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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE ECLIPSE GROUP LLP,

Plaintiff,

v.

TARGET CORPORATION, et al,

Defendants.

Case No.: 15cv1411-JLS (BLM)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO COMPEL

[ECF Nos. 108-110]

Currently before the Court are Defendants' April 17, 2017 motions to compel Plaintiff to provide further responses to Defendants' (1) Requests for Admission [ECF No. 108-1 ("RFA MTC")], (2) Request for Production of Documents [ECF No. 109-1 ("RFP MTC")], and (3) Interrogatories [ECF No. 110-1 ("ROG MTC")], Plaintiff's April 24, 2017 oppositions to Defendants' motions [ECF No. 119 ("RFA Oppo."), ECF No. 120 ("RFP Oppo."), and ECF No. 121 ("ROG Oppo.")], and Defendants' May 1, 2017 consolidated reply [ECF No. 125 ("Reply")]. For the reasons set forth below, Defendants' motions are **GRANTED IN PART AND DENIED IN PART.**

PROCEDURAL BACKGROUND

Defendants served their First Sets of Requests for Admissions ("RFAs"), Requests for Production of Documents (RFPs") and Interrogatories ("ROGs") on Plaintiff on February 22, 2017. RFA MTC at 7; see also ECF No. 108-2, Declaration of Jason Cirlin in Support of

1 Defendants' Motion to Compel Plaintiff to Provide Further Responses to Requests for Admissions
2 ("RFA Cirlin Decl.") at 2, RFP MTC at 7, ECF No. 109-2, Declaration of Jason Cirlin in Support of
3 Defendants' Motion to Compel Plaintiff to Provide Further Responses to Requests for Production
4 ("RFP Cirlin Decl.") at 2, ROG MTC at 7, and ECF No. 110-2, Declaration of Jason Cirlin in Support
5 of Defendants' Motion to Compel Plaintiff to Provide Further Responses to Interrogatories ("ROG
6 Cirlin Decl.") at 2. Plaintiff served its responses on March 24, 2017 consisting of several
7 objections. RFA MTC at 7; see also RFA Cirlin Decl. at 2, Exhs. A-C, RFP MTC at 7, RFP Cirlin
8 Decl. at 2, Exh. A-C, ROG MTC at 7, and ROG Cirlin Decl. at 2, Exhs. A-C. On April 3, 2017,
9 defense counsel held a telephone conference with Plaintiff's counsel to discuss the deficient
10 responses. RFA Cirlin Decl. at 2, Exh. D; RFP Cirlin Decl. at 2-3, Exh. D, and ROG Cirlin Decl. at
11 2, Exh. D. The parties were unable to resolve their dispute. Id.

12 On April 11, 2017, the District Court denied Intervenor's motion for summary adjudication
13 to allow time for the instant discovery motions to be considered before deciding Intervenor's
14 motion on the merits. RFA MTC at 7; see also RFP MTC at 7, ROG MTC at 7, and ECF No. 102.

15 LEGAL STANDARD

16 The scope of discovery under the Federal Rules of Civil Procedure is defined as follows:

17 Parties may obtain discovery regarding any nonprivileged matter that is relevant
18 to any party's claim or defense and proportional to the needs of the case,
19 considering the importance of the issues at stake in the action, the amount in
20 controversy, the parties' relative access to relevant information, the parties'
21 resources, the importance of the discovery in resolving the issues, and whether
22 the burden or expense of the proposed discovery outweighs its likely benefit.
23 Information within this scope of discovery need not be admissible in evidence to
24 be discoverable.

25 Fed. R. Civ. P. 26(b)(1).

26 District courts have broad discretion to determine relevancy for discovery purposes. See
27 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad discretion
28 to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing that courts must
limit discovery where the party seeking the discovery "has had ample opportunity to obtain the
information by discovery in the action" or where the proposed discovery is "unreasonably

1 cumulative or duplicative,” “obtain[able] from some other source that is more convenient, less
2 burdensome, or less expensive,” or where it “is outside the scope permitted by Rule 26(b)(1)”.

3 **DEFENDANTS’ POSITION**

4 Defendants request an order from the Court requiring Plaintiff (1) to fully respond in
5 writing and under oath to Defendant Target’s Requests for Admission (“RFAs”) 1-6, 8, 9, 11-22,
6 24-26, 28-29, 31, 33, 40-42, 50-51, and 55-58 and the corresponding RFAs of Defendants Kmart
7 Corporation and Toys “R” US, Inc. [RFA MTC at 7], (2) to further respond to Defendant Target’s
8 RFPs 1-6, 8-12, 15, 20, 22-24, 26-29, 31-35, 37, 38-39, 41, 44, 47(-2), 48(-2), 49, 51, and 52
9 and the corresponding RFPs of Defendants Kmart Corporation and Toys “R” US, Inc. [RFP MTC
10 at 7], and (3) to further respond to Defendant Target’s ROGs 1-16 and the corresponding ROGs
11 of Defendants Kmart Corporation and Toys “R” US, Inc., as well as Kmart ROG No. 5 [ROG MTC
12 at 7]. Defendants argue that the requests are relevant because one of their defenses is that
13 Intervenor may not pursue equitable claims for compensation since the work he performed was
14 as an agent for Plaintiff and the requests directly relate to the express agreements that control
15 the payment of compensation and the intent of the parties. RFA MTC at 8-9, RFP MTC at 9-10,
16 ROG MTC at 8-9. Defendants further argue that the requests relate to their position that
17 Intervenor and Plaintiff violated their ethical duties and to their claim of equitable estoppel. RFA
18 MTC at 10, RFP MTC at 11-12, ROG MTC at 10-11. Finally, Defendants argue that the requests
19 are relevant because Plaintiff and Intervenor’s billing practices are directly at issue in this
20 litigation. RFA MTC at 10-11, RFP MTC at 12, ROG MTC at 11. Defendants note that Plaintiff
21 has the burden of proof to demonstrate that their requests are improper. RFA MTC at 11, RFP
22 MTC at 13, ROG MTC at 11.

23 **PLAINTIFF’S POSITION¹**

24 Plaintiff begins its objections by stating that it has provided first amended responses
25 “which hopefully will resolve many if not all of the issues raised in Defendants’ motions.” RFA
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28 ¹ The memorandums in opposition to Defendants’ motions are identical. See RFA Oppo. at 2,
RFP Oppo. at 2, and ROG Oppo. at 2.

1 Oppo. at 2, RFP Oppo. at 2, ROG Oppo. at 2. Plaintiff continues by contending that Defendants
2 should not be permitted to bring the instant motion because discovery has closed and asking if
3 the Court has chosen to “simply ignore[] the discovery cutoff” in this case without motion or any
4 determinations regarding due diligence. Id. Plaintiff next contends that Defendants are
5 attempting to use discovery to obtain information about issues and claims that they have failed
6 to properly plead including (1) a theory of third-party beneficiary, (2) whether or not Intervenor
7 can seek redress directly from Defendants, and (3) whether or not Intervenor and Plaintiff
8 violated the Canon of Ethics and therefore cannot recover their fees. Id. at 2-5. Finally,
9 Plaintiff contends that Defendants’ arguments regarding Intervenor’s contract with Plaintiff has
10 no merit. Id. at 6. Plaintiff notes that it has supplemented its responses to almost all of the
11 discovery requests to which it previously objected, not because the objections were without
12 merit, but “to avoid the necessity of this Court having to make decisions concerning the status
13 of the pleadings and/or amendments to the pleadings and/or legal sufficiency of Defendants’
14 new un-pled, theoretical defenses” which are decisions to be made by the trial court at a later
15 time. Id. at 7. Plaintiff does not address each individual request in his oppositions. See RFA
16 Oppo., RFP Oppo, and ROG Oppo.

17 TIMELINESS

18 As an initial matter, Defendants’ motion is not untimely and Defendants are not required
19 to explain why they are entitled to file the instant motion. Plaintiff’s confusion and concern that
20 the Court is treating discovery deadlines “as suggestions” is difficult to understand as this Court’s
21 November 21, 2016 Scheduling Order states that

22 [a]ll discovery motions must be filed within 30 days of the service of an objection, answer
23 or response which becomes the subject of dispute or the passage of a discovery due date
24 without response or production, and only after counsel have met and conferred and have
reached impasse with regard to the particular issue.

