soon as they become available. In the meantime, Plaintiff notes that Defendant has been in possession of medical authorizations for Plaintiff's medical providers since at least October 26, 2011 and Defendant could, just as easily as Plaintiff, submit records requests to all of Plaintiff's medical providers. (See letter to Mr. Schoen dated October 26, 2011 attached hereto as Exhibit A).

Third, Defendant's October 25, 2013 letter alleges that Plaintiff claimed we are "not obligated to respond to the Notice to Produce." Plaintiff never took this position on our call. The only thing we represented on our call, and that Defendant's correctly noted in their October 25, 2013 letter, is that in accordance with Fed. R. Civ. P. 33 Plaintiff is not required to produce documents with answers to interrogatories. Plaintiff felt the records we have in our possession would speed up the process and be helpful to Defendant, and, in a show of good faith, produced all the records we currently have. Perhaps Defendant realized their mistake and that is why this passage was left out of Defendant's October 29, 2013 letter to your honor.

Fourth, Defendant's letter to your honor cites three unpublished cases. One of the three cases, *Munich Reinsurance Am., Inc. v. Am. Nat'l. Ins. Co.*, No. 09-6435(FLW), 2011 WL 1466369 (D.N.J. April 18, 2011), was also cited in Defendant's October 25, 2013 letter to Plaintiff with an incomplete citation for the proposition that Plaintiff must identify specific bates numbers in our production when responding to interrogatories. This proposition is inaccurate and Defendant's citation is inapplicable as NJ Court Rule 1:36-3 specifically states that: "[n]o unpublished opinion shall constitute precedent or be binding upon any court." Furthermore, Defendant's letters misstate the holding of Munich. It is true that the court in Munich required the responding party to supplement **one** of their interrogatory responses with specific bates numbers, but the court did so only because of an agreement between the parties. *See Munich*, 2011 WL 1466369 at *23 (relying on Article X(B) of agreement between parties as justification for requiring identification of bates numbers in responding to one interrogatory). Here, no such agreement exists between the parties making Munich distinguishable, inapplicable, and, as previously noted, non-precedential and nonbinding.

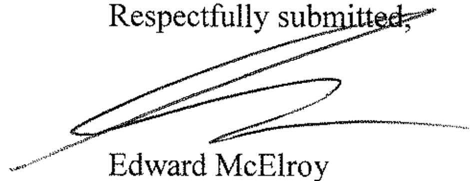
To further address Defendant's contention that Plaintiff must identify specific bates numbers in responding to interrogatories, Plaintiff's point Defendants to Fed. R. Civ. P. 33(d) which states that a responding party **may** produce documents:

> . . . if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:
> (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
> (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Fed. R. Civ. P. 33 ("Rule 33") (emphasis added). It is Plaintiff's position that examining the small number of records produced bears the exact same burden on Plaintiff as it does on Defendant. Defendant can identify the documents responsive to its interrogatories as readily as Plaintiff, which is why Plaintiff opted to produce the medical records even though Rule 33 does not require the production of records when responding to interrogatories.

For the reasons set forth above, Plaintiff respectfully requests that your honor take no action on Defendant's October 29, 2013 letter as Plaintiff has already agreed to supplement her answers to several interrogatories as well as provide additional medical records when they become available.

Respectfully submitted,



Edward McElroy

EM/nm
CC: All counsel of record