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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOCTORS MEDICAL CENTER OF
MODESTO, INC., a California Corporation,

Plaintiff,

v.

PRINCIPAL LIFE INSURANCE
COMPANY, and DOES 1 through 25,
inclusive,

Defendant.

CASE NO. 1:10-cv-00452-LJO-SKO

**ORDER ON DEFENDANT'S
"MOTION FOR DISCOVERY"**

(Docket No. 20)

I. INTRODUCTION

Plaintiff Doctors Medical Center of Modesto, Inc. ("DMC" or "Plaintiff") filed suit against Defendant Principal Life Insurance Company ("Principal" or "Defendant") in Stanislaus County Superior Court alleging claims for breach of contract, breach of an implied contract, negligent misrepresentation, and quantum meruit. (Doc. 1 at 8-27.) According to Plaintiff's complaint, DMC entered into an agreement with Principal to provide medical services at a discounted rate to patients who were participants in a program offered by Principal. (Doc. 1 at 9, ¶¶ 6-7.) DMC provided medical services to four participants of Principal's plan, but Principal failed to pay for the full amount of the services rendered to these participant patients in violation of the agreement between DMC and Principal. (Doc. 1, 11-15, ¶¶ 22-58.) Principal removed the action from Stanislaus

1 County Superior Court on March 12, 2010.

2 **II. PROCEDURAL AND FACTUAL BACKGROUND**

3 On October 14, 2010, Principal served DMC with a First Request for Admissions numbered
4 1 through 22. (Doc. 20-1, Exhibit A.) Responses to the Request for Admissions ("RFAs") were due
5 on November 18, 2010. On November 18, 2010, one of DMC's counsel, Mr. Greg Lehman,
6 contacted Principal's counsel to request an extension of time to respond to the admissions; Principal's
7 counsel agreed to extend the time to respond until Tuesday, November 23, 2010. (Doc. 20-1, Exhibit
8 B; Doc. 26-1, ¶ 2.)

9 On November 24, 2010, DMC served its responses to Principal's RFAs. (*See* Doc. 20-1,
10 Exhibit C; *see also* Doc. 26-1, ¶¶ 2-3 ("Defense attorney Christopher Yoo granted an extension until
11 11/23/2010 to respond to the requests for admissions. The Helton Law Group mailed the legally and
12 factually sufficient responses I drafted to the requests for admissions on 11/24/2010, one day late as
13 I was still waiting for the receipt of the verification from our client.").)

14 Upon review of DMC's responses, Principal's counsel, apparently dissatisfied with the
15 sufficiency of the responses, contacted DMC's counsel on December 10, 2010, regarding RFAs
16 numbers 5 through 8. (Doc. 20-1, ¶ 5.) According to Principal, DMC's counsel agreed to withdraw
17 the objections and supplement the responses. (Doc. 20-1, ¶ 5.) Despite repeated negotiations
18 between the parties' attorneys, Principal maintains that DMC has never supplemented its responses
19 as agreed. (Doc. 20-1, ¶ 7.) Principal requests that the Court deem RFAs 5 through 8 admitted
20 because DMC failed to provide substantive responses. (Doc. 20-1, ¶ 12.)

21 DMC asserts that it unequivocally denied each of the RFAs and that none of its responses
22 is insufficient. (*See* Doc. 26, 3:17-18 ("Plaintiff unequivocally denied RFAs 1-4, 5-8 (the only ones
23 sought to be admitted in defendant's motion) and 9-22.").) DMC argues that Principal does not bring
24 the present motion in good faith because it is not seeking to deem all of the RFAs admitted, only
25 numbers 5 through 8. (Doc. 26, 4:3-8.) DMC points out that Principal has never asserted that the
26 responses to the RFAs were late or that they were deemed admitted. DMC asserts this is evidenced
27 by the fact that Principal's counsel continued to ask DMC's counsel for additional responses to RFAs
28 5 through 8 after the RFAs were served.