25 See ECF No. 68 at 2. In order to assist Plaintiff who is “unclear as to the meaning of the Court’s
26 orders,” this means that a discovery motion may be brought even after the close of discovery if
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1 it is within the thirty-days described above.² Here, Plaintiff served its responses to Defendants'
2 RFAs, RFPs, and ROGs on March 24, 2017. RFA MTC at 7; see also RFA Cirlin Decl. at 2, Exhs.
3 A-C, RFP MTC at 7, RFP Cirlin Decl. at 2, Exh. A-C, ROG MTC at 7, and ROG Cirlin Decl. at 2,
4 Exhs. A-C. Thirty days from March 24, 2017 is April 23, 2017. Defendants filed the instant
5 motion on April 17, 2017 before the thirty days expired. See RFA MTC; see also RFP MTC, and
6 ROG MTC. Accordingly, not only were the motions not untimely, they were early and will be
7 considered by this Court. Id.

8 REQUESTS FOR ADMISSION³

9 Legal Standard

10 "A party may serve on any other party a written request to admit, for purposes of the
11 pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to :(A)
12 facts, the application of law to fact, or opinions about either; and (B) the genuineness of any
13 described documents." Fed. R. Civ. P. 36(a)(1). "Each matter must be separately stated." Fed.
14 R. Civ. P. 36(a)(2). A responding party must admit a matter, specifically deny a matter, or state
15 in detail why they cannot truthfully admit or deny it. Fed. R. Civ. P. 36(a)(4). If a matter is
16 denied, the "denial must fairly respond to the substance of the matter; and when good faith
17 requires that a party qualify an answer or deny only a part of a matter, the answer must specify
18 the part admitted and qualify or deny the rest." Id. A responding party may object to a request
19 if they state the ground for the objection. Fed. R. Civ. P. 36(a)(5). The requesting party may
20 seek a decision from the court determining the sufficiency of an answer or objection. Fed. R.
21 Civ. P. 36(a)(6). The court must order that an answer be served unless it finds an objection

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23 ² Fact discovery closed on April 3, 2017. ECF No. 68 at 1.

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25 ³ This motion refers to the RFAs propounded by Defendant Target, but the three sets of RFAs
26 are comparable to each other and Defendants request that to "the extent the Court orders
27 [Plaintiff] to further respond to any RFAs of Target . . . the order apply equally to the
28 comparable RFAs propounded by Defendants Toys "R" Us, Inc. and Kmart Corporation." RFA
MTC at 6-7. Defendants' request is **GRANTED**. If Plaintiff is ordered to provide further
responses, it must do so for Defendants Target, Kmart Corporation, and Toys "R" Us.

1 justified. Id. “On finding that an answer does not comply with this rule, the court may order
2 either that the matter is admitted or that an amended answer be served.” Id.

3 Analysis

4 RFAs 1-4 and 22 and Plaintiff’s responses are as follows:

5 **RFA 1:** “Admit that Aquawood, LLC hired ECLIPSE to represent Target Corporation in
6 *Worldslide, LLC v. Target Corporation*, Case No. 2:11-CV-3350-MCE (E.D. Cal.).”

7 **RFA 2:** “Admit that Aquawood, LLC hired ECLIPSE to represent Target Corporation in
8 *Worldslide, LLC v. Target Corp.*, Case No. 2:11-cv-872-MCE (E.D. Cal.).”

9 **RFA 3:** “Admit that Aquawood, LLC hired ECLIPSE to represent Target Corporation in
10 *Worldslide, LLC v. Target Corp.*, Case No. 2:11-cv-873-MCE (E.D. Cal.).”

11 **RESPONSE TO RFAs 1-3:** “Objection. The issues in this case involve the value of the
12 services rendered to Defendants with their knowledge and consent. Eclipse relationship with
13 Aquawood is not relevant to that issue.” **SUPPLEMENTAL RESPONSE to RFAs 1-3:** “Admit
14 that Eclipse was hired by Aquawood as well as by Target.” RFA Oppo. at Exh. A.

15 **RFA 4:** “Admit that MANLEY⁴ hired ECLIPSE to represent Target Corporation in the *Adams*
16 *LITIGATION.*”⁵ **RESPONSE TO RFA 4:** “Objection. The issues in this case involve the value
17 of the services rendered to Defendants with their knowledge and consent. Eclipse relationship
18 with Manley is not relevant to that issue.” **SUPPLEMENTAL RESPONSE TO RFA 4:** “Admit
19 that Eclipse was hired by Manley as well as by Target.” RFA Oppo. at Exh. A.

20 **RFA 22:** “Admit that Aquawood, LLC selected ECLIPSE to represent Target Corporation
21 in the litigation over U.S. Patent No. 7,309,302.” **RESPONSE TO RFA 22:** “Objection. The
22 issues in this case involve the value of the services rendered to Defendants with their knowledge
23 and consent. Eclipse relationship with Aquawood is not relevant to that issue.”

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25 ⁴ For the purposes of these Requests for Admissions, the term "MANLEY" shall mean and refer
26 to Manley Toys, Ltd. RFA Oppo. at Exh. A.

27 ⁵ The term "Adams LITIGATION" shall mean and refer to *Adams v. Target Corp.*, Case No. 13-
28 cv-5944-GHK-PJWx (C.D. Cal. 2013). RFA Oppo. at Exh. A.

1 **SUPPLEMENTAL RESPONSE TO RFA 22:** “Deny. Eclipse was selected by both Target and
2 Aquawood.” RFA Oppo. at Exh. A.

3 Defendants argue that the supplemental answers for RFAs 1-4 are “incomplete, evasive
4 and non-responsive” because the fact that Target also hired/selected Plaintiff is not responsive
5 to the RFAs. Reply at 7. Defendants argue that the supplemental answer for RFA 22 is
6 “incomplete, evasive, and non-responsive” as the RFA is directed to Aquawood and not Target.
7 Id. at 10. Defendants’ motion to compel further response to RFAs 1-4 and 22 is **DENIED**.
8 Plaintiff has responded to the RFAs with reasonable qualifications because the RFAs are unclear
9 since they can be interpreted to seek admission that *only* Aquawood hired/selected Eclipse or
10 that Aquawood was one of the entities that hired/selected Eclipse. See Mkt. Lofts Cmty. Assoc.
11 v. Nat’l Union Fire Ins. Co., 2016 WL 6237909, at *9 (C.D. Cal. Mar. 9, 2016) (stating that
12 “[g]enerally, qualification is permitted if the statement, although containing some truth, ‘...
13 standing alone out of context of the whole truth ... convey[s] unwarranted and unfair
14 inferences.”) (quoting Diederich v. Dep’t of Army, 132 F.R.D. 614, 619 (S.D.N.Y. 1990) (quoting
15 Johnstone v. Cronlund, 25 F.R.D. 42, 44 (E.D. Pa. 1960)); see also Fed. R. Civ. P. 36(a)(4)
16 (stating that “when good faith requires that a party qualify an answer or deny only a part of a
17 matter, the answer must specify the part admitted and qualify or deny the rest”).

18 Defendants state that Plaintiff admitted RFAs 5, 6⁶, 16, 18, and 58, “but has not provided
19 any answers to the comparable requests directed to Kmart and TRU.” Reply at 7. Defendants’
20 motion to compel further response to RFAs 5, 6, 16, 18, and 58 is **DENIED AS MOOT**, however,
21 Plaintiff is ordered to formally serve the supplemental responses on Defendants Kmart and Toys
22 “R” Us.

23 RFAs 12, 13, 15, and 17 and Plaintiff’s responses are as follows:

24 **RFA 12:** “Admit that ECLIPSE did not obtain the informed written consent of Target
25 Corporation regarding a potential conflict of interest as provided under California Rules of
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27 ⁶ Defendants note that “RFA No. 6 was admitted unconditionally, and therefore is no longer at
28 issue here.” Reply at 4 n3.

1 Professional Conduct, Rule 3-310(C) during its joint representation of Target Corporation in the
2 *Worldslide* LITIGATION.” **RESPONSE TO RFA 12:** “Objection. That has not been pled, and is
3 not an issue in this case.” **SUPPLEMENTAL RESPONSE TO RFA 12:** “Deny. There was no
4 potential conflict of interest between the parties.” RFA Oppo. at Exh. A.

5 **RFA 13:** “Admit that ECLIPSE did not obtain a conflict of interest waiver from Target
6 Corporation during its joint representation of Target Corporation in the *Worldslide* LITIGATION.”
7 **RESPONSE TO RFA 13:** “Objection. That has not been pled, and is not an issue in this case.”
8 **SUPPLEMENTAL RESPONSE TO RFA 13:** “Admit. There was no conflict of interest, therefore
9 no need for a conflict of interest waiver.” RFA Oppo. at Exh. A.

