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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MICHELLE L. MORIARTY, et al.,
12 Plaintiff,
13 v.
14 AMERICAN GENERAL LIFE
15 INSURANCE COMPANY, et al.,
16 Defendants.

Case No.: 17-CV-1709-BTM-WVG

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL
PRODUCTION**

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18 **I. INTRODUCTION**

19 On June 4, 2018, the Court was alerted to a discovery dispute where Plaintiff
20 Michelle Moriarty orally moved the Court for an order compelling Defendant American
21 General Life Insurance Co. to further respond to her Request for Production of Documents.
22 For the reasons that follow, the Court **DENIES** Plaintiff's motion.

23 **II. BACKGROUND**

24 On June 4, 2018, the counsel for Plaintiff Michelle Moriarty and Defendant
25 American General Life Insurance Co. (hereafter "parties") jointly alerted the Court to a
26 pending discovery dispute regarding Defendant's responses to Plaintiff's request for
27 production of documents and interrogatories. On June 28, 2018, the Court convened a
28 telephonic discovery conference. Plaintiff argued that Defendant's responses to Plaintiff's

1 Request for Production of Document (“RPD”) Nos. 1-21, 24-25, and 32-77 were deficient.
2 Additionally, Plaintiff argued Defendant’s responses to Plaintiff’s Interrogatory Nos. 1-13
3 were similarly deficient. After finding the dispute to not yet be ripe, the Court ordered the
4 parties to meet and confer and to file a status report. (See ECF No. 82.) On July 26, 2018,
5 the parties timely filed a status report indicating that all issues had been resolved with the
6 exception of Plaintiff’s RPD Nos. 43-77. (See ECF No. 88). On August 1, 2018, the Court
7 convened another discovery conference call where Plaintiff renewed her motion to compel
8 Defendant’s responses to her RPD Nos. 43-77.

9 **III. LEGAL STANDARD**

10 Each of the disputed RPDs may be characterized as contention interrogatories
11 pursuant to Federal Rule of Civil Procedure 33(a)(2). The purpose of contention requests
12 “is not to obtain facts, but rather to narrow the issues that will be addressed at trial and to
13 enable the propounding party to determine the proof required to rebut the respondent’s
14 position.” *Folz v. Union Pacific R.R. Co.*, 2014 WL 357929 at *1 (S.D. Cal. 2014).
15 “[C]ontention interrogatories need not be answered until the substantial completion of
16 pretrial discovery.” *Id.*

17 “A party filing contention interrogatories early in the pretrial period, before
18 substantial documentary or testimonial discovery has been completed, has the burden of”
19 justifying the early contention requests. *Fischer and Porter Co. v. Tolson*, 143 F.R.D. 93,
20 96 (E.D. Pa. 1992). The propounding party “must present ‘specific, plausible grounds for
21 believing that securing early answers to its contention questions will materially advance
22 the goals of the Federal Rules of Civil Procedure.’” *Id.* (quoting *In re Convergent*
23 *Technologies Securities Litigation*, 108 F.R.D. 328, 339 (N.D. Cal. 1985). To meet that
24 burden, a party must show “that there is good reason to believe that answers to its well-
25 tailored questions will contribute meaningfully to clarifying the issues in the case,
26 narrowing the scope of the dispute, or setting up early settlement discussion, or that such
27 answers are likely to expose a substantial basis for a motion under Rule 11 or Rule 56.” *Id.*
28 A court should deny a motion to compel responses to contention interrogatories where the

1 tentative nature of the responses “would be of questionable value to the goal of efficiently
2 advancing the litigation.” *In re eBay Seller Antitrust Litigation*, 2008 WL 5212170, *2
3 (N.D. Cal. 2008).

4 **IV. DISCUSSION**

5 Plaintiff offers two arguments as to why Defendant should be compelled to provide
6 a further response to her contention requests.