1 **III. DISCUSSION**

2 **A. Legal Standard**

3 The Federal Rules of Civil Procedure provide the following with regard to the time to
4 respond to Requests for Admission:

5 A matter is admitted unless, within 30 days after being served, the party to whom the
6 request is directed serves on the requesting party a written answer or objection
7 addressed to the matter and signed by the party or its attorney. A shorter or longer
8 time for responding may be stipulated to under Rule 29 or be ordered by the court.

9 Fed. R. Civ. P. 36(a)(3). Accordingly, if the 30th day is a weekend or a legal holiday, the response
10 is not due until the next business day. Fed. R. Civ. P. 6(a)(3). An additional three days are allowed
11 for responses where the Requests for Admission are served by mail or other applicable means under
12 Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Fed. R. Civ. P. 6(d).

13 The failure to timely respond to Requests for Admission results in *automatic admission* of
14 the matters requested. Fed. R. Civ. P. 36(a)(3). "No motion to establish admissions is needed
15 because Federal Rule of Civil Procedure 36(a) is self executing." *Fed. Trade Comm'n v. Medicor*
16 *LLC*, 217 F. Supp. 2d 1048, 1053 (C.D. Cal. 2002); *Garcia v. City of Ceres*, No. CV F. 08-1720 LJO
17 SKO, 2010 WL 2490917, at *4 n.5 (E.D. Cal. June 16, 2010). Once admitted, the matter is
18 conclusively established "unless the court, on motion, permits the admission to be withdrawn or
19 amended." Fed. R. Civ. P. 36(b).

20 Where responses have been timely served but are deficient, the requesting party may move
21 for an order to determine the sufficiency of the response. Fed. R. Civ. P. 36(a)(6). "On finding that
22 [a response] does not comply with this rule, the court may order either that the matter is admitted or
23 that an amended [response] be served." *Id.*

24 Once admitted due to (1) a complete failure to respond, (2) untimeliness, or (3) insufficiency,
25 an admission cannot be amended or withdrawn except by leave of court. Fed. R. Civ. P. 36(b); *999*
26 *v. C.I.T. Corp.*, 776 F.2d 866, 869 (9th Cir. 1985).

27 **B. Untimely Responses to Requests for Admissions**

28 Although the parties dispute the sufficiency of DMC's responses to RFAs numbers 5 through
8, the parties agree that the responses to the RFAs were served late. The responses were initially due

1 30 days from the date of service of the requests. Fed. R. Civ. P. 36(a)(3). As the RFAs were served
2 on October 14, 2010 (*see* Doc. 20-1, Exhibit A at 13), the responses were due on Saturday,
3 November 13, 2010. Because the response deadline was a Saturday, the responses were then due
4 on the next business day, which was Monday, November 15, 2010. Fed. R. Civ. P. 6(a)(3).
5 Additionally, because the RFAs were served by mail (*see* Doc. 20-1, Exhibit A), three additional
6 days were added resulting in a response deadline of November 18, 2010. Fed. R. Civ. P. 5(b)(2)(C),
7 6(d).

8 On November 18, 2010, the parties stipulated that DMC would have until Tuesday,
9 November 23, 2010, to serve its responses. (*See* Doc. 20-1, Exhibit B.) Despite that stipulation, the
10 responses were served on November 24, 2010. (Doc. 20-1, Exhibit C at 28; Doc. 26-1, ¶ 3 ("The
11 Helton Law Group mailed the legally and factually sufficient responses I drafted to the requests for
12 admissions on [November 24, 2010,] one day late as I was still waiting for the receipt of the
13 verification from our client.")) The Court finds that DMC's responses to Principal's October 14,
14 2010, RFAs were untimely.

15 Despite the self-executing nature of Rule 36 with regard to the automatic admission of
16 untimely responses, the Ninth Circuit has long recognized the district court's discretion to permit late
17 responses to requests for admission. *See, e.g., French v. United States*, 416 F.2d 1149, 1152 (9th
18 Cir. 1968) ("A trial judge has discretion to permit a late response to a request for admissions made
19 pursuant to [Rule 36], and thus relieve a party of apparent default.") The language of Rule 36(a)
20 provides a court with discretion to extend the time for responding to requests for admissions, even
21 after the time to respond has expired.¹ Fed. R. Civ. P. 36(a)(3) ("A shorter or longer time for
22 responding may be stipulated to under Rule 29 or be ordered by the court.").