10 **RFA 15:** “Admit that ECLIPSE did not obtain the informed written consent of Target
11 Corporation as provided under the California Rules of Professional Conduct, Rule 3-31[0](F)
12 concerning the arrangement with MANLEY to pay the legal services of ECLIPSE during ECLIPSE’s
13 representation of Target Corporation in the *Worldslide* LITIGATION.” **RESPONSE TO RFA 15:**
14 “Objection. That has not been pled, and is not an issue in this case.” **SUPPLEMENTAL**
15 **RESPONSE TO RFA 15:** “Deny. Defendants agreed orally and in writing to Plaintiff’s
16 representation.” RFA Oppo. at Exh. A.

17 **RFA 17:** “Admit that ECLIPSE had a duty to specify whether Target Corporation was
18 responsible for paying ECLIPSE’s legal services performed in the *Worldslide* LITIGATION.”
19 **RESPONSE TO RFA 17:** “Objection. The request is vague and ambiguous. Duty to specify, to
20 whom? In addition, this has nothing to do with the issues in this case which are limited to the
21 value of the services provided by Plaintiff to Defendants with their knowledge and consent.”
22 **SUPPLEMENTAL RESPONSE TO RFA 17:** “Objection. This calls for a legal opinion, and the
23 request does not state any basis upon which it makes any claim of such duty.” RFA Oppo. at
24 Exh. A.

25 Defendants argue that the supplemental answers for RFAs 12, 13, and 15 are “evasive”
26 because the qualified denials to RFAs 12 and 15 are not directly responsive to the RFAs, “but
27 rather based upon [Plaintiff’s] contention that there was no need for informed consent.” Reply
28 at 7-8. Defendants also argue that the supplemental objections to RFA 17 should be waived as

1 untimely since they differ from Plaintiff's initial objections. Id. at 8. Additionally, Defendants
2 reply that RFAs may be directed to "facts, the application of law to fact or opinions about either"
3 and note that Plaintiff fails to address the authorities cited in Defendants' motion. Id.

4 Defendants' motion to compel further response to RFAs 12, 13, and 17 is **DENIED**.
5 Plaintiff has admitted or denied RFAs 12 and 13 with reasonable and relevant qualifications. See
6 Mkt. Lofts Cmty. Assoc., 2016 WL 6237909, at *9 ("[g]enerally, qualification is permitted if the
7 statement, although containing some truth, '... standing alone out of context of the whole truth
8 ... convey[s] unwarranted and unfair inferences.") (internal citations omitted). The Court agrees
9 with Plaintiff's initial response to RFA 17 and finds that the request is vague and ambiguous as
10 to "duty to specify" to whom.

11 Defendants' motion to compel further response to RFP 15 is **GRANTED**. Plaintiff's
12 supplemental response is hereby **STRICKEN**. Plaintiff's supplemental response is not
13 responsive to the RFA which addresses Defendants' consent to a particular arrangement as
14 opposed to Defendants' consent to Plaintiff's overall representation.

15 RFAs 33, 51, and 40 and Plaintiff's responses are as follows:

16 **RFA 33**: "Admit that ECLIPSE never disclosed to Target Corporation, at the time ECLIPSE
17 commenced its representation in the Worldslide LITIGATION, that Target Corporation would be
18 responsible for paying ECLIPSE's legal fees." **RESPONSE TO RFA 33**: "Objection. This request
19 has nothing to do with the issue of the value of the services provided to Defendants within their
20 knowledge and consent." **SUPPLEMENTAL RESPONSE TO RFA 33**: "Plaintiff is without
21 knowledge." RFA Oppo. at Exh. A.

22 **RFA 51**: "Admit that ECLIPSE never disclosed to Target Corporation at the time ECLIPSE
23 commenced its representation in the *Adams* LITIGATION that Target Corporation would be
24 responsible to pay for the legal fees." **RESPONSE TO RFA 51**: "Objection. This case is based
25 on the value of the services rendered to Defendants with their full knowledge and consent."
26 **SUPPLEMENTAL RESPONSE TO RFA 51**: "Plaintiff is without knowledge." RFA Oppo. at Exh.
27 A.

28 **RFA 40**: "Admit that the legal services ECLIPSE performed in *Aquawood, LLC v.*

1 *Worldslide, LLC*, Case No. 11-cv-5611-JFW-Ex (C.D. Cal. 2011) would have been performed
2 whether or not the *Worldslide* LITIGATION had been filed.” **RESPONSE TO RFA 40:**
3 “Objection. Calls for speculation.” **SUPPLEMENTAL RESPONSE TO RFA 40:** “This
4 information is unknown to Eclipse.” RFA Oppo. at Exh. A.

5 Defendants argue that the responses to RFAs 33, 51, and 40 are insufficient because lack
6 of information is not a proper response for failing to admit or deny without stating that a
7 reasonable inquiry has been made and “that the information known or readily obtainable by the
8 party is insufficient to enable the party to admit or deny.” Reply at 8-10.

9 Defendants’ motion to compel further response to RFAs 33, 51, and 40 is **GRANTED**.
10 Plaintiff’s response that it is “without knowledge” is insufficient. See Fed. R. Civ. P. 36(a)(4)
11 (stating that “[t]he answering party may assert lack of knowledge or information as a reason
12 for failing to admit or deny **only if the party states that it has made reasonable inquiry**
13 **and that the information it knows or can readily obtain is insufficient to enable it to**
14 **admit or deny.**) (emphasis added).

15 RFAs 55 and 56 and Plaintiff’s responses are as follows:

16 **RFA 55:** “Admit that Stephen M. Lobbin knew that Aquawood, LLC hired ECLIPSE to
17 provide Target Corporation a defense in the *Worldslide* LITIGATION as required under the
18 indemnity agreement between Aquawood, LLC and Target Corporation.” **RESPONSE TO RFA**
19 **55:** “Objection. This request has nothing to do with the issue in this case, which is the value of
20 the legal services provided to the Defendants with their full knowledge and consent.”
21 **SUPPLEMENTAL RESPONSE TO RFA 55:** “Admit that Eclipse was hired by Aquawood and
22 Target Corporation.” RFA Oppo. at Exh. A.

23 **RFA 56:** “Admit that Stephen M. Lobbin knew that MANLEY hired ECLIPSE to provide
24 Target Corporation a defense in the *Adams* LITIGATION as required under the indemnity
25 agreement between MANLEY and Target Corporation.” **RESPONSE TO RFA 56:** “Objection.
26 The indemnity agreement has nothing to do with the value of services provided to Defendants
27 with their knowledge and consent.” **SUPPLEMENTAL RESPONSE TO RFA 56:** “Admit that
28 Eclipse was hired by Manley and Target Corporation.” RFA Oppo. at Exh. A.

1 Defendants argue that the responses to RFAs 55 and 56 are “evasive and do not fairly
2 meet the substance of the requests” and the way Plaintiff qualified the admission, makes it
3 unclear what Plaintiff is admitting. Reply at 10.

4 Defendants’ motion to compel further response to RFAs 55 and 56 is **GRANTED**.
5 Plaintiff’s response to the RFAs is incomplete and unclear and Plaintiff must serve amended
6 answers to RFAs 55 and 56. See Fed. R. Civ. P. 36(a)(6) (a court may order that a matter is
7 admitted or that an amended answer be served where the answer does not comply with Fed.
8 R. Civ. P. 36).

9 There are numerous RFAs raised in Defendants’ motion to compel that are not addressed
10 in Defendants’ reply. The Court interprets this as an indication that Plaintiff’s supplemental
11 responses were sufficient. Accordingly, Defendants’ motion to compel further response to RFAs
12 8, 9, 11, 14, 19, 20, 21, 24-26, 28, 29, 31, 41, 42, 50 and 57 is **DENIED AS MOOT**.

13 **REQUESTS FOR PRODUCTION OF DOCUMENTS**⁷

14 Legal Standard

15 A party may request the production of any document within the scope of Rule 26(b).
16 Fed. R. Civ. P. 34(a). “For each item or category, the response must either state that inspection
17 and related activities will be permitted as requested or state with specificity the grounds for
18 objecting to the request, including the reasons.” Id. at 34(b)(2)(B). The responding party is
19 responsible for all items in “the responding party’s possession, custody, or control.” Id. at
20 34(a)(1). Actual possession, custody or control is not required. Rather, “[a] party may be
21 ordered to produce a document in the possession of a non-party entity if that party has a legal
22 right to obtain the document or has control over the entity who is in possession of the

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24 ⁷ This motion refers to the RFPs propounded by Defendant Target, but the three sets of RFPs
25 are comparable to each other and Defendants request that to “the extent the Court orders
26 [Plaintiff] to further respond to any requests directed to Target Corporation the order apply
27 equally to the comparable RFAs propounded by Defendants Toys “R” Us, Inc. and Kmart
28 Corporation.” RFP MTC at 6-7. Defendants’ request is **GRANTED**. If Plaintiff is ordered to
provide further responses, it must do so for Defendants Target, Kmart Corporation, and Toys
“R” Us.

