

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|------------------------------------|---|----------------------------|
| ALISON WARREN, |) | No. 2:11-cv-01800-RSL |
| |) | |
| v. |) | ORDER GRANTING IN PART |
| |) | DEFENDANT’S MOTION TO |
| BASTYR UNIVERSITY, <i>et al.</i> , |) | COMPEL DISCOVERY RESPONSES |
| |) | |
| Defendants. |) | |

INTRODUCTION

This matter comes before the Court on defendant Koutoubi’s “Motion To Compel Discovery Responses.” Dkt. # 83. Plaintiff objects to the discovery requests served by defendant Dr. Saner Koutoubi and his wife on the grounds that they exceed the limit on the number of interrogatories allowed by Federal Rule of Civil Procedure 33(a) and that several of the interrogatories and requests for production are unduly burdensome, overly broad, irrelevant, ask for privileged information, or are otherwise objectionable. Plaintiff has filed a cross-motion for protective order. Dkt. # 87. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

BACKGROUND

On October 27, 2011, plaintiff Alison Warren filed a complaint asserting ten claims, including racial discrimination, a variety of breach of contract claims, defamation, and

ORDER GRANTING IN PART
MOTION TO COMPEL

1 intentional and negligent infliction of emotional distress, against Bastyr University and a number
2 of individual defendants. Dkt. # 1. On April 9, 2012, plaintiff filed a Second Amended
3 Complaint adding defendants Dr. Saner Koutoubi and Jane Doe Koutoubi (hereinafter,
4 “defendant Koutoubi”) and alleging sexual harassment and intentional and negligent infliction of
5 emotional distress.

6 Defendant Koutoubi’s First Set of Interrogatories and Requests for Production of
7 Documents contained sixteen numbered interrogatories and seven requests for production related
8 to plaintiff’s identify, her personal, educational, and work history, and the identity of persons
9 and other information related to plaintiff’s claims. Motion (Dkt. # 83) at 2-3. Plaintiff objected to
10 each of the discovery requests on various grounds.

11 The parties engaged in a discovery conference but were unable to resolve the
12 dispute. After defendant Koutoubi filed his motion to compel, plaintiff served supplemental
13 disclosures under Rule 26(a). The motion to compel and the cross-motion for protective order
14 address substantially the same issues and shall therefore be considered together.

15 **DISCUSSION**

16 **I. Numerical Limits on Interrogatories**

17 Plaintiff contends that defendant Koutoubi exceeded the permissible number of
18 interrogatories. Federal Rule of Civil Procedure 33(a)(1) provides: “[u]nless otherwise stipulated
19 or ordered by the court, a party may serve on any other party no more than 25 written
20 interrogatories, including all discrete subparts.” Rule 33 does not, however, define “discrete
21 subparts.” The Advisory Committee states:

22 Parties cannot . . . join[] as ‘subparts’ questions that seek information about
23 discrete separate subjects. However, a question asking about communications of a
24 particular type should be treated as a single interrogatory even though it requests
that the time, place, persons present, and contents be stated separately for each
such communication.