23 Nevertheless, the Court is hesitant to exercise such discretion here. The Federal Rules of
24 Civil Procedure are not suggestions; they are the rules of practice in federal court. Attorneys
25

26 ¹ *See, e.g., United States v. Lake Killarney Apartments, Inc.*, 443 F.2d 1170 (5th Cir. 1971) (per curiam)
27 (government allowed to serve untimely answers to requests for admission not an abuse of discretion); *F.C., III v. Cnty.*
28 *of L.A.*, No. CV 10-169 CAS (RZx), 2010 WL 5157339, at *4 (C.D. Cal. Dec. 13, 2010) (district court "construes
plaintiffs' opposition [to the motion for summary judgment] as a motion to withdraw or amend their admissions pursuant
to Fed. R. Civ. P. 36(b)); *A. Farber & Partners, Inc. v. Garber*, 257 F.R.D. 250, 257-58 (C.D. Cal. 2006) (district court
exercises discretion to relieve party of deemed admitted effect of untimely responses to requests for admission).

1 admitted to practice have a duty of competence to their clients to understand and appreciate the
2 applicable rules, including those particular to federal court practice. The Court's concern is that
3 exercising discretion to relieve DMC from these admissions undercuts the self-executing nature of
4 Rule 36 and tacitly implies that a party's or its attorney's failure to abide by the rules of practice is
5 of little or no consequence.

6 On the other hand, discretion also requires the Court to examine competing factors and
7 interests. The Court must weigh the public policy favoring the disposition of cases on their merits
8 rather than on technical violations of procedural rules, consider the scope and purpose of the Federal
9 Rules of Civil Procedure, and assess the particular circumstances presented. DMC asserts that if the
10 RFAs are deemed admitted the result is essentially a case-terminating sanction as the RFAs,
11 especially numbers 5 through 8, "eviscerate" Plaintiff's case and will prevent the matter from being
12 decided on the merits. (*See, e.g.*, Doc. 26, 6:27-28.) The Ninth Circuit has repeatedly held, in a
13 variety of procedural contexts, that the public policy favoring disposition of cases on their merits
14 strongly counsels against dismissal of a case or sanctions that are ultimately case-terminating. *See,*
15 *e.g., In re Phenylpropanolamine Prods. Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006).

16 Further, the Rules of Civil Procedure explicitly counsel that the rules are to "be construed and
17 administered to secure the just, speedy, and inexpensive determination of every action and
18 proceeding." Fed. R. Civ. P. 1. Here, the responses were only days late and appear to be due to poor
19 planning on the part of counsel for DMC.² Allowing a technical violation of this nature to drive the
20 resolution of the matter essentially deprives DMC of a merits-based decision. Construing Rule 36
21 in this manner would not comport with the scope and purpose of the Rules.

22 Beyond this, even assuming that DMC is incorrect in its assertion that the admissions are
23 case-terminating, the circumstances of this case weigh in favor relieving DMC of its late responses.
24 The tardiness of the responses is minimal, and Principal has not shown how it was prejudiced by this
25 delay. Additionally, Principal continued to seek supplemental responses to some of the RFAs – and
26

27 ² The unverified responses were served one day late on November 24, 2010. DMC's verification of the
28 responses was not obtained until November 29, 2010, and the responses were served again via email on December 1,
2010.

1 extended additional time to DMC to provide such responses – despite that the original responses
2 were untimely. Allowing DMC additional time to provide amended responses to the RFAs can be
3 construed as an agreement to waive the original untimeliness. For these reasons, in its discretion,
4 the Court declines to find that the tardiness of DMC's responses is a sufficient ground to grant
5 Principal's motion that all the RFAs be deemed admitted. *See Garber*, 237 F.R.D. at 257 (citing
6 *Nguyen v. CNA Corp.*, 44 F.3d 234, 242-43 (4th Cir. 1995) (district court did not abuse discretion
7 in refusing to deem admitted requests for admission when responses were one day late, given
8 minimal delay and circumstances surrounding delay)).

