

\*\*\* If you are requesting oral argument, please call 530-532-7153\*\*\*

1-4. 25CV03075 June Howard, by and through her attorney in fact, Genevieve Bauguess v. AOCL, LLC et al.

EVENT:

- (1) *Plaintiff's Motion to Quash Subpoena for Personal Medical Information of Plaintiff*
- (2) *Defendant AOCL, LLC's Amended Motion to Compel Plaintiff's Further Responses to Special Interrogatories, Set One; Request for Monetary Sanctions in the Amount of \$1,850*
- (3) *Defendant AOCL, LLC's Amended Motion to Compel Plaintiff's Further Responses to Request for Production of Documents, Set One; Request for Monetary Sanctions in the Amount of \$2,075.00*
- (4) *Defendant AOCL LLC's Motion to Compel Plaintiff's Further Responses to Form Interrogatories, Set One; Request for Monetary Sanctions in the Amount of \$1,725.00*

Plaintiff's Motion to Quash

Preliminarily, counsel is ordered to meet and confer regarding a protective order. Within two weeks, if counsel agree on a protective order, they shall file a stipulation and proposed order attaching the protective order. If they cannot agree on a protective order, each side shall submit a proposed order and the Court will select one.

The protective order should mitigate any concerns regarding inadvertent disclosure, including mental health records. On that topic, because the subpoenas expressly exclude mental health records, and in consideration of the anticipated protective order, Plaintiff's concerns regarding mental health records are not a sufficient basis for granting this motion.

Defendants contend that Plaintiff has the burden of demonstrating the subject matter is not directly relevant. The Court is not persuaded. The Court's reading of *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1017 is that it is the propounding party's burden to demonstrate direct relevance when medical information is implicated ["The burden is on the party seeking the constitutionally protected information to establish direct relevance"].

In any event, Defendants reference paragraph 131 of the First Amended Complaint which provides:

"Despite Defendants' knowledge of Mrs. Howard's ailments, cognitive deficits, fall risk factors, pressure injury risks, and other information, Defendants repeatedly failed to properly monitor and care for Mrs. Howard ..."

In light of this allegation the Court finds the subpoena is directly relevant on the issue of Defendants' knowledge of Plaintiff's health issues, at least the specifically categorized issues. Accordingly, the subpoena is limited to the following categories of records: cognitive deficits, fall risk factors, and pressure injury risks. The ruling is without prejudice in the event Plaintiff subsequently amends the pleading to allege other specific categories for which she claims Defendants were on notice.

Additionally, Defendant contends the subpoenas are appropriate to the extent they seek medical liens. The Court agrees. Medical liens shall not be excluded from production.

In sum, the motion is granted to the extent production is limited to the categories discussed. Otherwise, the motion is denied.

### Defendant's Discovery Motions

#### *Meet and Confer*

In reviewing the meet and confer correspondence, it is apparent both sides were at an impasse. As a result, any further correspondence would have been futile.

#### *Special Interrogatories*

Note: The Court finds the interposed objections to these requests are without merit.

#### *No. 17*

The motion is GRANTED. Plaintiff's substantive response essentially identifies two categories of witnesses – staff at Defendants' facility and Plaintiff's family members. Regarding staff at the facility, Plaintiff's position that she is in the early stages of discovery, while not a recognized discovery objection, provides a reasonable explanation as to why Plaintiff cannot identify specific individuals at this time. Nevertheless, in order to comply with the CCP 2030.220(c), the response should have included a statement that she lacks personal knowledge to provide a complete response at this time.

As to family members, the Court agrees with defense that the response is incomplete. The request seeks identification of specific persons so that subpoenas can be issued. Simply identifying family members is insufficient. Plaintiff must identify specific individuals or, if Plaintiff lacks personal knowledge to identify specific family members, Plaintiff must so state in order to comply with 2030.220.

#### *Nos. 39,40,41,42*

The motion is GRANTED. Plaintiff essentially copied and pasted a huge section of the First Amended Complaint and used that to respond to this request. That is unacceptable and discovery abuse. Hardly any portion of the lengthy narrative was responsive to the

request, which sought information concerning complaints that were made to the facility about treatment.

The substantive response does not comply with 2030.220. Plaintiff must respond to the question posed to the extent she can. And if she lacks personal knowledge to respond, she needs to indicate that. The objections are without merit. Plaintiff hangs her hat on the argument that Defendant is in possession of this information. That is an assumption. Defendant is not required to assume that it has records of every instance in which a complaint was made.

No. 43

The motion is GRANTED in PART. The response references “relevant” medical records. The term relevant medical records is ambiguous. Plaintiff needs to provide specifically what the “relevant” medical records are.

No. 44

For the same reasons discussed in no. 17, the motion is GRANTED. The response does not comply with 2033.220(c). If Plaintiff has no information regarding staff witnesses, she must so state. As to family members, she must either identify specific individuals or state that she lacks personal knowledge.

Nos. 48,51,54,57,59,63,66

The motion is GRANTED. The Court appreciates that, as it pertains to alter ego, such information is usually in possession of Defendant and/or third parties. Thus, at this stage of the case the Court would not expect Plaintiff to possess information on this issue. Nevertheless, as noted, an objection that discovery is premature is not a legally cognizable objection. Thus, Plaintiff still needs to provide a response that complies with 2033.220(c).

Nos. 70,73,76

For the same reasons discussed in no. 17, supra, the motion is GRANTED.

### *Production of Documents*

No. 3

The motion is GRANTED.

## CCP 2031.210. Nature and format of response

(a) The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:

(1) A statement that the party will comply with the particular demand for inspection, copying, testing, or sampling by the date set for the inspection, copying, testing, or sampling pursuant to paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

(2) A representation that the party lacks the ability to comply with the demand for inspection, copying, testing, or sampling of a particular item or category of item.

(3) An objection to the particular demand for inspection, copying, testing, or sampling.

Plaintiff argues she has complied with subdivisions (2) and (3). As to subdivision (3), the Court finds none of the interposed objections warrant a refusal to comply with the request. The request as phrased excludes attorney client privilege and work product material. The remainder of the objections are without merit.

As to subdivision (2), the actual response does not clearly indicate an inability to comply, rather it states that discovery is premature. Not to belabor the point, but premature is not a cognizable objection. The statement that discovery is premature does not directly address whether the party lacks the ability to comply. Thus, Plaintiff's response is not sufficient under subdivision (2).

Ultimately, Plaintiff indicated in the opposition that she has produced all documents in her possession. Plaintiff simply needs to provide a further response indicating all documents in her possession custody and control have been produced (see CCP 2031.220), and the matter will be resolved.

No. 4

The motion is GRANTED.

## CCP 2031.230. Representation of inability to comply

A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any

natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

[Emphasis Added]

Plaintiff unambiguously states she has no documents.

Plaintiff's opposition explains the reason why she has no documents, essentially because the case is young, which suggests that she has never been in possession of the documents. All Plaintiff needs to indicate to satisfy the code is that Plaintiff has never been in possession of the documents, and the matter is resolved.

No. 5

The motion is DENIED. The motion fails to address the privacy objection. As discussed in the motion to quash, Defendant has the burden of demonstrating direct relevance in order to discover medically sensitive information. The motion fails to meet that burden and explain how this request is directly relevant.

No. 6

The motion is GRANTED.

It is unclear whether Plaintiff is producing all documents in her possession that are responsive to the request, or whether some documents are being withheld based on objection. Plaintiff shall provide a further response clarifying whether she has produced all documents in her possession. If she has, the matter is resolved. If she hasn't, she needs to comply with CCP 2031.240.

No. 7

The motion is GRANTED.

Consistent with the Court's ruling regarding interrogatory no. 39, the Court finds the request appropriate. The response does not clearly indicate whether Plaintiff is producing all documents in her possession. Plaintiff's opposition seems to suggest that they have no documents based on the representation that they did not have a log. If they have no documents, Plaintiff must so state in her verified discovery response.

No. 8

For the same reasons stated in no.7, the motion is GRANTED.

Nos. 9,12,13

The motion is GRANTED.

It is unclear whether Plaintiff is producing all documents in her possession that are responsive to the request, or whether some documents are being withheld based on objection. Plaintiff shall provide a further response clarifying whether she has produced all documents in her possession. If she has, the matter is resolved. If she hasn't, she needs to comply with CCP 2031.240.

No. 14

The motion is DENIED. The response appears to state that all documents within Plaintiff's possession have been produced.

No. 15

The motion is DENIED for the same reasons set forth in no. 5.

Nos. 20 – 27

The Motion is GRANTED. In the interrogatory section the Court noted it appreciates that alter ego information is most likely to be in Defendant's possession. However, that fact is not grounds for not providing a complete response to the discovery request. It is unclear whether Plaintiff is producing all documents that she has which are responsive, or whether some documents are being withheld. Plaintiff shall provide a further response clarifying whether she has produced all documents in her possession. If she has, the matter is resolved. If she hasn't, she needs to comply with CCP 2031.240.

No. 28

It is unclear whether Plaintiff is producing all documents in her possession that are responsive to the request, or whether some documents are being withheld based on objection. Plaintiff shall provide a further response clarifying whether she has produced all documents in her possession. If she has, the matter is resolved. If she hasn't, she needs to comply with CCP 2031.240.

### *Form Interrogatories*

No. 12.1

For the reasons stated regarding Special Interrogatory No.17, the motion is GRANTED.

The request for sanctions is denied. However, the Court will be inclined to appoint a discovery referee should substantial discovery disputes arise in the future.

Defendant shall prepare and submit a form of order within 2 weeks.