1 document.” Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D. Cal. 1995).

2 Documents that Plaintiff Contends Have Been Produced, RFPs 1-8, 13, 16-19, 25-29, 36,
3 37, 39, 41, 45-48, and 50

4 Initially, the parties are fighting over whether or not Plaintiff has produced all of the
5 responsive documents to a large number of RFPs. Defendants argue both that Plaintiff has not
6 produced the responsive documents in this litigation and that Plaintiff has not actually
7 supplemented its document production as it said it would. Reply at 10. Plaintiff counters that
8 it has produced all documents responsive to the RFPs at issue. Oppo. at Exh. A. Defendants
9 respond that Plaintiff should be required to identify by bates-numbers which documents are
10 responsive to which RFPs. Reply at 11. Neither party provides any information regarding the
11 manner of the production, such as whether the documents were produced in the “usual course
12 of business” or were “organize[d] and labele[d] to correspond to the categories in the request.”
13 See Fed. R. Civ. P. 34(b)(2)(E). Accordingly, the Court interprets this dispute as a simple
14 disagreement in which Defendants believe there should be more responsive documents and
15 Plaintiff states there are not. Due to the parties’ inability to conduct discovery in a professional
16 manner, they apparently are unable to bridge this difference of opinion. To resolve this
17 disagreement, Plaintiff is **ORDERED** to produce all documents responsive to RFPs 1-8, 13, 16-
18 19, 25-29, 36, 37, 39, 41, 45-48, and 50 which have not already been produced. If all such
19 responsive documents have been produced, Plaintiff must serve on Defendants a declaration so
20 stating. The Court **DENIES** Defendants’ requests to require Plaintiff to identify which
21 documents are responsive to which RFPs. Rutherford v. PaloVerde Health Care District, 2014
22 WL 12633523, * 3 (C.D. Cal. April 25, 2014) (stating that “[t]he plain language of Rule 34 does
23 not require the responding party to identify each responsive document in its written response
24 to each document request”).

25 Documents Plaintiff Contends Do Not Exist RFPs 9, 11, 12, 15, 20, and 21

26 Defendants’ second general objection is that with regard to RFPs for which Plaintiff did
27 not have responsive documents, Plaintiff failed to “affirmatively state that it has made a
28 reasonably diligent investigation for the responsive documents.” Reply at 13. Defendants are

1 correct. When a responding party does not have responsive documents in its possession,
2 custody or control, the responding party must conduct a “diligent search and reasonable
3 inquiry.” Thomas v. Saafir, 2007 WL 1063474, at *2 (N.D. Cal. Apr. 9, 2007) (finding that a
4 party's supplemental response stating that a “diligent search and reasonable inquiry of all
5 available sources” was conducted, that the party could not locate the requested documents, and
6 that as a result, the requested documents were not in the party's “possession, custody or
7 control” satisfied the party's obligation under Rule 34); see also Rogers v. Giurbino, 288 F.R.D.
8 469, 485 (S.D. Cal. 2012) (stating that a “party must make a reasonable inquiry to determine
9 whether responsive documents exist, and if they do not, the ‘party should so state with sufficient
10 specificity to allow the Court to determine whether the party made a reasonable inquiry and
11 exercised due diligence.’”) (quoting Marti v. Baires, 2012 WL 2029720 (E.D. Cal. June 5, 2012)).
12 Accordingly, Defendants' motion to compel further responses to RFPs 9, 11, 12, 15, 20, and 21
13 is **GRANTED** and Plaintiff is **ORDERED** to conduct a diligent search and reasonable inquiry and
14 then supplement its responses. If no documents exist, Plaintiff must provide an explanation of
15 the search that was performed and/or whether or not any responsive documents ever existed.
16 With respect to RFPs 9 and 20, if written documents exist as Defendants allege based in part on
17 the testimony of Plaintiff's 30(b)(6) witness, those responsive documents must also be produced.
18 With respect to RFPs 12 and 15, it appears that Plaintiff is stating that the only existing document
19 responsive to this request is Intervenor's contract which has been produced. If that is accurate,
20 Plaintiff must serve on Defendants a declaration so stating. If Plaintiff has not produced all
21 responsive documents as it has stated, Plaintiff must do so.

22 Remaining RFPs

23 Defendants argue that Plaintiff should be compelled to further respond to RFPs 10 and
24 33 because Amazon.com was a party to this action, and “assumed a comparable position as the
25 other retailer defendants.” RFP MTC at 17. Defendants note that the legal services agreement
26 between Plaintiff and Amazon.com for the *Worldslide* litigation states that Manley will pay for
27 the legal services provided by Plaintiff and argue that the agreement and communications
28 between Plaintiff and Amazon.com are indicative of the intent of the retailers as a group

1 (including Defendants) concerning the right to receive legal services paid fully by Manley and
2 not Defendants. Id. Defendants further argue that the supplemental responses to RFPs 10 and
3 33 simply restate the initial objection and fail to address the arguments raised in Defendants'
4 motion to compel. Reply at 13. Plaintiff does not address Defendants' arguments or the specific
5 requests in its opposition. RFP Oppo. The RFPs and Plaintiff's responses are as follows:

6 **REQUEST NO. 10:** "All DOCUMENTS and COMMUNICATIONS that refer, relate, or
7 pertain to the written legal services agreement between YOU and Amazon.com in any way
8 related to the LITIGATION." **REQUEST NO. 33:** "All COMMUNICATIONS between YOU and
9 Amazon.com related to YOUR attempt to recover litigation fees and expenses in the
10 LITIGATION." **RESPONSE TO REQUESTS NO. 10 AND 33:** "Objection. Amazon is not a
11 party to this litigation and any such communications have nothing to do with the value of legal
12 services provided to Defendants with their knowledge and consent." **SUPPLEMENTAL**
13 **RESPONSE:** "Plaintiff's original objection stands. The dispute and resolution thereof between
14 Plaintiff and Amazon has nothing to do with the dispute between Plaintiff and Defendants, and
15 Plaintiff intends to resist Defendants' efforts to create smokescreens and irrelevant side issues."
16 RFP Oppo. at Exh. A.

17 Defendants' motion to compel additional responses to RFPs 10 and 33 is **GRANTED**.

18 Defendants argue that Plaintiff's response to RFP No. 52 is muddled and that Plaintiff's
19 previous document productions to Manley, who is not a party to this matter or represented by
20 Defendants, has nothing to do with Plaintiff's obligations in the instant matter. Reply at 13-14.
21 Additionally, Plaintiff's statement falls short of the required statement of compliance. Id. at 14.
22 RFP No. 52 seeks:

23 **"REQUEST NO. 52:** All draft engagement letters between ECLIPSE and MANLEY for any
24 legal representation in any LITIGATION." **RESPONSE TO REQUEST NO. 52:** "Objection.
25 Other cases have nothing to do with this case." **SUPPLEMENTAL RESPONSE:** "Any draft
26 engagement letters between Eclipse and Manley would have been sent to Manley and to the
27 extent that such documents were in Eclipse['s] possession, custody or control, they would have
28 been sent to Defendants. It should bore [sic] in mind that Manley and Defendants share

1 common attorneys. In fact, Defendants' attorneys are employed by Manley to defend them in
2 this case, as stated by Plaintiff's attorney in his declaration regarding Defendants' attempts to
3 take inappropriate depositions. Accordingly, all files in Manley's possession are also in
4 Defendants' possession. Nonetheless, Plaintiff has made every effort to see to it that Defendants
5 receive the same documents that Manley received." RFP Oppo. at Exh. A.

6 Defendants' motion to compel additional responses to RFP 52 is **GRANTED IN PART**.
7 Defendants' request as written is overbroad since it contemplates any litigation and Plaintiff's
8 response is unclear as it only states that Plaintiff "has made every effort." Plaintiff must produce
9 all draft engagement letters between ECLIPSE and MANLEY for any legal representation in the
10 Worldslide, Aviva, or Adams litigation.

11 Defendants argue that the amended responses to RFPs 22-24, 34, 35, and 38 are "evasive
12 and non-responsive" because RFP 24 is not directed toward Mr. Lobbin's violation of ethical rules
13 and RFP 38 is not to be limited to "any failure by Mr. Lobbin to follow any ethical rules." Reply
14 at 14-15. The requests read as follows:

15 **REQUEST NO. 22:** "Any of YOUR written policies, practices, or procedures in effect at
16 any time during the LITIGATION that refer, pertain, or relate to entering into written legal
17 services agreements as provided under Business & Professions Code section 6148." **REQUEST**
18 **NO. 23:** "All COMMUNICATIONS that refer, relate, or pertain to any ethical violations of Stephen
19 M. Lobbin committed during the LITIGATION, including without limitation, any violations of the
20 California Rules of Professional Conduct." **REQUEST NO. 34:** "Any of YOUR written policies,
21 practices, or procedures in effect at any time during the LITIGATION that refer, pertain, or relate
22 to disclosing potential conflicts of interest to clients, and obtaining their informed written consent
23 to joint representation." **REQUEST NO. 35:** "Any of YOUR written policies, practices, or
24 procedures in effect at any time during the LITIGATION that refer, pertain, or relate to obtaining
25 clients' informed written consent when legal fees and expenses are paid by a third party."

