel was filed nearly three months late, and  
14 Plaintiff has not provided any justification for his untimeliness.

15 Previously, Plaintiff was warned that all discovery disputes must comply with the  
16 Court’s rules. (*See* ECF No. 146 at 2 (advising the parties that “all discovery disputes must  
17 be filed in accordance with the time limits, and filing procedures set forth in Judge Bartick’s  
18 Civil Chambers Rules”).) It would be well within the Court’s discretion to reject Plaintiff’s  
19 motion for these reasons. However, in the interest of justice, the Court will address the  
20 merits of the parties’ dispute. **Nevertheless, Plaintiff is advised that any future**  
21 **discovery motion will not be considered unless the Court’s rules and procedures are**  
22 **complied with.**

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1 **B. Plaintiff’s Motion to Compel Admissions**

2 Requests for Admissions (“RFAs”) are governed by Federal Rule of Civil Procedure  
3 36, which provides:

4 A party may serve on any other party a written request to admit, for the  
5 purposes of the pending action only, the truth of any matters within the scope  
6 of Rule 26(b)(1) relating to:

- 7 (A) facts, the application of law to fact, or opinions about either; and  
8 (B) the genuineness of any described document.

8 Fed.R.Civ.P. 26(a)(1).

9 Rule 36 does not limit the number of RFAs that may be propounded, however, the  
10 Court’s Local Rules do. Civil Local Rule 36.1 states:

11 No party will serve on any other party requests for admission which,  
12 including subparagraphs, number more than **twenty-five** requests for  
13 admission without leave of court. Any party desiring to serve additional  
14 requests for admission must submit to the court a written memorandum  
15 setting forth the proposed additional requests for admission and the reasons  
16 establishing good cause for their use.

16 Civ.L.Rule 36.1(a) (emphasis added). *See also* Fed.R.Civ.P 26(b)(2)(A) (authorizing  
17 district courts to limit the number of requests under Rule 36 by local rule.)

18 The party answering an RFA must admit, deny, or state in detail why the party cannot  
19 truthfully admit or deny the matter. Fed.R.Civ.P 36(a)(4). Qualified answers are proper if  
20 the responding party specifies the part admitted and qualifies or denies the rest. *Id.* The  
21 responding party may also assert lack of sufficient information or knowledge as a reason  
22 for failing to admit or deny the matter, as long as the party states that “it has made  
23 reasonable inquiry and that the information it knows or can readily obtain is insufficient to  
24 enable it to admit or deny.” *Id.*

25 1. RFA Nos. A.1 - A.12

26 In Request for Admissions Nos. A.1 through A.12, Plaintiff requested that Levine  
27 authenticate certain documents. Levine responded to the RFAs by either making qualified  
28 admissions (A.3-A.6, A.8-A.9, A.12) or indicating she had insufficient information to

1 enable her to admit or deny the request (A.1-A.2, A.7, A.10-A.11). The Court finds  
2 Levine's responses are sufficient. Therefore, the Court will not compel further responses.

3 2. RFA Nos. B.1 – B.13

4 In Request for Admissions Nos. B.1-B.13, Plaintiff requested Levine admit various  
5 factual matters. Levine again responded appropriately by denying two requests (B.2 and  
6 B.4.), making a qualified admission as to one request (B.3), and by indicating she lacked  
7 sufficient information to admit or deny the remaining requests (B.1, B.5-B.13.). In light  
8 of Levine's verified discovery responses, the Court will not compel further responses.

9 3. RFA Nos. B.14 – B.155

10 Plaintiff propounded a total of 167 RFAs. Levine answered the first 25, and objected  
11 the remaining 142 on the basis that Plaintiff did not have leave of court to serve more than  
12 25 requests under Civil Local Rule 36.1. The Court finds Levine acted reasonably in only  
13 responding to the first 25 requests. Under the Local Rules, the limit on RFAs is 25.  
14 Civ.L.R. 36.1. Plaintiff never sought leave to go beyond this limit, and the Court does not  
15 find good cause to permit Plaintiff to propound an additional 142 RFAs. Accordingly, the  
16 Court will not order Levine to further respond to RFA Nos. B.14 through B.155.

17 **III. CONCLUSION**

18 For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiff's *Ex Parte*  
19 Application to Compel Defendant Sharon Levine to Answer Plaintiff's Request for  
20 Admissions is **DENIED**.

21 **IT IS SO ORDERED.**

22 Dated: June 22, 2016



23 DAVID H. BARTICK

24 United States Magistrate Judge