25 Fed. R. Civ. P. 33 Advisory Committee Notes regarding 1993 Amendment.

1 Courts have formulated various tests for determining when subparts are actually a
2 separate interrogatory. Interrogatory subparts are counted as a single interrogatory if “they are
3 logically or factually subsumed within and necessarily related to the primary question.” Safeco
4 of Am. v. Rawstron, 181 F.R.D. 441, 445 (C.D. Cal. 1998). “A single question asking for several
5 bits of information related to the same topic counts as one interrogatory. (E.g., ‘State the name,
6 address and telephone number of each person present at the meeting.’)” Hasan v. Johnson, No.
7 1:08-cv-00381-GSA-PC, 2012 WL 569370, at *4 (E.D. Cal. Feb. 21, 2012). However, if the
8 interrogatory poses a question that can be answered fully and completely without answering the
9 second question, then the subparts are discrete. Walech v. Target Corp., No. C11-0254RAJ,
10 2012 WL 1068068, at *3 (W.D. Wash. Mar. 28, 2012); Estate of Manship v. U.S., 232 F.R.D.
11 552, 555 (M.D. La. 2005). Similarly, an inquiry requesting the same information regarding
12 disparate claims, defenses, or events counts as multiple interrogatories. Jovanovich v. Redden
13 Marine Supply, Inc., No. C10-0924RSM, 2011 WL 4459171, at *3 (W.D. Wash. Sept. 26,
14 2011); Collaboration Props., Inc. v. Polycom, Inc., 224 F.R.D. 473, 475 (N.D. Cal. 2004). “Since
15 many of these formulations are difficult to apply or perhaps even conflicting, some courts have
16 taken a ‘pragmatic approach,’ looking to see if an interrogatory threatens the purpose of Rule 33
17 by combining into one interrogatory several lines of inquiry that should be kept separate.”
18 Paananen v. Cellco Partnership, 2009 WL 3327227, at *2 (W.D. Wash. Oct. 8, 2009) (citing
19 Willingham v. Ashcroft, 226 F.R.D. 57, 59 (D.D.C. 2005), and Banks v. Office of Senate
20 Sergeant-at-Arms, 222 F.R.D. 7, 10 (D.D.C. 2004)). With these evaluative tools in mind, the
21 Court will determine the number of interrogatories that defendant Koutoubi has propounded.

22 **A. Defendant’s Interrogatories**

23 **i. Interrogatory No. 1**

24 Interrogatory No. 1 asks plaintiff to state: a) her full name, date of birth, and social
25 security number; b) whether she has ever been known by any other name and the period of time
26

1 during which she was known by the name; and c) whether her name has ever been legally
2 changed, and if so when, where, and through what procedure. Turner Decl. (Dkt. # 84) Ex. 1 at
3 11. Although this interrogatory presents a number of subparts, they are all part of a single line of
4 inquiry relating to plaintiff's identity and should be counted as one interrogatory.

5 **ii. Interrogatory No. 2**

6 The parties agree that Interrogatory No. 2, which requests plaintiff's residential
7 history, is a single interrogatory. Motion (Dkt. # 83) at 6; Response (Dkt. # 87) at 6.

8 **iii. Interrogatory No. 3**

9 Interrogatory No. 3 asks plaintiff to identify the name and address of each
10 grammar school, high school, college, university, or vocational school that she has attended, the
11 years of her attendance, and the degree or diploma she received, if any. Turner Decl. (Dkt. # 84)
12 Ex. 1 at 12. This interrogatory presents a single line of inquiry relating to plaintiff's educational
13 history and should be counted as a single interrogatory.

14 **iv. Interrogatory No. 4**

15 Interrogatory No. 4 asks plaintiff to identify: a) the names and addresses of her
16 past employers, including any periods of self-employment for the past five years; b) the dates of
17 commencement and termination of each such employment, including any periods of
18 self-employment; c) her compensation for each such employment; d) her immediate supervisor
19 for each such employment; e) if the employment has been terminated, the reason for the
20 termination; and f) her job titles, job duties and responsibilities for each employment. Turner
21 Decl. (Dkt. # 84) Ex. 1 at 12–13.

22 This interrogatory presents two lines of inquiry and should be counted as two
23 interrogatories. The first line of inquiry relates to the theme of plaintiff's employment history.
24 Certain subparts—the names and addresses, the dates, the compensation, the supervisors, and the
25 titles, duties and responsibilities—are logically subsumed within the employment history
26

1 inquiry. The second inquiry asks whether plaintiff has ever been terminated and the reasons for
2 any terminations. The details of any terminations in plaintiff's past is a thematically distinct
3 inquiry from establishing her employment history and should be treated as a separate
4 interrogatory.

5 **v. Interrogatory No. 5**

6 This interrogatory asks plaintiff to provide information related to every complaint,
7 charge, grievance, and claim filed by her or on her behalf against any employer or educational
8 institution. Turner Decl. (Dkt. # 84) Ex. 1 at 13. Despite the reference to employment and
9 education, the interrogatory simply seeks identifying information about plaintiff's prior disputes
10 and could have been asked more broadly to encompass all complaints, charges, grievances, and
11 claims. The fact that defendant Koutoubi limited his inquiry to disputes arising out of
12 employment and education does not multiply the number of interrogatories.

