

1 was not satisfied with that production date and insisted that the privilege log be produced on
2 December 19th, rather than December 20th. Plaintiff's intransigence on this issue is
3 inexplicable: the discovery cut off remains months away and there is no indication that the exact
4 date of production was of any moment. It appears that plaintiff's counsel filed the motion to
5 compel not because the parties had reached an impasse, but because she was apprehensive that
6 defendant would not produce the privilege log on December 20th as promised. This is hardly a
7 genuine disagreement and does not justify forcing defendant and the Court to expend time and
8 resources on what was, in essence, a non-issue.

9 With regards to Interrogatory No. 4, plaintiff made two attempts to revise the
10 inquiry in response to defendant's objections. Upon receipt of plaintiff's second effort on
11 December 12, 2013, defendant identified the problems it would have in responding to the revised
12 interrogatory. Defendant did not rely on a list of boilerplate objections and instead attempted to
13 explain why the request was vague, overbroad, and irrelevant. Defendant also informed plaintiff
14 that no other claims of harassment or discrimination had ever been filed against it and expressed
15 its willingness to consider additional limitations that would overcome its objections. Decl. of
16 Kathleen Phair Barnard (Dkt. # 11), Ex. D at 62. Despite the fact that defendant was willing to
17 engage in further dialogue in an effort to reach an appropriate balance between the practical
18 difficulties that would arise in responding to plaintiff's revised interrogatory and plaintiff's
19 interest in the information sought, plaintiff made no response and filed this motion, as
20 threatened, on December 19th.

21 Because there was no actual disagreement with regards to the privilege log and
22 because plaintiff failed to confer to an impasse regarding the appropriate scope of Interrogatory
23 No. 4, the motion to compel is DENIED for failure to comply with Fed. R. Civ. P. 37(a)(1) and
24 LCR 37(a)(1).

25 (2) If the Court were to consider the merits of defendant's objections to Interrogatory
26 No. 4, those objections would be upheld and the motion to compel would be denied. Plaintiff

1 demands that defendant identify every derogatory comment, written or verbal, ever made by an
2 employee, supervisor, or manager of Delta Electric Motors that relates to a characteristic
3 protected under Title VII. Decl. of Kathleen Phair Barnard (Dkt. # 11), Ex. D at 64. The request
4 is not limited as to time, persons, or situation. A derogatory joke told eight years ago by a Delta
5 Electric Motors employee to his neighbor at a backyard picnic would be responsive as the
6 interrogatory is currently written. Nor does the inquiry seek only those comments about which
7 defendant knows, such as those which have given rise to a complaint or claim of some kind. The
8 inquiry would essentially require defendant to ask every employee, supervisor, and manager
9 whether they had ever, in any context, made a derogatory comment regarding race, color,
10 religion, sex, or national origin or whether they had ever heard such a derogatory comment made
11 by another employee, supervisor, or manager of defendant. While plaintiff might like the
12 opportunity to uncover any and all hidden currents of discrimination flowing through the
13 workplace, the Interrogatory is little more than a fishing expedition only tangentially related to
14 plaintiff's situation and the claims he has asserted. While a more narrow inquiry might be
15 justified, Interrogatory No. 4 is unduly burdensome in relation to its relevance.


16 (3) Pursuant to 28 U.S.C. § 1927:

17 Any attorney or other person admitted to conduct cases in any court of the United
18 States or any Territory thereof who so multiplies the proceedings in any case
19 unreasonably and vexatiously may be required by the court to satisfy personally
20 the excess costs, expenses, and attorneys' fees reasonably incurred because of such
conduct.

21 Similarly, Fed. R. Civ. P. 37(a)(5)(B) also allows an award of fees when a motion to compel is
22 filed without substantial justification. Although defendant has not requested an award of fees,
23 the Court has considered the application of both the statute and the Rule in the circumstances
24 presented here. Out of respect for counsel and her firm, the Court will give them the benefit of
25 the doubt and presume that the intransigence that led to the filing of this motion was an
26 aberration that will not be repeated.

1 For all of the foregoing reasons, plaintiff's motion to compel is DENIED. .

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3 Dated this 3rd day of March, 2014.

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5 Robert S. Lasnik
6 United States District Judge
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