9 **C. Rule 36(a)(6) Motion Regarding the Sufficiency of Responses to RFAs Nos. 5 -8**

10 Principal presents additional argument that the responses to RFAs 5 through 8 are insufficient
11 and should be deemed admitted pursuant to Rule 36(a)(6).

12 **1. Disputed RFAs and Responses**

13 These relevant and disputed RFA responses are as follows:

14 **REQUEST FOR ADMISSION NO. 5:**

15 Admit that at the time he/she received services at DMC Modesto, Patient 1
16 was not a "participant of MPI's Client's Program" as referenced in paragraph 6 of the
Complaint.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

18 Objection. This request is *vague and ambiguous, and is unintelligible as*
19 *worded* with respect to the reference to Patient 1 being a "participants [sic] of MPI's
Client's Program." As the complaint is worded at Paragraph 6, there is no reference
20 to any Patient being a participant in "MPI's Client's Program."

21 Responding party lacks sufficient information to admit or deny this request
and, therefore, must deny the request. Responding party's investigation and
22 discovery are ongoing to determine the facts relating to this request.

23 **REQUEST FOR ADMISSION NO 6:**

24 Admit that at the time he/she received services at DMC Modesto, Patient 2
was not a "participant of MPI's Client's Program" as referenced in paragraph 6 of the
25 Complaint.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

27 Objection. This request is *vague and ambiguous, and is unintelligible as*
28 *worded* with respect to the reference to Patient 2 being a "participants [sic] of MPI's
Client's Program." As the complaint is worded at Paragraph 6, there is no reference
to any Patient being a participant in "MPI's Client's Program."

1 Responding party lacks sufficient information to admit or deny this request,
2 and, therefore, must deny the request. Responding party's investigation and
3 discovery are ongoing to determine the facts relating to this request.

4 **REQUEST FOR ADMISSION NO. 7:**

5 Admit that at the time he/she received services at DMC Modesto, Patient 3
6 was not a "participant of MPI's Client's Program" as referenced in paragraph 6 of the
7 Complaint.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

9 Objection. This request is *vague and ambiguous, and is unintelligible as*
10 *worded* with respect to the reference to Patient 3 being a "participants [sic] of MPI's
11 Client's Program." As the complaint is worded at Paragraph 6, there is no reference
12 to any Patient being a participant in "MPI's Client's Program."

13 Responding party lacks sufficient information to admit or deny this request
14 and, therefore, must deny the request. Responding party's investigation and
15 discovery is ongoing to determine the facts relating to this request.

16 **REQUEST FOR ADMISSION NO. 8:**

17 Admit that at the time he/she received services at DMC Modesto, Patient 4
18 was not a "participant of MPI's Client's Program" as referenced in paragraph 6 of the
19 Complaint.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

21 Objection. This request is *vague and ambiguous, and is unintelligible as*
22 *worded* with respect to the reference to Patient 4 being a "participants [sic] of MPI's
23 Client's Program." As the complaint is worded at Paragraph 6, there is no reference
24 to any Patient being a participant in "MPI's Client's Program."

25 Responding party lacks sufficient information to admit or deny this request
26 and, therefore, must deny the request. Responding party's investigation and
27 discovery is ongoing to determine the facts relating to this request.

28 **2. Contentions of the Parties**

Principal contends that DMC's responses to these RFAs did not adequately admit or deny but
instead were merely objections to the RFAs on the ground that they were vague and ambiguous.

(Doc. 20, ¶ 6.) Principal asserts that it contacted DMC's counsel on December 10, 2010, regarding
these responses and that DMC's counsel agreed to withdraw the objections and admit or deny RFAs
5 through 8. (Doc. 20, ¶ 7.) The parties conferred again on December 27, 2010, as DMC had not
yet served amended responses to RFAs numbers 5 through 8. Ultimately the parties agreed that
DMC would provide amended responses during the week of January 17, 2011, but DMC failed to

1 do so. (Doc. 20-1, Exhibit D.) Principal requests that the Court deem RFAs numbers 5 through 8
2 admitted because the responses to those RFAs are insufficient, and DMC failed to amend its
3 responses, despite agreeing to do so.