13 **vi. Interrogatory No. 6**

14 Interrogatory No. 6 asks plaintiff to provide information related to any criminal
15 charges filed against her. Turner Decl. (Dkt. # 84) Ex. 1 at 13. This interrogatory presents one
16 line of inquiry and should be counted as one interrogatory.

17 **vii. Interrogatory No. 7**

18 Interrogatory No. 7 asks plaintiff to state the factual basis for each of the causes of
19 action alleged in the Second Amended Complaint against defendant Koutoubi. Turner Decl.
20 (Dkt. # 84) Ex. 1 at 14. It is not clear which of the thirteen claims are asserted against defendant
21 Koutoubi, however, and plaintiff offers no assistance in this regard, having declined to provide
22 any analysis of Interrogatories Nos. 5-16. Response (Dkt. # 87) at 7. It appears that plaintiff's
23 claims against defendant Koutoubi can be grouped into two categories: claims of sexual
24 harassment and claims for emotional distress. Fully and completely responding to an inquiry
25 regarding the facts supporting a claim for sexual harassment will not necessarily reveal the facts
26

1 supporting a claim for emotional distress damages. Thus, the Court finds that this interrogatory
2 presents (at least) two distinct lines of inquiry.

3 **viii. Interrogatory No. 8**

4 Interrogatory No. 8 asks plaintiff to identify every person who has knowledge of
5 the facts and circumstances surrounding her claims, and the subject matter of these persons'
6 knowledge. Turner Decl. (Dkt. # 84) Ex. 1 at 14. This interrogatory presents a single line of
7 inquiry and should be treated as a single interrogatory.

8 **ix. Interrogatories No. 9 and 10**

9 Interrogatories No. 9 and 10 each ask plaintiff to identify persons to whom she
10 reported defendant Koutoubi's alleged sexual harassment (both at Bastyr and elsewhere) and to
11 identify any documents related to the same. Turner Decl. (Dkt. # 84) Ex. 1 at 14–15. These
12 interrogatories present two lines of inquiry. The first asks for the identity of certain individuals
13 while the second asks plaintiff to identify the evidence related to the same. See Willingham, 226
14 F.R.D. at 60 (“[A] demand for information about a certain event and for the documents about it
15 should be counted as two separate interrogatories because knowing that an event occurred is
16 entirely different from learning about the documents that evidence it occurred.”) (internal
17 citations omitted); Paananen, 2009 WL 3327227, at *3 (“Even though the two inquiries do relate
18 to the same theme, neither is subsumed within the other because the inquiry into the facts
19 supporting a defense can be answered fully and completely without identifying the documentary
20 support for those facts. The separate question of documentary support does not seek ‘who, what,
21 when, where, and how’ information, but instead asks a separate question: how do you know?”).
22 Interrogatories No. 9 and No. 10 should each be counted as two interrogatories.

23 **x. Interrogatory No. 11**

24 This interrogatory asks plaintiff to identify any persons whom she, or anyone
25 acting on her behalf, has obtained statements from related to the allegations set forth in her
26

1 complaint and to explain the contents of any such statement. Turner Decl. (Dkt. # 84) Ex. 1 at
2 15. This interrogatory seeks information regarding witness statements (the who and the what)
3 and presents a single line of inquiry.

4 **xi. Interrogatory No. 12**

5 This interrogatory asks plaintiff to identify all documents, materials, presentations,
6 outlines, research projects, publications, supporting data, articles and information that defendant
7 Koutoubi researched, reviewed, revised, authored or prepared for plaintiff that were related to
8 her class or clinic work at Bastyr University. Turner Decl. (Dkt. # 84) Ex. 1 at 16. This
9 interrogatory presents one line of inquiry and should be counted as one interrogatory.

10 **xii. Interrogatory No. 13**

11 This interrogatory asks plaintiff to “summarize the context” of her conversations
12 with defendant Koutoubi during several in-person meetings. Turner Decl. (Dkt. # 84) Ex. 1 at
13 17. This interrogatory presents one line of inquiry and should be counted as one interrogatory.