7 First, Plaintiff argues the responses provided by Defendant are boilerplate
8 objections. (ECF No. 88 at 6:1.) Indeed, to each RPD, Defendant responds with the
9 following objection:

10 Responding Party objects to this request as a premature
11 contention request. Responding Party has not yet obtained
12 enough information through discovery to respond.^{1,2}

13 While the objections to each RPD are the same, it is not the typical boilerplate
14 language used in written discovery responses, such as “overly burdensome,” among others.
15 Rather, the objections are proper objections over the timing of the contention requests that
16 is simply applied to each RPD. The mere fact that an objection is repeated does not alone
17 render it boilerplate in nature.

18 Second, Plaintiff argues the requests are not premature given the age of the case, the
19 number of document requests propounded on Plaintiff, and the fact that Defendant has
20 deposed Plaintiff. (*Id.* at 6:15-18.) As such, Plaintiff contends that Defendant should
21 “provide some modicum of a substantive response.” (*Id.* at 6:18-19.)

22 Defendant’s argument is largely that contention requests are, as of now, premature
23 because substantial discovery remains to be completed. Defendant recognized both in its
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25 ¹ Defendant provided supplemental responses to each contention request. Rather than
26 repeat the response to each request, the Court will note that at the conclusion of each
27 response, Defendant stated it “will seasonably supplement this response as necessary
28 prior to the close of discovery.”

² Defendant has not waived its objection to timeliness by virtue of providing
supplemental responses and Plaintiff does not raise such an argument.

1 papers and orally during the discovery conference call that at some point it will need to
2 provide adequate responses to these requests. In support of its argument, Defendant points
3 out that Plaintiff owes responses to two sets of requests for the production of documents,
4 one set of interrogatories, and one set of requests for admissions. (*Id.* at 8.) Additionally,
5 Defendant is in the process of providing what may be a massive amount of document
6 discovery to Plaintiff. Lastly, Defendant identifies two additional depositions that need to
7 be taken. (*Id.*)

8 Given the apparent volume of outstanding discovery, the Court finds that any
9 responses Defendant would be compelled to provide would be tentative and thus “would
10 be of questionable value to the goal of efficiently advancing the litigation.” *In re eBay*
11 *Seller Antitrust Litigation*, 2008 WL 5212170, *2. This is exacerbated by the present stay
12 of discovery, discussed further below.

13 Presently, discovery is stayed, with the exception of the dispute at hand, pending a
14 ruling on Plaintiff’s motion to strike.³ (*See* ECF No. 82.) Discovery was stayed because the
15 parties have indicated to the Court that resolution of Plaintiff’s motion to strike may
16 dramatically change the posture of the case. Given the stay on discovery that is in place, it
17 does not appear that compelled answers will meaningfully clarify “the issues in the case,
18 narrow[] the scope of the dispute, or set[] up early settlement discussion, or that such
19 answers [will] likely [] expose a substantial basis for a motion under Rule 11 or Rule 56.”
20 *Tolson*, 143 F.R.D. at 96. This is particularly so because the pending issue in Plaintiff’s
21 motion to strike is purely a question of law and not a factual issue that may be resolved by
22 further discovery.

23 Accordingly, the Court sustains Defendant’s objections and **DENIES WITHOUT**
24 **PREJUDICE** Plaintiff’s motion to compel further responses to its contention requests.

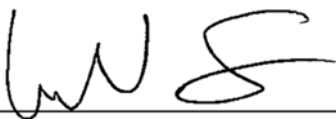
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28 ³ Additionally, the date by which Plaintiff must file her motion for class certification was
stayed. (*See* ECF No. 82.)

1 **V. CONCLUSION**

2 As discussed above, the Court **DENIES WITHOUT PREJUDICE** Plaintiff's
3 motion to compel. The Court concludes by noting that discovery will resume where it left
4 off when a ruling on Plaintiff's motion to strike is handed down. To be clear and to assuage
5 any fears maintained by Plaintiff, Defendant will be required to answer Plaintiff's
6 contention requests at a time prior to Plaintiff's motion for class certification; a point
7 acknowledged by Defendant on the record.

8 **IT IS SO ORDERED.**

9 DATED: August 13, 2018

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12 Hon. William V. Gallo
13 United States Magistrate Judge
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