26 **RESPONSE TO REQUEST NO. 22-23 and 34-35:** "Objection. Such documents are of no
27 relevance to the issues which have been pled in this case." **SUPPLEMENTAL RESPONSE:**
28 Without waiving objections, Plaintiff does not maintain written policies and practices relating to

1 the Rules of Professional Conduct Code [6148]⁸. Each attorney is expected to know and follow
2 the Rules of Professional Conduct. There are no documents relating to any failure by Mr. Lobbin
3 to follow any ethical rules. There is nothing in his personal files that concerns his job
4 performance relating to any ethical rules. There are no reported ethical violations or disciplinary
5 actions. Finally, Mr. Lobbin's contract with Eclipse relating to his right to earn fees has already
6 been produced to Defendants. RFP Oppo. at Exh. A.

7 **REQUEST NO. 24:** "All COMMUNICATIONS that refer, relate, or pertain to any violation
8 of YOUR policies, practices, or procedures by Stephen M. Lobbin committed during the
9 LITIGATION." **REQUEST NO. 38:** "The personnel file of Stephen M. Lobbin at ECLIPSE that
10 concerns his job performance and any rules, ethical violations, or disciplinary action."

11 **RESPONSE TO REQUEST NO. 24 AND 38:** "Objection. Such documents are of no relevance
12 to the issues which have been pled in this case." **SUPPLEMENTAL RESPONSE:** "There are
13 no documents relating to any failure by Mr. Lobbin to follow any ethical rules. There is nothing
14 in his personal files that concerns his job performance relating to any ethical rules. There are
15 no reported ethical violations or disciplinary actions." RFP Oppo. at Exh. A.

16 Defendants' motion to compel additional responses to RFPs 24, 34, and 35 is **GRANTED**.
17 Plaintiff's response to RFP 24 is limited to ethical violations. Plaintiff must supplement its
18 response to include any violations of Plaintiff's policies, practices, and procedures. Defendants'
19 motion to compel is **DENIED** as to RFPs 22, 23, and 38.

20 Defendants argue that RFP 44 is relevant because they should have the right to enforce
21 the terms of any contract made for their behalf as third-party beneficiaries to the contracts
22 between Plaintiff and Aquaquad and Plaintiff and Manley. RFP MTC at 16. Defendants note
23 that Plaintiff did not supplement its response to this request. Reply at 12. The request and
24 Plaintiff's response is as follows:

25 **REQUEST NO 44:** All COMMUNICATIONS that concern YOUR "write-offs" identified in
26

27 ⁸ This is only included in the supplemental response to RFP 22. RFP Oppo. at Exh. A.
28

1 paragraphs 16 and 20 of YOUR FIRST AMENDED COMPLAINT. **RESPONSE TO REQUEST NO.**
2 **44:** Objection. Any write offs would have involved Manley and Plaintiff only, and do not address
3 the issues in this case, to wit, the value of the legal service provided to Defendant.” RFP MTC
4 at Exh. A.

5 Defendants’ motion to compel further responses to RFP 44 is **GRANTED**.

6 Regarding RFPs 49 and 51, Defendants argue that the requests are directly relevant since
7 evidence of the value of a professional's services can be demonstrated through evidence of a
8 professional's customary charges and earnings in similar matters. RFP MTC at 23. Defendants
9 note that lawyers disclose their rates every time they make an attorneys' fees application to the
10 court and that the rates are not privileged. Id. at 24. Defendants further note that Plaintiff can
11 redact any privileged attorney-client information in its legal services agreements, “but still
12 produce the documents that reflect the scope of the services and the agreed rates for its legal
13 services.” Id. Defendants argue that the supplemental response to RFP No. 49 and 51
14 inappropriately attempts to assert additional objections and contain arguments. Reply at 16.
15 Defendants argue that the attorney-client privilege objection raised in the supplemental
16 response is waived because Intervenor did not make the objection initially, only in his
17 supplemental response and, therefore, is untimely. Reply at 16. The requests seek the
18 following:

19 **REQUEST NO. 49:** “YOUR legal services agreements that YOU entered into with clients
20 from 2012 to 2015 involving defense of patent infringement litigation or class action litigation.”

21 **REQUEST NO. 51:** “Every motion for attorney's fees, and supporting papers, filed by Stephen
22 Lobbin between 2010 to 2015.” **RESPONSE to NO. 49:** “Objection. Irrelevant to the issues

23 in this case, plus highly confidential attorney-client privileged information.” **RESPONSE TO**

24 **NO. 51:** “Objection. Other cases have nothing to do with this case.” **AMENDED RESPONSE**

25 **TO BOTH:** “Plaintiff will stand by its original objection. Those documents are highly confidential
26 attorney-client privilege. In addition, this is a gross abuse of discovery which should be limited
27 and focused in scope.” RFP Oppo. at Exh. A.

28 Defendants’ motion to compel additional responses to RFPs 49 and 51 is **DENIED**. The

1 Court finds that the requests as written are overbroad and not proportional to the needs of the
2 case. Defendants' sole argument is that the requests are relevant because the rates that Plaintiff
3 charged for its services in similar actions "are directly relevant to the value of its legal services."
4 RFP MTC at 22. However, Defendants' requests seek much more than the rates Plaintiff charged
5 in other matters as legal services agreements are not limited to rates and "every motion for
6 attorneys' fees and supporting papers" is not limited to similar actions. Additionally, the Court
7 finds that the information sought, Plaintiff's rates, is more appropriately obtained via
8 interrogatories. See infra p. 26-27.

9 In regards to RFPs 47(-2)⁹ and 48(-2)¹⁰, Defendants argue that Lobbin has placed the
10 requested documents in dispute through his claims in intervention. RFP MTC at 24 (citing ECF
11 No. 58 paragraph 27). Additionally, Defendants argue that if fee sharing agreements are not
12 disclosed, it would be a violation of the Rules of Professional Conduct 2-200 and that these
13 requests are related to the claims and defenses of the parties. Id. Defendants also argue that
14 Plaintiff failed to supplement RFPs 47(-2) and 48(-2). Reply at 16. Plaintiff does not address
15 the specific requests in its opposition. RFP Oppo. The requests are as follows:

16 **REQUEST NO. 47(-2):** "All contracts between Stephen M. Lobbin and ECLIPSE related
17 to any compensation to be paid arising from the legal representation in the LITIGATION."

18 **RESPONSE TO REQUEST NO. 47(-2):** "Objection. This is an internal matter between Eclipse
19 and Lobbin and in no way relates to the claims made by Plaintiff against Defendants."

20 **REQUEST NO. 48(-2):** "All DOCUMENTS that support the contention of ECLIPSE that
21 Stephen M. Lobbin is not entitled to recovery of any compensation in this action." **RESPONSE**

22 **TO REQUEST NO. 48(-2):** "Objection. This is an internal matter between Eclipse and Lobbin
23

24 ⁹ Because RFPs 47 and 48 were used twice to identify different requests, Defendants have
25 designated the requests as 47(-2) and 48(-2) to distinguish them from RFPs 47 and 48. RFP
26 MTC at 24, n8.

27 ¹⁰ The reply says 49(-2), however, the RFP MTC says 48(-2) and the description of the RFA
28 provided by Defendants in the MTC matches RFP No. 48. RFP MTC at 24; see also Reply at 16.
Additionally, there does not appear to be a second RFP No. 49. RFP Cirlin Decl. at Exh. A.

1 and in no way relates to the claims made by Plaintiff against Defendants.” RFP Oppo. at Exh.
2 A.

3 Defendants’ motion to compel additional responses to RFPs 47(-2) and 48(-2) is
4 **GRANTED**. Plaintiff does not provide any facts or law to support its objection and responses.
5 If the responsive documents, or portions thereof, are protected by a privilege that has not been
6 waived, Plaintiff may withhold the privileged information and must provide Defendants with an
7 appropriate privilege log.

8 There are RFPs raised in Defendants’ motion to compel that are not addressed in
9 Defendants’ reply. The Court interprets this as an indication that Plaintiff’s supplemental
10 responses were sufficient. Accordingly, Defendants’ motion to compel further response to RFPs
11 31 and 32 is **DENIED AS MOOT**.