14 **xiii. Interrogatory No. 14**

15 This interrogatory asks plaintiff to identify any physicians, counselors,
16 psychiatrists, psychologists, mental health specialists, priests or pastors who have treated her any
17 time in the last five years. Turner Decl. (Dkt. # 84) Ex. 1 at 17. This interrogatory presents one
18 line of inquiry and should be counted as one interrogatory.

19 **xiv. Interrogatory No. 15**

20 This interrogatory asks plaintiff to state the nature and amount of damages she is
21 alleging, including supporting calculations. Turner Decl. (Dkt. # 84) Ex. 1 at 17–18. This
22 interrogatory presents one line of inquiry and should be counted as one interrogatory.

23 **xii. Interrogatory 16.**

24 Interrogatory No. 16 seeks information relating to all expert witnesses plaintiff
25 intends to call at trial and the opinions those experts plan to offer. Turner Decl. (Dkt. # 84) Ex. 1
26

1 at 17–18. This interrogatory presents one line of inquiry and should be counted as one
2 interrogatory.

3 **B. Total Number of Interrogatories**

4 For all of the foregoing reasons the Court finds that defendant Koutoubi
5 expounded only twenty interrogatories. Therefore, the Court finds that he has not exceeded the
6 number of interrogatories allowed by Federal Rule of Civil Procedure 33(a)(1).

7 **II. Other Objections**

8 **A. Relevance**

9 Plaintiff objects to Interrogatories Nos. 3, 4, 10, 12, and 14 on the ground that they
10 are not likely to lead to the discovery of admissible information. “Unless otherwise limited by
11 court order, the scope of discovery is as follows: Parties may obtain discovery regarding any
12 nonprivileged matter that is relevant to any party’s claim or defense” Fed. R. Civ. P.
13 26(b)(1). “Evidence is relevant if it has ‘any tendency to make the existence of any fact that is of
14 consequence to the determination of the action more probable or less probable than it would be
15 without the evidence.’ ” United States v. Stever, 603 F.3d 747, 753 (9th Cir. 2010) (quoting
16 Fed. R. Evid. 401) (emphasis in original). The Court finds that all of defendant Koutoubi’s
17 interrogatories seek information that is clearly relevant to the claims and defenses asserted in this
18 litigation.

19 **B. Undue Burden or Harm**

20 Plaintiff further argues that forcing her to respond to a number of the
21 interrogatories would cause undue burden or harm and seeks a protective order.¹ Pursuant to
22 Federal Rule of Civil Procedure 26(c), the Court may limit the frequency or scope of discovery
23 “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or

24
25 ¹ Defendant’s objections regarding a lack of certification are overruled. Defense counsel has
26 stated that both the 25-interrogatory limit and plaintiff’s secondary objections were discussed on
December 17, 2012. Turner Decl. (Dkt. # 84) at ¶ 10.

1 expense” In determining whether a burden is “undue,” the Court considers whether: i) the
2 discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other
3 source that is more convenient, less burdensome, or less expensive; ii) the party seeking
4 discovery has had ample opportunity to obtain the information by discovery in the action; or
5 iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the
6 needs of the case, the amount in controversy, the parties’ resources, the importance of the issues
7 at stake in the action, and the importance of the discovery in resolving the issues.

8 **i. “Stalker Like Behavior”**

9 Plaintiff objects to supplying her date of birth and social security number as
10 requested by Interrogatory No. 1 and her present and past addresses as requested by
11 Interrogatory No. 2 on the grounds that defendant Koutoubi has allegedly engaged in “stalker
12 like behavior” and the information requested could be used to facilitate such behavior. Turner
13 Decl. (Dkt. # 84) Ex. 1 at 11. This assertion is consistent with plaintiff’s underlying claims of
14 sexual harassment, and defendant Koutoubi has not shown that he needs the information in order
15 to defend himself from or to adequately investigate plaintiff’s claims. The Court therefore
16 GRANTS plaintiff’s motion for a protective order as to the disclosure of her date of birth, social
17 security number, and present and past addresses.

