

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 06/27/2011

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown, K. Pratchen

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **06AS00839**

CASE INIT.DATE: 03/02/2006

CASE TITLE: **Glenn Hagele vs. Brent Hanson**

CASE CATEGORY: Civil - Unlimited

EVENT ID/DOCUMENT ID: ,6987572

EVENT TYPE: Motion for Protective Order - Civil Law and Motion

MOVING PARTY: Glenn Hagele

CAUSAL DOCUMENT/DATE FILED: Motion for Protective Order, 05/25/2011

APPEARANCES

Nature of Proceeding: Motion for Protective Order

TENTATIVE RULING

Plaintiff's Motion for Protective Order that he not be required to respond to Defendant Hanson's Request for Admission, Set 2 is denied.

Plaintiff filed a "notice of incapacity" on June 21 stating that he suffered a stroke and is unable to file a reply. Plaintiff has not requested a continuance. The Court will continue the matter at plaintiff's request to allow the filing of the Reply. If no request to continue is made before the hearing, the court rules as follows:

Plaintiff seeks damages for defamation and invasion of privacy arising out of a 2005 letter published on the Internet and the publishing of private information on the Internet in 2006. Plaintiff previously responded to 79 Requests for Admissions. Set 2, accompanied by the required declaration for additional discovery pursuant to CCP 2033.050, contains an additional 28 Requests, and seeks information about plaintiff's mental and emotional health, which issues he raised in his responses to form interrogatories in which he stated he suffered from emotional distress, sleep disturbance, anxiety, depression, and irritability as a result of defendant's conduct. (See Responses to Form Interrogatories, Set 1, Nos. 6.2, 6.3, 6.4, 6.5, and 6.7.)

The motion is denied on procedural grounds. Defendant opposes the motion on the ground it was not properly served. Plaintiff served the motion electronically but the parties had no agreement for such service.

The motion is also denied on the merits. Request Nos. 80, 81, 82, and 96 seek information about whether an anonymous poster on an internet website, "Bhakta_Glenn" is, in fact, plaintiff. Defendant agreed to withdraw these requests during the meet and confer process. Therefore, this motion was not necessary as to Requests 80, 81, 82, and 96.

Plaintiff contends the number of RFAs is excessive, that the preliminary definitions violate the code, that

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the information sought is irrelevant, and that the information invades plaintiff's constitutional right of privacy. The burden is on the party seeking the constitutionally protected information to establish direct relevance. *Davis v. Superior Court* (1992) 7 Cal. App. 4th 1008, 1017. Defendant, here, has met his burden of showing that plaintiff has waived those privileges by putting his mental health at issue. Plaintiff has put his mental health in issue by claiming damages for emotional distress, including claims of depression and anxiety. Therefore, the requests are directly relevant to the lawsuit. The preliminary definitions do not violate the code (CCP 2033.060(e) specifically addresses that there may be "specially defined" terms), and the plaintiff is being required to respond to only 24 additional requests.

Requests for Admission may request an opinion relating to fact, or the application of law to fact. CCP 2033.010. Therefore, the plaintiff's objection to the requests on the ground they seek a legal opinion are rejected. The "collateral source" rule does not prevent the discovery of whether plaintiff has received Social Security benefits based on a disability. Certain evidence may not be admissible for calculation of damages purposes, but the scope of discovery is broader, and the evidence is directly relevant to the issue of apportionment of damages.

Sanctions are ordered to be paid by plaintiff to defendant in the amount of \$600, if no oral argument is required

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.