12 INTERROGATORIES¹¹

13 Legal Standard

14 An interrogatory may relate to any matter that may be inquired under Rule 26(b). Fed.
15 R. Civ. P. 33(a)(2). “The grounds for objecting to an interrogatory must be stated with
16 specificity, [and] [a]ny ground not stated in a timely objection is waived unless the court, for
17 good cause, excuses the failure.” Fed. R. Civ. P. 33(b)(4). Any interrogatory not objected to
18 must be answered fully in writing under oath. Fed. R. Civ. P. 33(b)(3). In answering
19 interrogatories propounded to a corporation, partnership, association or governmental agency,
20 the officer or agent responding on its behalf “must furnish the information available to the party.”
21 Fed. R. Civ. P. 33(b)(1)(B); see also Cal. Prac. Guide Fed. Civ. Pro. Before Trial Ch. 11(IV)-B.

22
23 ¹¹ This motion refers to the ROGs propounded by Defendant Target, but the three sets of ROGs
24 are comparable to each other and Defendants request that to “the extent the Court orders
25 [Plaintiff] to further respond to any Interrogatories of Target . . . the order apply equally to
26 the comparable Interrogatories propounded by Defendants Toys “R” Us, Inc. and Kmart
27 Corporation.” ROG MTC at 6-7. Defendants’ request is **GRANTED**. If Plaintiff is ordered to
28 provide further responses, it must do so for Defendants Target, Kmart Corporation, and Toys
“R” Us.

1 Analysis

2 Defendants argue that Plaintiff fails to (1) state all facts, (2) identify all witnesses, and
3 (3) identify all documents that support Plaintiff's responses to RFAs 5 and 15 as asked in ROGs
4 No. 1-3. Reply at 4.

5 The interrogatories and responses are as follows:

6 **"INTERROGATORY NO. 1:** For each of Target Corporation's Requests for Admissions,
7 Request Nos. 5, 6, 8 and 15 served on YOU concurrently with these interrogatories for which
8 YOUR response is anything but an unequivocal admission, state all facts that support YOUR
9 response." **"INTERROGATORY NO. 2:** For each of Target Corporation's Requests for
10 Admissions, Request Nos. 5, 6, and 15 served on YOU concurrently with these interrogatories
11 for which YOUR response is anything but an unequivocal admission, IDENTIFY all witnesses that
12 support YOUR response." **"RESPONSE TO ROGs 1-2:** Objection. Plaintiff's response to those
13 requests consisted of legal objections. Accordingly there is no need to provide facts."
14 **SUPPLEMENTAL RESPONSE TO ROGs 1-2:** "Plaintiff admits to the terms set forth in the
15 written agreement." ROG Oppo. at Exh. A.

16 **INTERROGATORY NO. 3:** "For each of Target Corporation's Requests for Admissions,
17 Request Nos. 5, 6 and 15 served on YOU concurrently with these interrogatories for which YOUR
18 response is anything but an unequivocal admission, IDENTIFY all DOCUMENTS that support
19 YOUR response." **RESPONSE TO ROG 3:** "Objection. Plaintiff's response to those requests
20 consisted of legal objections. Accordingly, there is no need to provide facts." **SUPPLEMENTAL**
21 **RESPONSE TO ROG 3:** "The indemnity agreement with Defendants and Aquawood, as well as
22 emails between Mr. Lobbin and Defendants, as well as numerous oral conversations with
23 Defendants and Mr. Lobbin establish that defendants were at all times fully aware that Manley,
24 pursuant to the demands of Defendants, and pursuant to its indemnity agreements had
25 contacted and retained Plaintiff to defend Defendants, to which representation Defendants
26 explicitly assented." ROG Oppo. at Exh. A.

27 Defendants' motion to compel further response is **GRANTED** as to ROGs No. 1 and 2.
28 Plaintiff's responses to interrogatories 1 and 2 do not provide the requested facts and witnesses.

1 Interrogatory 3 states that the only responsive document is the indemnity agreement. If that
2 is accurate, Plaintiff does not need to supplement its response. If it is inaccurate, Plaintiff must
3 serve a supplemental response.

4 Defendants argue that Plaintiff's responses to ROGs No. 4-6¹² are inadequate because
5 Plaintiff does not "state all facts" and does not respond for each of the Defendants. Reply at 4-
6 5. Defendant further argues that Plaintiff did not file motions for summary judgment in all of
7 the actions, motions for summary judgment were not brought on behalf of all the parties, most
8 of the work performed in *Aviva Sports* was after Kmart had been dismissed, and Plaintiff invoiced
9 thousands of dollars in attorneys' fees so it is unclear how Defendants benefit. Id. The
10 interrogatories are as follows:

11 "INTERROGATORY NO. 4: State all facts that support YOUR contention that Target
12 Corporation benefited directly from all of the legal services YOU invoiced in *Aquawood LLC v.*
13 *Worlds/ide, LLC*, Case No. 11-cv-5611-JFW-Ex (C.D. Cal. 2011)." "INTERROGATORY NO. 5:
14 State all facts that support YOUR contention that Target Corporation benefited directly from all
15 of the services YOU invoiced in *Adams v. Target Corp.*, Case No. 13-cv-5944-GHK.-PjWx (C.D.
16 Cal. 2013)." "INTERROGATORY NO. 6: State all facts that support YOUR contention that
17 Target Corporation benefited directly from all of the services YOU invoiced in *Aviva Sports, Inc.*
18 *v. Fingerhut Direct Marketing, Inc., et al.*, Case No. 09-cv-1 091-JNE (D. Minn. 2009)."

19 **RESPONSE TO ROGs 4-6:** "The results." **SUPPLEMENTAL RESPONSE TO ROGs 4-6:**
20 "Plaintiff successfully defended all claims against Defendants and obtained summary judgments
21 and dismissals on behalf of Defendants." ROG Oppo. at Exh. A.

22 Defendants' motion to compel further response to ROGs No. 4-6 is **GRANTED**. Plaintiff's
23 response does not adequately respond to the individual interrogatories.

24 Defendants argue that the responses to interrogatories 7 and 15 do not comply with the
25 law which requires Plaintiff to conduct a reasonably diligent search for responsive information.

26
27
28 ¹² Kmart's corresponding ROGs are Nos. 11-13. Toys "R" Us's corresponding ROG is No. 4. ROG
MTC at 16 n6.

1 Reply at 5, 7. Defendants note that while Plaintiff claims that Intervenor would be able to
2 respond to ROG 7, Intervenor's discovery responses state that he does not know and that
3 Plaintiff should be able to respond. Id. The interrogatories ask Plaintiff to:

4 **"INTERROGATORY NO. 7:** State all facts concerning the oral agreement that YOU
5 reached with MANLEY concerning the representation of Target Corporation in any of the
6 LITIGATION." **RESPONSE TO ROG 7:** "Objection. The issue in this case is the value of the
7 legal services provided to Defendants with their knowledge and consent. Any oral agreements
8 with Manley are irrelevant and not likely to lead to the discovery of admissible evidence."

9 **SUPPLEMENTAL RESPONSE TO ROG 7:** "Plaintiff is unaware of the facts concerning any
10 alleged oral agreements with Manley. That information would be known to the Intervenor." ROG
11 Oppo. at Exh. A.

12 **"INTERROGATORY NO. 15^[13]:** State all facts as to why ECLIPSE did not enter into a
13 written contract with MANLEY for legal services to represent Target Corporation in *Adams v.*
14 *Target 24 Corp.*, Case No. 13-cv-5944-GHK-PJWx (C.D. Cal. 2013). **RESPONSE TO ROG 15:**
15 Objection. Any reasons relating to plaintiff entering into or not entering into a contract with a
16 nonparty is of no relevance to the issues in this case which relate to the value of the legal
17 services provided to defendants with their knowledge and consent." **SUPPLEMENTAL**
18 **RESPONSE TO ROG 15:** "That information is not in possession of Eclipse. Defendants'
19 attorneys should ask their client Manley for that information and/or they should attempt to
20 obtain it from Intervenor." ROG Oppo. at Exh. A.

21 Defendants' motion to compel further response to ROGs No. 7 and 15 is **GRANTED**. See
22 Franklin v. Smalls, 2012 WL 5077630, at *6 (S.D. Cal. Oct. 18, 2012) (stating that the
23 "responding party must state under oath that he is unable to answer the interrogatory and must
24 describe the efforts made to obtain the answer" and finding that defendants did not comply with
25 Fed. R. Civ. P. 33 where they "did not explain under oath why they are unable to provide the
26 information requested, nor do they describe the efforts made to obtain the information.") (citing

27
28 ¹³ The corresponding interrogatory for Kmart is No. 14. ROG MTC at 25 n15.