18 **ii. Disclosure of Expert Witnesses**

19 Interrogatory No. 16 and Request for Production No. 7 seek the identity and
20 reports of all experts who are expected to testify in this matter. Pursuant to Fed. R. Civ. P.
21 26(a)(2)(D), disclosure of experts and their reports shall be “at the times and in the sequence that
22 the court orders” or 90 days before trial. The Court assumes the parties complied with the
23 December 19, 2012, deadline for exchanging expert reports and will not compel production in
24 response to discovery requests. See, e.g., Trevino v. ACB Am., Inc., 232 F.R.D. 612, 617 (N.D.
25 Cal. 2006) (denying motion to compel information prior to the time mandated by the case
26

1 scheduling order).

2 **iii. Overbreadth and Undue Burden**

3 Plaintiff objects to Interrogatories Nos. 3, 4, 10, 12, and 14 and Requests for
4 Production Nos. 4 and 5 and on the grounds that they are overly broad and unduly burdensome.
5 Turner Decl. (Dkt. # 84) Ex. 1 at 12-13, 15-17. With regards to most of these requests, plaintiff
6 has not provided the court sufficient information to determine if they are objectionable on the
7 stated grounds, and it is not obvious to the Court that they are. The Court therefore GRANTS
8 defendant Koutoubi's motion to compel with respect to Interrogatories Nos. 3, 4, 10, and 14 and
9 Request for Production No. 5.

10 Plaintiff argues that Interrogatory No. 12 and Request for Production No. 4 are
11 overly broad and unduly burdensome because defendant Koutoubi has access to the information
12 and documents as readily as plaintiff does. Response (Dkt. # 87) at 9. This interrogatory and
13 request for production ask for documents and other information prepared by defendant Koutoubi
14 for plaintiff related to her class work or clinic work at Bastyr University. Although defendant
15 Koutoubi may be aware or have copies of some of the requested information and documentation,
16 there is no reason to assume that he would have kept copies of all materials prepared for
17 plaintiff. In light of the relatively low burden of identifying and producing any responsive
18 documents and the relatively high likelihood that defendant Koutoubi does not have all
19 responsive information, the motion to compel with respect to Interrogatory No. 12 and Request
20 for Production No. 4 is GRANTED.

21 **iv. Duplicate Requests**

22 Plaintiff objects to Interrogatories Nos. 4 and 7 on the ground that plaintiff was
23 asked about the subject matter of these interrogatories during her deposition. Parties may utilize
24 any of the methods of discovery set forth in the Federal Rules of Civil Procedure, and plaintiff
25 makes no effort to show that the questions asked during deposition are duplicative of the
26

1 carefully-drafted interrogatories at issue here. The motion to compel with respect to
2 Interrogatories Nos. 4 and 7 is GRANTED.

3 **C. Attorney-Client Privilege and the Work Product Doctrine**

4 Plaintiff objects to Interrogatories Nos. 9, 10, and 11 on the basis of attorney-client
5 privilege and the work product doctrine. The attorney-client privilege protects confidential
6 communications between attorneys and clients, which are made for the purpose of giving legal
7 advice. Upjohn Co. v. United States, 449 U.S. 383, 389 (1981). The work product doctrine
8 protects “from discovery documents and tangible things prepared by a party or his representative
9 in anticipation of litigation.” Admiral Ins. Co. v. U.S. Dist. Ct., 881 F.2d 1486, 1494 (9th Cir.
10 1989).

11 Interrogatory No. 9 seeks the identity of persons associated with Bastyr to whom
12 plaintiff recounted her allegations of sexual harassment and the content of those
13 communications. The interrogatory seeks information regarding communications that are not
14 confidential and have no obvious tie to counsel or counsel’s preparations for litigation.
15 Interrogatory No. 10 seeks similar information regarding persons not associated with Bastyr.
16 This inquiry likely sweeps within its scope communications plaintiff had with counsel for
17 purposes of obtaining legal advice. To that extent, the motion for protective order is granted.
18 Interrogatory No. 11 seeks information regarding any and all witness statements obtained by
19 plaintiff and/or her counsel. Certain statements are likely protected by the work product doctrine
20 and need not be produced. Plaintiff shall supplement her interrogatory responses to disclose any
21 communications and witness statements that do not fairly fall into the attorney-client privilege or
22 work product doctrine. To the extent any documents responsive to Request for Production No. 3
23 are withheld on the grounds of privilege, they must be included in a privilege log.

