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October 30, 2015

**Via Email**

Roberto A. Rivera-Soto, Esq.  
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Re: **American Board of Internal Medicine v. Jamie Salas Rushford, M.D.**  
**No. 2:14-cv-06428-KSH-CLW**

Dear Mr. Rivera-Soto:

This is in response to your recent email to me objecting to Defendant's interrogatories on the basis that the questions purportedly exceed the limit as set forth in the Rules. We have reviewed our interrogatories as served and believe them to be in compliance with the 25 interrogatory limit of Rule 33 and Plaintiff has not set forth with any specificity the basis for which interrogatories are objectionable.

The 1993 Advisory Committee Notes to Rule 33 provides an guidance of when subparts should be disregarded in the count of questions for purposes of the 25 interrogatories limit: "a question asking about communications of a 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." *Id.*, at ¶ 3. Moreover, an "interrogatory's subparts are to be counted as separate and discrete subparts if they are not logically or factually subsumed within and necessarily related to the primary question." *Carpenter v. Donegan*, Civ. No. 1:11-CV-043-NAM-RFT (N.D.N.Y. March 15, 2012) (quoting *Madison v. Nesmith*, 2008 WL 619171, at \*3 (N.D.N.Y. Mar. 3, 2008) ((quoting *Cramer v. Fedco Auto. Component Co., Inc.*, 2004 WL 1574691, at \*4 (W.D.N.Y. May 26, 2004))), and citing 7 JAMES WM. MOORE ET AL, *MOORE'S FEDERAL PRACTICE*, § 33.30[2] (3d ed. 2003) ("The better view is that subparts be counted as part of one interrogatory if they are logically and necessarily related to the primary question.").

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Additionally, “if a response to the first part of a two-part interrogatory is ‘implicit in a response to the [second] [p]art [] . . . [then] a complete answer to the latter [part] requires an answer to the former [part]. The two subparts are not discrete and may not be characterized as [independent interrogatories].’” *Carpenter* (quoting *Sec. Ins. Co. of Hartford v. Trustmark Ins. Co.*, 2003 WL 22326563, at \* 1) (and citing *Thompson v. Lantz*, 2009 WL 3157563, at \*1 (D.Conn. Sept. 25, 2009) (“A subpart is discrete and therefore regarded as a separate interrogatory when it is logically or factually independent of the questions posed by the basic interrogatory.”) (and also citing *Nyfield v. Virgin Islands Tel. Corp.*, 200 F.R.D. 246, 247-48 (D. Virgin Island, May 10, 2001) (“ruling that [courts] should examine whether the first question is primary and subsequent questions are secondary to the primary question and if the subsequent questions can stand alone then they are independent of the primary question”))).

In the interest of preventing any further delay with compliance to at least part of our discovery request, we provide the additional instruction that Plaintiff answer Defendant’s Interrogatories in this order of preference: 1, 21, 24, 2, 5, 15, 10, 11, 6, 7, 9, 8, 12, 18, 13, 17, 19, 22, 4, 3, 14, 16, 25, 23, and 20. We note that Interrogatories Nos. 6 and 7 should be considered as only 1 request for purposes of the 25 interrogatory limit because Interrogatory No. 7 cannot be answered without answering also No. 6.

To further facilitate Plaintiff’s substantive response to Defendant’s Interrogatories, and to work out any remaining objections to Defendant’s demands, we request the scheduling of a meet and confer. We can also discuss deposition scheduling. We are available to conduct a meet and confer on November 2, 3 (after 3pm), and 6 (9am-12pm). Please let me know your availability.

Very truly yours,

/s/ M. A. Gonzalez, Jr.

M. A. Gonzalez, Jr.

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