4 DMC asserts that, despite its objection to RFAs numbers 5 through 8, these RFAs were
5 denied "[c]iting a lack of sufficient information and belief." (Doc. 26, 4:15-16.) DMC contends that
6 its denial, based on a lack of sufficient information and belief, was factually and legally sufficient.
7 (Doc. 26, 4:16-18.)

8 **3. Objection to the RFAs**

9 Where the propounding party disputes the sufficiency of a response or an objection, it may
10 move for a determination from the court on the issue:

11 The requesting party may move to determine the sufficiency of an answer or
12 objection. Unless the court finds an objection justified, it must order that an answer
13 be served. On finding that an answer does not comply with this rule, the court may
14 order either that the matter is admitted or that an amended answer be served

15 Fed. R. Civ. P. 36(a)(6).

16 DMC objected to Principal's RFAs numbers 5 through 8 on the ground that these RFAs are
17 vague and ambiguous. In its complaint, DMC asserts that it provided medical services to four
18 patients, who are alleged to be participants in Principal's Program, for which it did not receive
19 adequate payment from Principal. The relevant allegations in the complaint are provided as follows:

20 6. On or about July 1, 2008, DMC Modesto entered into the MPI³ Participating
21 Facility Agreement ("DMC Modesto Agreement") to provide medical care at
22 reduced rates to Participants of MPI's Client's Program. DMC Modesto is
23 informed and believes Principal is a Client, as defined by the Agreement.
24 The sole purpose of this Agreement was for DMC Modesto to provide
25 medical services to any Participants in Principal's Program in need of such
26 medical services, and for Principal to pay DMC Modesto for such medical
27 services rendered in accordance with the terms of the DMC Modesto
28 Agreement.

29 With respect to each individual patient 1 through 4, the names of whom were withheld in the
30 interests of privacy, DMC alleged the following:

31 9. At the time Patient 1 was admitted to DMC Modesto and throughout Patient
32 1's stay, the DMC Modesto Agreement was in place and Principal was
33 specifically obligated to make payment in accordance with the terms. The

34 ³ The term "MPI" is not defined in the complaint.

1 DMC Modesto Agreement provides for various payment schedules and
2 discounts depending upon the type of medical goods and services provided
to Patient 1 by DMC Modesto.

3

4 11. From July 25, 2008[,] through July 28, 2008, DMC Modesto provided Patient
5 1, a Participant in Principal's Program, with treatment for medically necessary
and physician ordered medical services.

6

7 23. At the time Patient 2 was admitted to DMC Modesto and throughout Patient
8 2's stay, the DMC Modesto Agreement was in place and Principal was
specifically obligated to make payment in accordance with the terms. The
9 DMC Modesto Agreement provides for various payment schedules and
discounts depending upon the type of medical goods and services provided
to Patient 2 by DMC Modesto.

10

11 25. From December 1, 2008[,] through December 3, 2008, DMC Modesto
12 provided Patient 2, a Participant in Principal's Program, with treatment for
medically necessary and physician ordered medical services.

13

14 36. At the time Patient 3 was admitted to DMC Modesto and throughout Patient
15 3's stay, the DMC Modesto Agreement was in place and Principal was
specifically obligated to make payment in accordance with the terms. The
16 DMC Modesto Agreement provides for various payment schedules and
discounts depending upon the type of medical goods and services provided
to Patient 3 by DMC Modesto.

17

18 38. From December 29, 2008[,] through December 30, 2008, DMC Modesto
19 provided medically necessary and physician ordered medical services to
Patient 3.

20

21 48. At the time Patient 4 was admitted to DMC Modesto and throughout Patient
22 4's stay, the DMC Modesto Agreement was in place and Principal was
specifically obligated to make payment in accordance with the terms. The
DMC Modesto Agreement provides for various payment schedules and
discounts depending upon the type of medical goods and services provided
to Patient 4 by DMC Modesto.

23

24 50. From August 31, 2008, through September 1, 2008, DMC Modesto provided
medically necessary and physician ordered medical services to Patient 4.

25 (Doc. 1, 8-41, ¶¶ 9, 11, 25, 36, 38, 48, 50.)

