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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

K.D.

Plaintiff(s),

v.

UNITED AIRLINES, INC., et al.,

Defendant(s).

Case No.: 2:17-cv-02825-RFB-NJK

**Order**

[Docket No. 66]

16 Pending before the Court is Defendant United's motion to compel further discovery.  
17 Docket No. 66. Plaintiff filed a response in opposition, and Defendant filed a reply. Docket Nos.  
18 72, 74. The motion is properly resolved without a hearing. See Local Rule 78-1. For the reasons  
19 discussed below, the motion to compel is hereby **GRANTED**.

20 **I. BACKGROUND**

21 The instant case alleges two causes of action, battery and negligence, related to a United  
22 flight Plaintiff undertook on October 26, 2016. Docket No. 1-1 at 5-9. The parties are currently  
23 before the Court regarding discovery disputes arising out of Plaintiffs' refusal to produce  
24 documents in response to the supplemental response to request for protection. See Docket No. 66.

25 **II. STANDARDS**

26 "[B]road discretion is vested in the trial court to permit or deny discovery." Hallett v.  
27 Morgan, 296 F.3d 732, 751 (9th Cir. 2002). When a party fails to provide discovery and the  
28 parties' attempts to resolve the dispute without Court intervention are unsuccessful, the opposing

1 party may seek an order compelling that discovery. Fed. R. Civ. P. 37(a). The party seeking to  
2 avoid discovery bears the burden of showing why that discovery should not be permitted.  
3 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975); see also *Carr v. State Farm Mut.*  
4 *Auto. Ins. Co.*, 312 F.R.D. 459, 469 (N.D. Tex. 2015) (addressing burdens following 2015  
5 amendments to discovery rules). The party resisting discovery must state, in detail, the reasons  
6 why each request is irrelevant or otherwise objectionable, and may not rely on generalized,  
7 conclusory, or speculative arguments. See, e.g., *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 552  
8 (D. Nev. 2013). Arguments against discovery must be supported by “specific examples and  
9 articulated reasoning.” *U.S. E.E.O.C. v. Caesars Ent.*, 237 F.R.D. 428, 432 (D. Nev. 2006).

10 The scope of proper discovery is limited to relevant matter. Fed. R. Civ. P. 26(b)(1).  
11 District courts enjoy wide discretion in deciding relevancy for discovery purposes. E.g., *Shaw v.*  
12 *Experian Info. Solutions., Inc.*, 306 F.R.D. 293, 296 (S.D. Cal. 2015). To be permissible, discovery  
13 must be “relevant to any party’s claim or defense.” *In re Bard IVC Prod. Liab. Litig.*, 317 F.R.D.  
14 562, 563-64 (D. Ariz. 2016) (discussing impact of 2015 amendments to definition of relevance for  
15 discovery purposes). Even after the 2015 amendments to the discovery rules, relevance remains  
16 broad in scope. See, e.g., *Fed. Nat’l Mrtg. Assoc. v. SFR Investments Pool 1, LLC*, Case No. 2:14-  
17 cv-02046-JAD-PAL, 2016 WL 778368, at \*2 n.16 (D. Nev. Feb. 25, 2016).

### 18 **III. ANALYSIS**

19 The discovery dispute before the Court arises out of 15 requests for production served by  
20 Defendant on Plaintiff. Docket No. 66. The requests for production include:

- 21 • Documents related to the incident and damages Plaintiff is alleging (Request for  
22 Production No. 7)
- 23 • Medical documents prepared by Plaintiff’s health care provider (Request for  
24 Production Nos. 9, 10)
- 25 • Medical documents relevant to any injuries Plaintiff sustained prior to the alleged  
26 incident (Request for Production No. 11)

- 1 • Plaintiff's financial information such as tax return information, paycheck stubs,  
2 Social Security or Benefits earnings, and any documents to support Plaintiff's  
3 contention of loss of wages (Request for Production Nos. 12, 13, 14, 15)
- 4 • Plaintiff's commercial flight history before and since the alleged incident (Request  
5 for Production Nos. 19, 20, 21)
- 6 • Documents, and finally, facts and documents related to Plaintiff's responses to  
7 United's first set of interrogatories (Request for Production Nos. 23, 28, 29)

8 The Court find that these subjects are all pertinent to the claims and defenses in this case  
9 and, therefore, Plaintiff's communications, documents, and facts regarding those subjects are  
10 clearly relevant and discoverable.

11 Nonetheless, Plaintiff resists providing complete responses on two grounds. First, she  
12 asserts that some of the requests are overbroad, vague, and unduly burdensome. Docket No. 72 at  
13 2. Second, she asserts that these documents are not in her possession. *Id.* at 3, 5-7. Neither  
14 argument justifies the failure to produce documents.

15 As to the first argument, the Court finds that the scope of the requests for production are  
16 not overly broad and are directed to obviously relevant information. The Court reiterates that the  
17 scope of relevant discovery remains broad. Plaintiff has already produced some responsive  
18 documents and has effectively conceded that the subject matter identified is generally relevant.  
19 See, e.g., Docket No. 72. Plaintiff states she has now determined that parts of these same responsive  
20 documents are not relevant or are overbroad; however, Plaintiff's *ex parte* determination is  
21 insufficient justification to withhold the documents. Cf. *Smith v. Logansport Comm. School Corp.*,  
22 139 F.R.D. 638, 648 (N.D. Ind. 1991) ("There is no middle ground entitling [a responding party]  
23 to produce some documents and withhold others, depending on her *ex parte* determination of  
24 relevancy").

25 As to the second argument, Plaintiff is not excused from discovery by the bare assertion  
26 that she has "done her best" to provide the requested documents. Docket No. 72 at 6. To  
27 demonstrate a lack of possession, custody, or control of the requested documents, parties must go  
28 further than a cursory search. *Larue*, 2015 WL 9890798 at 3 (D. Or. Dec 22, 2015) (citing *U.S. v.*

1 Seetapun, 750 F.2d 601, 605 (7th Cir. 1984)). Information regarding the search conducted should  
2 be provided through declarations under oath detailing the nature of the efforts to locate responsive  
3 documents. See Meeks v. Parsons, 2009 WL 3003718, \*4 (E.D. Cal. Sept. 18, 2009). Plaintiff's  
4 justification for failing to provide documents is insufficient evidence to demonstrate a lack of  
5 possession. Docket No. 72.

6 **IV. CONCLUSION**

7 For the reasons discussed more fully above, Defendant's motion to compel is **GRANTED**.  
8 The Court **ORDERS** Plaintiff to produce documents in response to Defendant's requests for  
9 production and/or to supplement her response to fully describe the search she conducted for  
10 responsive documents by October 12, 2018. The Court **DENIES** without prejudice Defendant's  
11 request for sanctions. No later than October 1, 2018, defendant may file a motion for sanctions  
12 that complies in full with all caselaw and rules.

13 IT IS SO ORDERED.

14 Dated: September 24, 2018

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17 Nancy J. Koppe  
18 United States Magistrate Judge  
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