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1. How should the court rule on Priscilla's (P) motion to compel further responses to her interrogatories to Grocery (G)?

### **Interrogatories**

Interrogatories are pre-trial discovery in order to decide whether there is enough evidence to move forward with trial, or whether a valid defense exists. Questions may be presented to each opposing party a set of questions to determine whether sufficient evidence is plausible for trial. In federal court, a party is entitled to 25 questions, unlike CA where 35 questions under form interrogatories are allowed. When a party denies answering questions the court may either compel the party to answer, or in other cases will consider any unanswered questions as being either admitted by the party, or refrained from using any question as a defenses at trial.

Here, P requested 26 questions, which in federal court is not allowed and as such G would be able to object to P's motion on any one of the questions asked, which could either be question 25 (providing names and addresses of every grocery employee who worked on the construction of the soda display), or question 26 (proving copies of every training manual G has used in training its employees. I CA, there question would be allowed, since 35 interrogatory questions are allowed.

The only exception would be if these were special interrogatory questions which would be allowed because they do not follow the 25 question rule in which case G would be obligated to respond to. Therefore, if special interrogatories, G would be obligated to answer them both.

### Compelling

A motion to compel responses to questions must first be made to the opposing party, and not the court. If the party still refuses to answer the questions then the asking party may seek the court's help to either compel the non-answering party to answer the questions, or the questions will be considered to have been answered, and the party may not later use a response in court that was not answered. In certain cases the court may issue sanctions on the other party for failure to respond. A party must respond to interrogatories which certain responses that are allowed, and not just saw the questions are flawed. Here, G's refusal to respond to the interrogatories 25 and 26 was too broad, and they are required to expand on the response either

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by asking for clarification of the question or that the questions are not too burdensome.

G will contend that requesting all names and addresses of every employee who worked on the display and the training involved is too burdensome because it will require searching their records and most records only state hours of employment and not what workers actually worked on during those hours of employment. P will counter that the information is required as to the names and addresses to review because she is suing for negligence and it is important to see through the records whether the employees involved were inexperienced, careless and according to the records how long the employees took to construct the display. Therefore, the motion will be granted by the court to request that G respond to the interrogatories 25 and 26.

2. How should the court rule on each of G's motions to compel:

a. Requesting P to submit to mental and physical examinations.

A plaintiff that places their mental or physical conditions in issue in a case is required to submit to examinations upon request. However, the court must order the exams due to Constitutional issues of privacy. Here, P is being asked to submit to a mental exam however because she is suing for negligence due to bruising her head and entire body G will not be allowed to subject P to a mental exam. This is because P has only placed her physical condition in issue and not her mental condition since bruising is physical and not mental. The only way she could be subjected to the exam is if she is claiming negligent infliction of emotional distress whereby her mental condition is in issue in the case. However, G will rebut this contention that because P has claimed loss of wages which because it can be considered a mental injury (anguish) she should be subjected to the exam. Therefore, if G can show the causal link between the injury and mental anguish in not being able to work they will be successful in getting the court to compel P to take the mental exam.

As to P's physical examination, the court will grant that she take the exam because she has placed her physical condition in issue by claiming that she has bruising and pain and suffering from the injury. The court will compel her to take the exam but the exam must be accompanied by P's attorney if she so chooses. Therefore, P will be compelled by the court to take the physical exam along with the mental exam.

b. Tax returns since 1995

Information that is too burdensome or simply calculated to harass a party is a violation of discovery rules. Here, G asking for P's tax returns over a 20 year period is too burdensome and

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it may be impossible to have P retrieve such returns from years ago as records are not usually kept that long. Unless G can show an urgent need to their request the tax returns P will not be compelled to release 20 years of tax returns.

3. Was G response to P interrogatory about expert's proper?

An interrogatory may also request names and information on evidence that is reasonably to be calculated at trial to be admitted. All evidence that is gathered for the purpose of trial can be excluded from discovery whether it is attorney's work product, attorney client privileged communications, or expert witnesses specific testimony. Here, G is claiming that their experts information is privileged and it will be privileged as to what the experts may actually testify about. However, P will be entitled to a response as to what type of expert the person is and in what field. Also, G would need to show, if reasonably calculated to be used at trial certain treatises an expert may use to gather their expert opinion. Therefore, the court should not sustain G's assertion that a privilege exists.

4. Has G response to P interrogatory about experts proper?

Privileges

A party is not required to disclose information on expert witnesses that they have interviewed but have decided not to call as a witness at trial. Here, Xavier, X, is an expert on grocery store displays and was hired by G to investigate to display. Since G interviewed X and then decided as a result of his unfavorable findings to not identify him as a witness they are within their privilege to not disclose his name to P. Therefore, they are not required to disclose any information as to X.

Question #1 Final Word Count = 1152

**END OF EXAM**