1 Hansel v. Shell Oil Corp., 169 F.R.D. 303, 305 (E.D. Pa. 1996); see also 7 James Wm. Moore et
2 al., Moore's Federal Practice § 33.102[3], at 33–75)); see also Bryant v. Armstrong, 285 F.R.D.
3 596, 612 (S.D. Cal. 2012) (finding that defendant failed to comply with Rule 33 and noting that
4 if defendant was unable to respond to the interrogatory “he must state so under oath and
5 describe the steps taken to answer interrogatories”) (citing Frontier–Kemper Constructors, Inc.
6 v. Elk Run Coal Co., 246 F.R.D. 522, 529 (S.D.W.Va.2007) (finding that a responding party has
7 a “severe duty” to make every effort to obtain the requested information and, if unsuccessful,
8 must provide an answer detailing the attempts made to ascertain the information)).

9 Defendants argue that while the parties may argue over whether or not consent was
10 required, Plaintiff must properly respond to interrogatories 8 and 9 and state whether or not it
11 obtained the consent, which it has not done. Reply at 6. The interrogatories ask Plaintiff to:

12 **“I NTERROGATORY NO. 8:** State whether YOU obtained the informed written consent
13 of Target Corporation regarding a potential conflict of interest as provided under California Rules
14 of Professional Conduct, Rule 3-310(C) during YOUR representation of Target in the
15 LITIGATION. **RESPONSE TO ROG 8:** Objection. This interrogatory is not related to any of the
16 issues pled in this case.” **SUPPLEMENTAL RESPONSE TO ROG 8:** “There was no potential
17 conflict of interest.” ROG Oppo. at Exh. A.

18 **“I NTERROGATORY NO. 9:** State whether YOU obtained the informed written consent
19 of Target Corporation as provided under the California Rules of Professional Conduct, Rule 3-
20 310(F) concerning the arrangement with MANLEY to pay for the legal services of ECLIPSE during
21 its representation of Target in any of the LITIGATION.” **RESPONSE TO ROG 9:** Objection. This
22 interrogatory is not related to any of the issues pled in this case. **SUPPLEMENTAL RESPONSE**
23 **TO ROG 9:** “Manley had agreed to retain and pay for the services of Plaintiff pursuant to the
24 express demand of Defendants, pursuant to their written indemnity agreements with Manley.
25 Accordingly, any assertion that there is a violation of the rules of professional conduct concerning
26 payments by Manley would clearly be waived in this case. Accordingly, there was no need to
27 obtain an express written agreement, although based on conversations and communication
28 between Intervenor and Defendants, it was clear that at all times Defendants were fully aware

1 of the financial arrangements between Plaintiff and Manley. At a minimum, Defendants should
2 be estopped from attempting to assert this clearly bad faith defense which has never been pled,
3 and which is obviously the afterthought of someone attempting to misuse a technicality.” ROG
4 Oppo. at Exh. A.

5 Defendants’ motion to compel further responses to ROGs No. 8 and 9 is **GRANTED**.
6 Plaintiff’s responses do not answer the interrogatories.

7 Defendants argue that the supplemental responses to ROGs No. 10 and 11 simply restate
8 the original objections and that the opposition does not address the moving papers’ position on
9 relevance. Reply at 6. In its motion, Defendants argue that further response is necessary
10 because “it is evident that [Plaintiff] knew that Defendants would not agree to pay for the legal
11 services of [Plaintiff] if Manley failed to pay” and that Plaintiff should be estopped from
12 recovering anything from Defendants. ROG MTC at 21. Defendants further argue that evidence
13 of custom and practice is admissible. Reply at 6. The interrogatories are as follows:

14 **“INTERROGATORY NO. 10¹⁴**: State whether it was YOUR practice at the time of the
15 LITIGATION to obtain written legal services agreements with clients YOU represented in
16 litigation. **RESPONSE TO ROG 10**: Objection. Plaintiff’s general practices have nothing to do
17 with the issues in this case which relate to the value of the legal services provided to Defendants
18 with their knowledge and consent.” **SUPPLEMENTAL RESPONSE TO ROG 10**: “Objection
19 Eclipse’s practices with regard to other clients have nothing to do with the issues in this case.
20 This is just a blatant attempt by Defendants to raise another red herring.” ROG Oppo. at Exh.
21 A.

22 **“INTERROGATORY NO. 11**: State whether it was YOUR practice at the time of the
23 LITIGATION to obtain written legal services agreements with clients such as Target Corporation
24 who did not agree to pay for YOUR services.” **RESPONSE TO ROG 11**: Objection. Plaintiff’s
25 general practices have nothing to do with the issues in this case which relate to the value of the
26

27 ¹⁴ The corresponding ROG for Kmart and Toys “R” Us is No. 9. ROG MTC at 21 n11.
28

1 legal services provided to Defendants with their knowledge and consent. **SUPPLEMENTAL**
2 **RESPONSE TO ROG 11**: “Objection Eclipse's practices with regard to other clients have nothing
3 to do with the issues in this case. This is just a blatant attempt by Defendants to raise another
4 red herring. Moreover, Target did agree to pay for the services rendered by accepting the
5 representation and the benefits of that representation. Such agreement results from the time-
6 honored principles of quasi-contract and *quantum meruit*.” ROG Oppo. at Exh. A.

7 Defendants' motion to compel further responses to ROGs No. 10 and 11 is **GRANTED**.
8 These interrogatories are not seeking specific details regarding unrelated cases; they are seeking
9 Plaintiff's general practice regarding conduct at issue in this case.

10 Defendants argue that with the exception of the word “no,” Plaintiff's entire response to
11 ROG No. 12 should be stricken. Reply at 6. The ROG is as follows:

12 **“INTERROGATORY NO. 12**: State whether YOU agreed with Amazon.com that any
13 legal services that YOU performed for Amazon.com in the LITIGATION would only be paid by
14 MANLEY. **RESPONSE TO ROG 12**: Objection. Amazon is not a party to this litigation and any
15 agreements with it are not only not relevant, they are privileged.” **SUPPLEMENTAL**
16 **RESPONSE TO ROG 12**: “Objection. Amazon is not a party to this litigation and any
17 agreements with it are of no relevance whatsoever. They are privileged. This is another blatant
18 attempt by Defendants to raise another red herring and divert the Court from the issues between
19 the parties. Moreover, NO.” ROG Oppo. at Exh. A.

20 Defendants' motion to strike Plaintiff's entire response with the exception of the word
21 “no” is **GRANTED**. See Mancini v. Ins. Corp. of N.Y., 2009 WL 1765295, at *2 (S.D. Cal. June
22 18, 2009) (striking portion of interrogatory response that was a ten-page long section of a legal
23 brief containing plaintiff's legal and factual arguments).

24 Defendants argue that the supplemental response to ROG 13 simply repeats the original
25 response and that the opposition does not respond to the moving papers which argue that
26 Plaintiff should provide the facts upon which it depends as the interrogatory is directed towards
27 facts not expert opinions and that Plaintiff has not responded in accordance with Fed. R. Civ. P.
28 33. Reply at 6; see also ROG MTC at 23. The interrogatory reads:

1 **“INTERROGATORY NO. 13^[15]**: State all facts that support YOUR contention that YOU
2 may recover fees from Target Corporation at rates higher than those negotiated with MANLEY
3 to represent Target Corporation in the LITIGATION. **RESPONSE TO ROG 13**: Those facts will
4 be presented by the experts, but will at a minimum include the outstanding results obtained.”
5 **SUPPLEMENTAL RESPONSE TO ROG 13**: “Those facts will be presented by the experts, but
6 will at a minimum include the outstanding results obtained.” ROG Oppo. at Exh. A.

7 Defendants’ motion to compel further response to ROG No. 13 is **GRANTED**. Plaintiff
8 must state the facts that support the contention.

9 Defendants argue that the supplemental responses for ROGs 14 and 5 (Kmart Set) parody
10 the original responses, add a new objection for invasiveness, and offer “extraneous” argument.
11 Reply at 6. Defendants further argue that the supplemental responses do not address the points
12 raised in their motion that the information requested is not privileged and that evidence of the
13 value of services can be demonstrated by customary charges and earnings in similar matters.
14 Id.; see also ROG MTC at 24-25. The interrogatories are as follows:

15 **“INTERROGATORY NO. 14**: Describe in detail each matter wherein YOU represented
16 a client in a patent infringement case, including, the case name and number, the name of the
17 client, the name of the opposing party, the claims asserted in the litigation, and the rates YOU
18 charged for the services provided between 2012 and 2015. **RESPONSE TO ROG 14**: Objection.
19 Fees charged to other clients and other cases are privileged and of no possible relevance to the
20 issues in this case, which is the value of the services provided to defendants with their knowledge
21 and consent.” **SUPPLEMENTAL RESPONSE TO ROG 14**: “Fees charged to other clients in
22 other cases are privileged and are of no possible relevance to the issues in this case, which is
23 the value of the services provided to Defendants with their knowledge and consent. In addition,
24 this interrogatory is highly invasive. It asked for client names; names of opposing counsel; claims
25 asserted and Eclipse rates. This is an abuse of discovery.” ROG Oppo. at Exh. A.