26 As worded, the RFAs ask DMC to admit or deny that each patient at issue was not a
27 participant in Principal's Program at the time DMC administered treatment. According to paragraph
28 6 of the complaint, Principal is alleged to be a "Client" of the "MPI Facility Agreement." In turn,

1 participants of a "Client's" Program are covered under the DMC Modesto Agreement. Thus, services
2 rendered to Principal's program participants are asserted to come under the auspices of the DMC
3 Modesto Agreement. The call of Principal's RFAs appears to be aimed at narrowing the issue of
4 whether the patients that DMC asserts to have treated were actually participants of Principal's
5 program at the time of treatment. This request does not appear to be overly vague or ambiguous such
6 that an appropriate response cannot be formulated. Moreover, DMC has represented to the Court
7 in its papers that, if admitted, these RFAs would be case-terminating. (*See* Doc. 28, 6:27-28 - 7:1
8 ("unilateral hand picked selection of requests for admission 5-8 being ordered deemed admitted
9 would have the draconian effect of eviscerating the Plaintiff's case, in terms of admissions deemed
10 admitted".)) If DMC understands the call of the requests sufficiently to represent to the Court that
11 any admission to such requests would be case-ending, then DMC demonstrates that the requests are
12 not so vague or ambiguous that DMC cannot answer them. The Court finds that the RFAs are not
13 impermissibly vague or ambiguous, and the objection on that ground is overruled.

14 **4. Sufficiency of Denial of RFAs Based on a Lack of Information**

15 Despite that DMC objected to RFAs numbers 5 through 8, it did provide an additional
16 response denying the RFAs based on a lack of sufficient information. Principal challenges the
17 sufficiency of this response. Pursuant to Rule 36(a)(4), an answer to an RFA may be predicated on
18 a lack of knowledge or information as follows:

19 The answering party may assert lack of knowledge or information as a reason for
20 failing to admit or deny only if the party states that it has made reasonable inquiry
21 that the information it knows or can readily obtain is insufficient to enable it to admit
22 or deny.

22 DMC's denial was predicated on a lack of sufficient information, but such an equivocal denial
23 must be accompanied by an explanation of what reasonable efforts were made to procure sufficient
24 information necessary to unequivocally respond to the RFA. *See Asea, Inc. v. S. Pac. Transp. Co.*,
25 669 F.2d 1242, 1245 (9th Cir. 1982) ("an evasive denial . . . may be deemed an admission").

26 Here, DMC did not set forth what efforts were made to conduct a reasonable inquiry to
27 procure information necessary to respond to the RFA without equivocation. This is insufficient
28 under Fed. R. Civ. P. 36(a)(6), particularly because DMC's counsel had not yet verified these

1 response with DMC prior to serving them.⁴ Moreover, DMC agreed to amend its responses to these
2 RFAs after conferring with Principal's counsel regarding the basis for DMC's objection and response
3 to these RFAs. For these reasons, the Court finds that DMC must amend its responses to RFAs
4 numbers 5 through 8. Such amended responses shall not simply restate a denial with equivocation
5 based on a lack of information. If information to respond precisely is not available, counsel must
6 diligently set forth what reasonable inquiry has been taken to uncover such information. In its
7 discretion under Rule 36(a)(6), the Court orders that DMC shall serve amended responses to RFAs
8 numbers 5 through 8, and **DMC shall ensure that such responses are received by Principal on**
9 **or before March 9, 2011.**

10 **D. DMC's Request for Monetary Sanctions**

11 The Court finds that DMC's request for monetary sanctions against Principal in the form of
12 costs and attorneys' fees is misplaced. (*See* Doc. 26, 7:17-21.) This is particularly so because DMC
13 served its responses to the RFAs in an untimely manner. DMC has been relieved from its tardy
14 responses and the deemed admitted effect purely by virtue of the Court's discretion – which was
15 hesitantly exercised for the reasons set forth above. DMC's request for monetary sanctions is
16 DENIED.

