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### **Priscilla's (P's) Motion to Compel Further Responses**

A motion to compel further responses is not the proper action. Discovery is governed by the FRCP, Standing Orders, and any Orders the given judge may have. Usually interrogatories are limited to 25, including sub parts. Here, P gave Grocer (G), 26 interrogatories. Thus, G can likely file a motion to strike the improper 26th interrogatory. Further, P gave the interrogatories with the complaint, this is improper. Discovery does not begin until the other side answers and any Rule 12 issues are taken care of. Despite these deficiencies that the clerk would likely point out to P's counsel, the court will likely make G respond to the interrogatories if they are reasonably calculated to lead to admissible evidence.

Discovery is available for relevant materials that are reasonably calculated to lead to evidence. Relevant material is anything that tends to prove or disprove facts in the case.

Here, ROG #25 requests all names and addresses for all employees that worked on the soda display in question and every soda company who did so as well. This is highly relevant since the case involves a large display of sodas that fell on P. To prove negligence P can use this information to show causation. However, asking for personal addresses may be a little intrusive albeit necessary for later depositions and subpoenas to the outside soda company employees.

As to ROG #25 the court will likely compel G to supply an answer.

For, ROG #16, the information in the training manuals may be helpful to show how displays are to be constructed and the care used in constructing the displays. G might respond that asking for "every training manual" is overly burdensome, however, the court will at least rule that the current and relevant training manual should be produced.

As to ROG #26, the court will likely compel G to at least supply the current manual.

### **G's Motion to Compel P to a Mental Exam and Physical Exam**

Mental exams and physical exams are allowed if they are at issue and good cause is shown.

Clearly, P claims she was hurt on her head and entire body from the falling soda. Thus, P's physical condition is at issue. G can show good cause since part of the negligence claim requires damages, which would turn on the extent of injuries. Further, good cause for the physical exam exists because P is suing for medical expenses, pain and suffering, thus, allowing G to examine P will be allowed by the court.

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However, the facts do not state that P's mental state is at issue.

Thus, the court will grant G's motion to compel the physical exam and deny G's motion to compel the mental exam.

### **G's Motion to Compel all of P's Tax Returns Since 1995**

Tax returns are arguably relevant to show P's lost wages. However, G does not need 24 years worth of them. That is beyond the scope of this simple negligence slip and fall case.

The court will deny G's request for 24 years worth of tax returns but may grant the motion in part for the past 2-3 years.

### **G's Improper Response to Interrogatory About Experts**

The listing of experts is part of the mandatory disclosures in discovery. A party must list experts it plans to use in a case. Here, since Xavier had unfavorable findings G will likely not use Xavier in the case. Thus, G should have stated that it does not plan to use an expert or there are no experts or opinions instead of stating "Objection. Privileged."

G's response to P's ROG about experts was improper.

Going forward, P's attorney should not limit ROGs to employees for the exact reason shown in this scenario. If ROG #25 stated "employees, independent contractors, affiliates" instead of simply "employees" then G would be under the obligation to disclose Xavier. This would then allow for P to depose Xavier to uncover relevant information to the case.

### **G's Assertion of Privilege Regarding Xavier**

The work product privilege covers materials produced in anticipation of litigation. An expert report that is unfavorable, that was prepared in anticipation of litigation, is privileged. The facts clearly state that G hired Xavier before the litigation, thus the findings would not be covered by the work product privilege because they were not crafted in anticipation of litigation. However, if G has a reason to know they were to be sued by P, and that was the reason for hiring Xavier, the findings would be covered by the work product privilege.

Thus, G's assertion of privilege based on work product privilege should only be sustained if the findings were produced in anticipation of litigation.

Attorney-client privilege exists for the communications of a client and attorney in the context of legal services. Here, G hired Xavier to investigate grocery displays as an independent contractor. There was no attorney and thus no attorney-client privilege applicable.

If, G claims privilege based on an attorney-client privilege, the court should overrule the assertion.

If G is to use an expert in this negligence case, G will need to produce an expert report and list the expert in the disclosures.

Question #1 Final Word Count = 864

**END OF EXAM**