26 **“INTERROGATORY NO. 5 (K-MART SET)**: Describe in detail each matter wherein
27 _____

28 ¹⁵ The corresponding ROG for Kmart is No. 10 and for Toys “R” Us is No. 5. ROG MTC at 23.

1 YOU represented a client in a false advertising case, including, the case name and number, the
2 name of the client, the name of the opposing party, the claims asserted in the litigation, and the
3 rates YOU charged for the services provided between 2012 and 2015. **RESPONSE TO ROG 5**
4 **(K-MART SET)**: Objection. Representations in other cases are not relevant to this case and in
5 this inquiry is inappropriate, including the fact that would involve confidential attorney-client
6 information for clients unrelated to this case and unrelated to the Defendants. This is just
7 another smokescreen by Defendants.” **SUPPLEMENTAL RESPONSE TO ROG 5 (K-MART**
8 **SET)**: “Fees charged to other clients in other cases are privileged and are of no possible
9 relevance to the issues in this 'case, which is the value of the services provided to Defendants
10 with their knowledge and consent. In addition, this interrogatory is highly invasive. It asked for
11 client names; names of opposing counsel; claims asserted and Eclipse rates. This is an abuse
12 of discovery.” ROG Oppo. at Exh. A.

13 Defendants’ motion to compel further response to ROG No. 14 and Kmart No. 5 is
14 **GRANTED IN PART**. The Court finds that the requests are relevant for purposes of Fed. R.
15 Civ. P. 26¹⁶ and that Plaintiff’s objections concerning relevancy and privilege are without merit.
16 See Cohen v. Trump, 2015 WL 3617124, at * 2 (S.D. Cal. June 9, 2015) (noting that “[g]enerally
17 the attorney-client privilege ‘does not safeguard against the disclosure of either the identity of
18 the fee-payer or the fee arrangement.’”) (quoting Ralls v. U.S., 52 F.3d 223, 225 (9th Cir.1995);
19 see also Gusman v. Comcast Corp., 298 F.R.D. 592, 599–600 (S.D. Cal. 2014) (noting that “[t]he
20 Ninth Circuit has repeatedly held retainer agreements are not protected by the attorney-client
21 privilege or work product doctrine” and that “[c]ommunications between attorney and client that
22 concern the identity of the client, the amount of the fee, the identification of payment by case

23
24
25 ¹⁶ Courts often use rate determinations from other cases and affidavits from other attorneys in
26 the relevant community to determine a prevailing market rate which can be helpful in
27 determining attorneys’ fees under the lodestar method. While this may not be the determining
28 factor in a *quantum meruit* analysis, the value of Plaintiff’s services provided to Defendants is at
issue and the rates that Plaintiff has charged other parties for similar services is relevant to
Defendants’ “claim or defense and proportional to the needs of the case.” Fed. R. Civ. P.
26(b)(1).

1 file name, and the general purpose of the work performed are usually not protected from
2 disclosure by the attorney-client privilege.”) (quoting Hoot Winc, LLC v. RSM McGladrey Fin.
3 Process Outsourcing, LLC, 2009 WL 3857425, at *1–2, (S.D. Cal. Nov. 4, 2009) and Paul v.
4 Winco Holdings, Inc., 249 F.R.D. 643, 654 (D. Idaho Feb. 27, 2008)). However, the requests
5 as written are overbroad. Accordingly, Plaintiff is **ORDERED** to respond to modified
6 Interrogatories 14 and 5(K-MART SET) as follows: (14) “Describe each matter wherein YOU
7 represented a client in a patent infringement case, including the case name, court, and number,
8 the claims asserted in the litigation, and the rates YOU charged for the services provided
9 between 2012 and 2015” and (5 K-MART SET) “Describe each matter wherein YOU represented
10 a client in a false advertising case, including the case name, court, and number, the claims
11 asserted in the litigation, and the rates YOU charged for the services provided between 2012
12 and 2015.”

13 Defendants do not address ROG 16 in their reply. ROG Reply. The Court interprets this
14 as an indication that Plaintiff’s supplemental response was sufficient. Accordingly, Defendants’
15 motion to compel further response to ROG No. 16 is **DENIED AS MOOT**.

16 **SANCTIONS**

17 Defendants request that the Court sanction Plaintiff and its counsel of record in the
18 amount of \$3,330.00 for the motion to compel further responses to Defendants’ RFAs as Plaintiff
19 “has unreasonably forced Defendants to file the instant motion and incur the costs to bring this
20 matter before the Court based largely upon baseless and unwarranted ‘relevance’ objections.”
21 RFA MTC at 30. Defendants also seek an award of \$2,790.00 in attorney’s fees for the motion
22 to compel further responses to Defendants’ RFPs because Plaintiff’s objections to the RFPs are
23 not substantially justified. RFP MTC at 25. Finally, Defendants seek an award of \$2,812.50 in
24 sanctions because Plaintiff’s objections to the ROGs are not substantially justified. ROG MTC at
25 27-28. Plaintiff does not address Defendants’ request for sanctions. See RFA Oppo.; see also
26 RFP Oppo. and ROG Oppo.

27 If a motion to compel discovery is granted, or if the disclosure or requested discovery is
28 provided after the motion was filed, Rule 37(a)(5)(A) requires a court to order the “party or

1 deponent whose conduct necessitated the motion, the party or attorney advising that conduct,
2 or both to pay the movant's reasonable expenses incurred in making the motion, including
3 attorney's fees" unless the movant failed to meet and confer, the objection was substantially
4 justified, or other circumstances militate against awarding expenses. If the motion is granted
5 in part and denied in part, the court "may, after giving an opportunity to be heard, apportion
6 the reasonable expenses for the motion." Fed. R. Civ. P. 37(a)(5)(C).

7 Defendants' request for sanctions is **DENIED**. While requested discovery was
8 supplemented after Defendants' filed their motions to compel, the Court finds that an award of
9 sanctions is not appropriate because many of Plaintiff's objections were justified as evidence by
10 the fact that many of Defendants' requests were denied.

11 **CONCLUSION**

- 12 1. Defendants' motion to compel further response to RFAs 1-4, 12, 13, 17, and 22 is
13 **DENIED**.
- 14 2. Defendants' motion to compel further response to RFAs 15, 33, 40, 51, 55, and 56
15 is **GRANTED**.
- 16 3. Defendants' motion to compel further response to RFAs 5, 6, 8, 9, 11, 14, 16, 18,
17 19, 20, 21, 24-26, 28, 29, 31, 41, 42, 50, 57, and 58 is **DENIED AS MOOT**.
- 18 4. Defendants' motion to compel additional responses to RFPs 1-9, 10-13, 15, 16-21,
19 24-29, 33-36, 37-39, 41, 44-48, 47(-2), 48(-2), and 50 is **GRANTED**.
- 20 5. Defendants' motion to compel additional responses to RFPs 22, 23, 38, 49, and 51
21 is **DENIED**.
- 22 6. Defendants' motion to compel additional responses to RFP 52 is **GRANTED IN**
23 **PART**.
- 24 7. Defendants' motion to compel additional responses to RFPs 31 and 32 is **DENIED**
25 **AS MOOT**.
- 26 8. Defendants' motion to compel further response to interrogatories 1, 2, 4-11, 13,
27 and 15 is **GRANTED**.
- 28 9. Defendants' motion to strike Plaintiff's entire response with the exception of the

1 word "no" to Interrogatory 12 is **GRANTED**.

2 10. For interrogatory no. 3, if the only responsive document is the indemnity
3 agreement as Plaintiff suggests, Plaintiff does not need to supplement its response.
4 If it is inaccurate, Plaintiff must serve a supplemental response.

5 11. Defendants' motion to compel further response to interrogatories 14, 5(KMART) is
6 **GRANTED IN PART**.

7 12. Defendants' motion to compel further response to interrogatory 16 is **DENIED AS**
8 **MOOT**.

9 13. Plaintiff must serve all supplemental responses or declarations on or before **July**
10 **7, 2017**.

11 14. Defendants' request for sanctions is **DENIED**.

12 **IT IS SO ORDERED.**

13 Dated: 6/21/2017

14 
15 Hon. Barbara L. Major
16 United States Magistrate Judge