24 **D. Physician-Patient and Priest-Penitent Privilege**

25 Interrogatory No. 14 and Request for Production No. 5 seek the identity of all of
26

1 plaintiff's medical, mental health, and pastoral providers and copies of all medical records from
2 the past five years. Plaintiff objects on the grounds that the requests violate the physician-patient
3 privilege and the priest-parishioner privilege.

4 **i. Physician-Patient Privilege**

5 The physician-patient privilege does not apply in this case. The federal law of
6 privilege governs federal question cases even where, as here, the Court exercises supplemental
7 jurisdiction over pendent state law claims. Religious Tech. Center v. Wollersheim, 971 F.2d 364,
8 367 n.10 (9th Cir. 1992) (refusing to apply California litigation privilege in copyright action with
9 pendent state law claims). There is no physician-patient privilege recognized under federal
10 common law or in the Ninth Circuit. In re Grand Jury Proceedings, 867 F.2d 562, 564 (9th Cir.
11 1989) (noting Ninth Circuit's refusal to adopt a physician-patient privilege), abrogated on other
12 grounds by Jaffee v. Redmond, 518 U.S. 1 (1996) (recognizing a psychotherapist-patient
13 privilege in federal law). See also Hutton v. City of Martinez, 219 F.R.D. 164, 166 (N.D. Cal
14 2003) ("The physician-patient privilege is not recognized by federal common law, federal
15 statute, or the U.S. Constitution.").

16 If, in the alternative, plaintiff meant to assert a psychotherapist-patient privilege
17 rather than a physician-patient privilege,² the privilege has been waived in this matter. A claim
18 for damages based on "garden variety" emotional distress does not necessarily waive the
19 psychotherapist-patient privilege. See, e.g., Fitzgerald v. Cassil, 216 F.R.D. 632, 639
20 (N.D. Cal. 2003). In this case, however, plaintiff has alleged two causes of action based entirely
21 on the assertion that she has suffered emotional distress. The jury will not be asked to simply
22 determine compensable damages keeping in mind the emotional distress plaintiff experienced as
23 a natural result of defendant's conduct. Rather, specific evidence of emotional distress will have

24
25 ² The Court considers the possibility of a psychotherapist-patient privilege only because
26 defendant Koutoubi addressed the privilege in his motion to compel. Motion (Dkt. # 83) at 9-10.

1 to be presented if plaintiff hopes to establish two of her claims. See, e.g., Hegel v. McMahon,
2 136 Wn.2d 122, 130, 960 P.2d 424, 429 (1998); Birklid v. Boeing Co., 127 Wn.2d 853, 867, 904
3 P.2d 278, 296 (1995). Having placed her mental and emotional health at issue, plaintiff has
4 waived any psychotherapist-patient privilege that may have attached. See Lahrichi v. Lumera
5 Corp., 433 Fed.Appx. 519, 521 (9th Cir. 2011) (holding that claims of negligent and intentional
6 infliction of emotional distress waive psychotherapist-patient privilege). Plaintiff's objections
7 and request for a protective order based on either the physician-patient or the psychotherapist-
8 patient privilege are DENIED.

9 **ii. Priest-Penitent Privilege**

10 The United States Supreme Court has long recognized a priest-penitent privilege.
11 The privilege has been stated broadly as "embracing any confession by a penitent to a minister in
12 his capacity as such to obtain such spiritual aid as was sought and held out in this instance."
13 Mockaitis v. Harclerod, 104 F.3d 1522, 1522 (9th Cir. 1997) (internal citations omitted),
14 overruled on other grounds by City of Boerne v. Flores, 521 U.S. 507 (1997). The Court
15 therefore DENIES defendant Koutoubi's motion to compel with respect to any information
16 plaintiff has withheld which is protected by the priest-penitent privilege.