17 **E. Rule 37 Sanctions**

18 While the Court has declined to deem all DMC's tardy responses to Principal's RFAs
19 admitted, the Court has particular concerns regarding the manner in which DMC responded to the
20 RFAs and stalled in providing amended responses after agreeing to do so. DMC's counsel claimed
21

22 ⁴ The Ninth Circuit took up the issue of insufficient responses to admissions in *Asea, Inc., supra*, and explained
its holding as follows:

23 We hold, therefore, that a response which fails to admit or deny a proper request for admission does
24 not comply with the requirements of Rule 36(a) if the answer party has not, in fact, made "reasonable
25 inquiry," or if information "readily obtainable" is sufficient to enable him to admit or deny the matter.
26 A party requesting an admission may, if he feels these requirements have not been met, move to
27 determine the sufficiency of the answer, to compel a proper response, or to have the matter ordered
admitted. Although the district court should ordinarily first order an amended answer, and deem the
matter admitted only if a sufficient answer is not timely filed, this determination, like most involved
in the oversight of discovery is left to the sound discretion of the district judge.

28 669 F.2d at 1247.

1 that he was one day late serving DMC's responses to the RFAs because he was waiting for
2 verification from his client, DMC. (Doc. 26-1, ¶ 3.) However, while the responses were served on
3 November 24, 2010, via mail, no client verification accompanied those responses. (Doc. 20-1,
4 Exhibit C.) The client verification was not obtained until five days later on November 29, 2010.
5 (Doc. 28, Exhibit A.) The responses with the client verification were then apparently again served
6 by DMC's counsel via email on December 1, 2010. (Doc. 28, Exhibit C.)

7 Additionally, contrary to DMC's assertion that it was never informed by Principal that its
8 responses were late and deemed admitted (*see* Doc. 26, 5:3-6), Principal's counsel sent an email to
9 DMC's counsel on November 30, 2010, stating that the RFAs were considered admitted.⁵ (Doc. 28,
10 Exhibit D.) Even assuming DMC believed it had a waiver or stipulation from Principal as to the
11 untimeliness of the responses, DMC continued to drag its feet in amending its responses as it agreed
12 – and, in fact, never provided amended responses. This is the type of conduct that unnecessarily
13 drives up the expense of litigation and evidences a disregard for the rules of practice. While what
14 would be tantamount to a case-terminating sanction such as deeming all the RFAs admitted is not
15 appropriate for the reasons already stated, Principal is entitled to amended responses to RFAs
16 numbers 5 through 8 because DMC's responses amount to evasive denials based on insufficient
17 information. This is especially so considering DMC had not yet even verified these responses with
18 its client before submitting them on November 24, 2010.

19 For these reasons, the Court finds that some apportionment of Principal's reasonable expenses
20 in bringing the motion may be appropriate under Rule 37(a)(4)(C). Therefore, Principal shall file
21 a declaration with supporting exhibits showing the costs and expenses of this motion on or before
22 **March 9, 2011**. DMC shall have an opportunity to be heard regarding such apportionment of
23 expenses by filing any objections on or before **March 9, 2011**. Thereafter, the Court will issue a
24 separate order regarding any apportionment of Principal's expenses found to be appropriate.

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26
27
28 ⁵ Why Principal continued to seek supplemental or amended answers to these RFAs from DMC after declaring that they were all admitted as tardy is somewhat puzzling (*see* Doc. 20-1, Exhibit D) and, as noted *supra*, may be construed as a waiver of the original untimeliness.

1 **IV. CONCLUSION**

2 For all the foregoing reasons, the Court HEREBY ORDERS THAT:

- 3 1. Principal's "Motion for Discovery" is DENIED IN PART and GRANTED IN PART;
- 4 2. Principal's request that Request For Admissions numbers 5 through 8 be deemed
5 admitted is DENIED;
- 6 3. Principal's motion that all RFAs be deemed admitted as untimely is DENIED;
- 7 4. DMC must serve amended responses to RFAs numbers 5 through 8 on or before
8 **March 9, 2011;**
- 9 5. Principal shall file a declaration with supporting exhibits establishing its costs and
10 expenses of bringing this motion on or before **March 9, 2011;** and
- 11 6. DMC shall have an opportunity to be heard regarding the imposition of such
12 expenses and costs upon it by filing any objections on or before **March 15, 2011.**
- 13
- 14

15 IT IS SO ORDERED.

16 **Dated: March 2, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE