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1  
2 THE COURT: Doscher versus Holding. Good morning.

3 Good morning.

4 MR. DOSCHER: Good morning.

5 THE COURT: This is set on for Mr. Doscher's motion  
6 to compel. If you could both identify yourselves for the  
7 court reporter, we can begin.

8 MR. on behalf of defendant  
9 Holding.

10 MR. DOSCHER: Christian Doscher, *pro se* plaintiff.

11 THE COURT: Good morning.

12 Mr. Doscher, go ahead, please.

13 MR. DOSCHER: Your Honor, there's not much to argue  
14 about with my motion to compel. The defendant has not  
15 requested that the court deny, although he says that in his  
16 conclusion. He has requested that the court allow him to  
17 redact phone numbers out of his phone bill before he serves  
18 that phone bill on me. So I motioned to compel because I  
19 asked for those records, and the problem is it's not just  
20 that he didn't produce them; he didn't object. He also  
21 specifically waived objection a couple of months before he  
22 hired counsel. When he was acting *pro se* he said he  
23 specifically waives all jurisdiction-related objections to  
24 jurisdiction-related discovery.

25 So I'm going on the strength of his failure to object

1 means when he's asking the court now for redaction, that  
2 kind of sounds like he was objecting to unredacted records  
3 being disclosed, which would fall under an objection. He  
4 didn't object so what he's asking the court for redaction  
5 for is really something that he waived. He can't  
6 re-characterize an objection as a motion for protective  
7 order.

8 I also moved for CR 26 sanctions, which as everyone  
9 knows are mandatory --

10 THE COURT: Mr. Doscher, I'm going to just interrupt  
11 you because the motion for sanctions wasn't noted up, and  
12 I'm not going to hear that today.

13 MR. DOSCHER: I'm sorry?

14 THE COURT: I'm not going to hear an unnoted up  
15 motion for CR 11 sanctions.

16 MR. DOSCHER: I didn't say CR 11.

17 THE COURT: I'm sorry. I thought you said CR 11  
18 sanctions. That was in your reply. You referred to that.

19 MR. DOSCHER: Right. Yeah. I'm talking about CR 26  
20 which was part of my original motion.

21 THE COURT: That's correct.

22 MR. DOSCHER: So I seek CR 26 sanctions for two  
23 reasons. The defendant contests a personal jurisdiction so  
24 I requested his phone records because any call he makes  
25 into would be a contact. He failed to produce

1 those records. But I seek the sanctions for that failure  
2 to produce because his excuse for failure to produce in his  
3 discovery answers was his phone bills do not contain a list  
4 of the numbers called. That is the information that I  
5 wanted. But he now says in his opposition to my motion he  
6 wants the court to allow him to redact that list of called  
7 numbers from his phone bill. So I ask the rhetorical  
8 question: How can you redact non-existent numbers from a  
9 phone bill?

10 I think what happened is CR 26 says the defendant must  
11 make a reasonable inquiry before he answers discovery. If  
12 he's now saying those telephone numbers on his bill are  
13 present, then when he said in his discovery answer they  
14 weren't, he hadn't made a reasonable inquiry. He just  
15 rushed off an answer to his attorney. So the contradiction  
16 between whether his phone bills contain a list of called  
17 numbers or not is a reason to say that he didn't make a  
18 reasonable inquiry before he answered discovery, and  
19 there's no way the -- the only way that I think the court  
20 could forgive him is if it found that he didn't fail to  
21 make a reasonable inquiry. Otherwise, if he failed, then  
22 CR 26 sanctions are mandatory.

23 And the other matter was a CR 11 sanction which you said  
24 you didn't want to hear. I'll re-note it later.

25 THE COURT: Well, you didn't note it so it's not a

1 question of re-noting it. You raised the issue in your  
2 reply brief, and if you want to note it, that's fine, but  
3 I'm not going to hear it today.

4 go ahead.

5 S: Thank you, Your Honor. To be clear,  
6 Your Honor, there are no phone numbers on a phone bill.  
7 There are potentially records that my client has obtained  
8 by calling the phone company saying I want a list of calls  
9 received and sent from my number. But his phone bill --  
10 and that record I have not yet seen. His phone bill as  
11 stated does not contain a list of numbers incoming and  
12 outgoing. It tells how much he owes the phone company  
13 every month.

14 Our position, however, after further reflection on  
15 this -- and I apologize to the court for not articulating  
16 this precisely in our response, but after some additional  
17 reflection, our position really is that Mr. Doscher's  
18 motion to compel is not well founded because what he asked  
19 the court to compel was not actually requested by his  
20 interrogatories and requests for production. Your Honor,  
21 specifically reviewing Interrogatory No. 3, he asks for  
22 information concerning something that my client was  
23 referring to in another document. That was then answered  
24 --

25 THE COURT: Hang on just a minute.

1 MR. : Sure.

2 THE COURT: I believe that, Mr. Doscher, you  
3 attached the interrogatories.

4 What page are you on, Mr. Rhodes?

5 MR. R Your Honor, I don't have the attachment  
6 in front of me.

7 THE COURT: You said it's Interrogatory No. 3 or  
8 request for production?

9 MR. : Interrogatory No. 3 is what I'm looking  
10 at right now. And that's in Exhibit 1 of Mr. Doscher's  
11 motion.

12 THE COURT: So Interrogatory No. 3 provides the real  
13 life names, internet pseudonyms, et cetera?

14 MR. l : Concerning a contact that my client was  
15 referring to in another document. And then it's Request  
16 For Production No. 3 that in part he alleges gives rise to  
17 this motion, and that -- and that request asks for "copies  
18 of all information you sent and received as described in  
19 the prior interrogatory." So he's referring very  
20 specifically to the information sought by Interrogatory No.  
21 3. And then he goes on to say, "For all responsive  
22 contacts that took place only by phone, provide a copy of  
23 the phone bill showing that you initiated calls to, or  
24 received calls from, said -based entities."  
25 There were no phone contacts with that contact and entity

1 that is responsive to Interrogatory No. 3, and so in  
2 response to that production, there are no phone records  
3 responsive.

4 Looking at number five he asks did you ever between May  
5 1st and November 2015 send any information to, et cetera,  
6 any government agency with an address in [REDACTED] If  
7 yes, specify all the reasons why you contacted that  
8 department. That interrogatory was answered and all such  
9 government agencies or entities were disclosed in answer to  
10 that interrogatory. He then asks in Request For Production  
11 No. "5 for all responsive contacts that took place only by  
12 phone, provide a copy of the phone bill showing that you  
13 initiated calls to or received calls from, said  
14 [REDACTED] based entities."

15 As disclosed, there is no such document. There is no  
16 phone bill demonstrating that information. There is a  
17 record that my client could potentially obtain by  
18 contacting his phone company, but that's not a phone bill.  
19 He asked for a phone bill demonstrating that information,  
20 and there is no such document.

21 So first and foremost, there's no document responsive to  
22 this very specific request. That being said, my client did  
23 go and attempt to obtain the phone records of calls  
24 incoming, outgoing from his phone, and those records  
25 apparently are en route to me, and I have no issue with

1 disclosing those to Mr. Doscher, but I don't believe his  
2 motion to compel is well founded because he asked for a  
3 phone bill demonstrating that information and no such  
4 document exists.

5 THE COURT: Anything else?

6 MR. No, Your Honor.

7 THE COURT: Go ahead, Mr. Doscher.

8 MR. DOSCHER: Just two points, Your Honor. The  
9 Supreme Court says courts will not  
10 tolerate efforts by counsel to hide behind the letter of  
11 discovery rules while ignoring their spirit. The purpose  
12 of civil discovery is to disclose to the opposing party all  
13 information that is relevant, potentially relevant . . . .  
14 That's *in re* . . . . 1991.

15 I think that's a major rebuttal to the defendant whose  
16 argument now is well, Mr. Doscher asked for a bill, not a  
17 record. These are two different things. I think that's --  
18 that's like how many angels can dance on the head of a pin.  
19 That's ridiculous trifling the court should not entertain.

20 Finally, his other point is that I didn't technically  
21 ask for what I'm trying to compel now, the problem being in  
22 his response to my motion he's asking the court for  
23 redaction. I don't think he was being unclear. I think  
24 he's asking the court to redact his evidence because he  
25 knows what I'm asking for in the motion to compel is

1 something that he should have revealed in discovery. Now,  
2 the defendant has been contesting personal jurisdiction now  
3 for seven months, and I think he had a discovery obligation  
4 to reveal all of his contacts with . He should  
5 not sit back and wait to see if I ask for specifically a  
6 record as opposed to a bill. He had an obligation to  
7 disclose what he knew, and my -- my discovery requests were  
8 sufficiently clear that he -- I don't think he can escape  
9 on the technicality.

10 My last problem is that he noted -- he's asking for a  
11 redaction of records, and he noted it for April 8th. So I  
12 don't know if you're going to hear that today or not.

13 THE COURT: I don't have a calendar on April 8th.  
14 I'm not going to be here. Mr. Doscher, do you want to have  
15 that heard today?

16 MR. DOSCHER: No. I would assume you haven't -- you  
17 haven't read that yet.

18 THE COURT: It was in his initial pleadings. I  
19 think it was in his response to your motion for sanctions.

20 MR. DOSCHER: Okay. Well, it would probably  
21 conserve judicial resources so I'll just make the same  
22 point that I just made. Why is he asking for redaction of  
23 the records if he truly feels my motion to compel can be  
24 dismissed on the merits? I think he's asking for redaction  
25 because he knows he has responsive records that should have

1           been included in his original discovery answer. That's all.

2           THE COURT: I don't believe -- and maybe you could  
3           correct me, both of you, if I'm wrong. I don't think the  
4           request was to redact the entire phone number including the  
5           area code which would show the contacts with           I  
6           think he was just asking for the last four digits of the  
7           phone number to be redacted.

8           MR. DOSCHER: Right. And my problem with that, as I  
9           show in my motion, case law requires the court to evaluate  
10          the quality and nature of the contacts, not just count  
11          them. If I'm given a bill or a record which says           and  
12          then a prefix and then stars for the last four numbers, I  
13          cannot evaluate the nature and quality of that because by  
14          redacting the number, I have no idea who it was in

15          that was called, and therefore the court cannot  
16          evaluate it when it inevitably has to do so on his motion  
17          to dismiss for personal jurisdiction. Counting how many  
18          times he called           is specifically denied in case  
19          law as sufficient to inform the express aiming and the  
20          purposeful availment prongs of the personal jurisdiction  
21          analysis. Redaction would make the discovery worthless to  
22          me.

23          THE COURT: Thank you.

24          MR.           Your Honor, I'd like to respond by  
25          saying my client would have no issue modifying our request

1 for protection order by stating that all [REDACTED] prefix  
2 phone numbers be released in their entirety without  
3 redaction and that only non-[REDACTED] calls be blacked out  
4 in the last four digits.

5 THE COURT: Mr. Doscher.

6 MR. DOSCHER: Well, I have a problem with that  
7 because how do I know what was redacted was indeed a  
8 non [REDACTED] number?

9 THE COURT: So if the last four digits were  
10 redacted, would that be acceptable?

11 MR. DOSCHER: No because --

12 THE COURT: For the out-of-state ones?

13 MR. DOSCHER: If -- I'm sorry. If the last four  
14 digits of the non-[REDACTED] State --

15 THE COURT: Yes.

16 MR. DOSCHER: Yes. That would be acceptable.

17 THE COURT: Anything else, Mr. Doscher?

18 MR. DOSCHER: No, Ma'am.

19 MR. [REDACTED] Your Honor, there's one additional  
20 issue that I'd like to tell the court. I had initially  
21 asked my client to obtain these records, and I initially  
22 told him long before it was even an issue with discovery to  
23 obtain these records, and I asked him to obtain them up  
24 through the end of July. He was served with the complaint  
25 in August because I believed anything after that was not

1 relevant to the issue of jurisdiction. The records he  
2 apparently is sending me end in July. Mr. Doscher has  
3 asked for records through November. My client has no issue  
4 with obtaining those, but it's going to apparently be  
5 another two weeks to obtain those records. I just wanted  
6 to be very clear on that right now.

7 MR. DOSCHER: No objection.

8 THE COURT: Okay. Well, slowly but surely the case  
9 is moving forward, which is nice to see, and I appreciate  
10 even though perhaps it's troubling to you, Mr. Doscher, I  
11 appreciate that Mr. Holding is moving forward now in a more  
12 responsive way than perhaps he was doing previously, and I  
13 attribute that to him getting advice from an attorney as to  
14 what his requirements are.

15 In reading the request for interrogatories and/or the  
16 interrogatories and request for productions, they refer to  
17 bills, phone bills, which I think have frankly a pretty  
18 common acceptable meaning, and bills are bills. They're  
19 not other records. And if Mr. as an officer of the  
20 court is indicating that the phone bills don't include that  
21 information, then the court accepts that at this juncture.  
22 Having said that, I'm not going to impose sanctions today.  
23 I don't think they're appropriate under the circumstances.

24 I'm going to allow in the order the agreement that  
25 counsel and you just made, Mr. Doscher, regarding

1 Mr. Holding's requirement to not redact any of the  
2 [REDACTED] phone numbers in their entirety so that you can  
3 do your work that you need to do on the personal  
4 jurisdiction issue that I think we're hearing in May on the  
5 motion of Mr. Holder. So that needs to happen, and it  
6 needs to be provided, Mr. [REDACTED], to Mr. Doscher  
7 immediately upon your receipt, and I trust that we're not  
8 going to have any further issues with respect to that.

9 I'm going to also order by agreement that the  
10 non-[REDACTED] phone calls, if there are any on those  
11 bills, the last four digits of the phone number be  
12 redacted. And again, that's by agreement. They're not  
13 relevant to Mr. Doscher's issues in responding to the  
14 motion to dismiss.

15 Is there anything else?

16 MR. DOSCHER: I just -- I don't have an order  
17 prepared because I'm not used to courts granting the relief  
18 that I request so I'll have to go down and get that.

19 THE COURT: I think Mr. [REDACTED] has something there.

20 MR. RHODES: I have an order and I think we can  
21 craft. Thank you, Your Honor.

22 THE COURT: Thank you.

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