17 **E. Computation of Damages**

18 Interrogatory No. 15 and Request for Production No. 6 seek the basis for plaintiff's
19 damage calculation. Plaintiff responded by referring to her Initial Disclosure, dated January 26,
20 2012, and asserting \$1,000,000 in damages for mental pain/emotional distress. Turner Decl.
21 (Dkt. # 84) Ex. 1 at 17-18. Plaintiff filed a supplemental disclosure on January 1, 2013, in which
22 she identified her lost profits according to a formula agreed upon between her and Bastyr. She
23 also identified, among other damages, emotional distress damages in the amount of \$1,000,000.
24 She provided no additional information explaining or supporting this figure. Berner Decl. (Dkt. #
25 88) Ex. 6 at 3-4.

1 While plaintiff is not expected to predict how the jury will react to the evidence at
2 trial, the Federal Rules require her to provide a computation related to each category of damages
3 claimed and supporting documents at the outset of the case (Fed. R. Civ. P. 26(a)(1)(A)(iii)) and
4 to supplement or correct her computation as needed (Fed. R. Civ. P. 26(e)(1)). Although
5 computations of emotional distress damages can be “difficult to quantify” and are “typically
6 considered a fact issue for the jury” (E.E.O.C. v. Wal-Mart Stores, Inc., 276 F.R.D. 637, 639
7 (E.D. Wash. 2011) (collecting cases), plaintiff has alleged a specific dollar amount, suggesting
8 that quantification is possible and that she has some factual basis for the \$1,000,000 claim. If
9 plaintiff intends to request a specific dollar amount as just compensation for her emotional
10 distress, she shall supplement her Rule 26 disclosures to the extent that there are any facts or
11 documents supporting the calculation. Failure to adequately disclose the basis for the claim may
12 prevent plaintiff from suggesting a specific amount to the jury. Sandoval v. American Bldg.
13 Maint. Indus., Inc., 267 F.R.D. 257, 282 (D. Minn. 2007).

14 **III. Attorneys’ Fees**

15 Federal Rule of Civil Procedure 37(a)(5)(A) states that if a motion to compel is
16 granted, or if a disclosure were made after the motion was filed, “the court must, after giving an
17 opportunity to be heard, require the party or deponent whose conduct necessitated the motion,
18 the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses
19 incurred in making the motion, including attorney’s fees,” with certain limited exceptions. This
20 same fee-shifting provision applies when a motion for protective order is granted. Fed. R. Civ.
21 P. 26(c) (3).

22 Despite some limited success on her motion for protective order, it is clear that
23 defendant Koutoubi’s motion to compel was necessitated by plaintiff’s unfounded and
24 unsupportable method of counting interrogatories, resulting in her flat refusal to answer any
25 interrogatories beyond Interrogatory No. 4. Plaintiff’s conduct was not substantially justified and
26

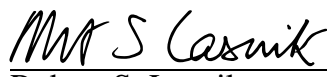
1 the fact that a few of her alternative arguments had merit does not justify her blanket refusal to
2 respond to properly propounded discovery requests.

3 **CONCLUSION**

4 For all of the foregoing reasons, defendant Koutoubi's motion to compel (Dkt.
5 # 83) is GRANTED in part and plaintiff's cross-motion for a protective order (Dkt. # 87) is
6 GRANTED in part. Plaintiff need not provide her birth date, social security number, or present
7 or past addresses in response to Interrogatories No. 1 and 2, nor need she provide information or
8 documentation protected by the attorney-client privilege, the work product doctrine, or the
9 priest-penitent privilege as described in this order. To the extent any document is withheld
10 based on one of these privileges, however, a privilege log must be produced within fourteen days
11 of the date of this order. Plaintiff shall supplement all other discovery responses within the same
12 time frame.

13 Defendant's request for attorney's fees has merit. Defendant shall submit a
14 statement of reasonable costs and fees incurred in making this motion (excluding any costs and
15 fees associated with the meet and confer process) within fourteen days of the date of this order.
16 Plaintiff's response, if any, is due seven days after the receipt of defendant's submission.

17 Dated this 8th day of April, 2013.

18 
19 Robert S. Lasnik
20 United States District Judge
21
22
23
24
25
26