

1 JANUARY 22, 2016

2 THE HONORABLE [REDACTED], PRESIDING

3 \* \* \* \* \*

4 THE COURT: Doscher and Holding? Good  
5 morning.

6 [REDACTED]: Good morning, Your Honor.

7 MR. DOSCHER: Good morning.

8 THE COURT: If you could identify yourselves  
9 for the court reporter, we will begin.

10 MR. DOSCHER: I'm plaintiff, Christian  
11 Doscher.

12 [REDACTED] [REDACTED] on behalf of the  
13 defendant, James Holding.

14 THE COURT: Good morning.

15 The Court set Mr. Doscher's matter from last week  
16 over until today so that the Court can hear both of  
17 the matters together given the overlap of the issues.

18 Mr. Doscher, I am going to start with you. I just  
19 want to remind you both of time constraints. We have  
20 ten minutes per side.

21 MR. DOSCHER: Your Honor, there's two matters  
22 on the docket. Would you like me to start with my  
23 motions or do you want to start with the motion to  
24 compel, which was the reply to my motion?

25 THE COURT: You can use your ten minutes any

1 way you wish.

2 MR. DOSCHER: Okay. I presented this motion  
3 to compel and motion for sanctions because I have  
4 served more than two months ago on defendant my  
5 discovery set number two. He never answered. We had  
6 a discovery conference about it. As he's made clear  
7 in his reply, his basic legal position is he thinks  
8 it's better to avoid discovery costs between now and  
9 the time that he plans to file his dispositive motion  
10 to dismiss for lack of personal jurisdiction.  
11 Although that's a -- I think that's too broad of an  
12 interpretation of CR 1. Discovery requests don't  
13 just back up because the defendant wants to wait.  
14 And so I quote [REDACTED] here: "Although a CR 12(b)  
15 motion extends the time for answering, it does not  
16 postpone the need to comply with requests for  
17 discovery unless a protective order is sought and  
18 granted."

19 I would add to [REDACTED] he meant timely. He did  
20 not mean six months after your deadline for answering  
21 discovery is due, you can go ahead and move for a  
22 protective order and then everything can be made okay  
23 retroactively. It has to be done timely.

24 I quote the Supreme Court three times. The  
25 Supreme Court says, "When faced with a discovery

1 request, there are not three options; there are only  
2 two. Answer and object as normal or seek a  
3 protective order." There is not a third option to  
4 wait and talk about how they plan to file a motion to  
5 dismiss, so why should they have to answer further  
6 discovery? It's a requirement and binding case law.  
7 Whether it's a good idea or not, it's required by  
8 case law.

9 I would also note, all the arguments I'm making  
10 here, the defendant does not reply to. He does not  
11 say that I've misquoted the law. He does not say  
12 that legally he's entitled to postpone discovery. He  
13 doesn't respond to [REDACTED] There's all sorts of --  
14 every possible way the discovery that I talk about  
15 could have been violated was violated. There's just  
16 no answer.

17 I quote case law in here: "A motion to compel  
18 compliance with the rules is not a prerequisite to  
19 sanctions." Many judges have said nobody has moved  
20 to compel, so we normally don't allow -- we normally  
21 don't allow an order of sanctions unless somebody has  
22 moved to compel, but case law says you don't have to  
23 move to compel.

24 The [REDACTED]  
25 [REDACTED], is the defendant counsel's

1 nightmare. The trial court said no to a sanctions  
2 motion. The Supreme Court reversed and said you are  
3 wrong; you must impose sanctions. The only thing the  
4 [REDACTED] defendants did was fail to disclose a few key  
5 documents. They didn't just wholesale ignore  
6 discovery the way counsel has done and that I'm  
7 complaining about. Therefore, [REDACTED] binding  
8 authority.

9 I think [REDACTED] teaches, as I say in here, the  
10 point at which discovery violation forgiveness  
11 becomes an abuse of discretion. We can't always just  
12 say let's give them seven chances and then if they do  
13 something really extreme, you can impose sanctions  
14 without violating discretion. Counsel has not  
15 provided any reason why he delayed. All he did in  
16 his rebuttal material was talk about how I was mouthy  
17 with a few non-parties or non-witnesses in my emails  
18 to people that are not parties. He doesn't explain  
19 why he did not timely answer. So as far as I'm  
20 concerned, my allegations are verities.

21 Specifically, defendant's failure to supply any  
22 facts whatsoever for his affirmative defenses was  
23 tactical nondisclosure, which case law says requires  
24 suppression. I asked in my discovery set number one,  
25 which he answered and objected to, in discovery set

1 one in interrogatory number 31, for facts supporting  
2 any of his affirmative defenses. He did not reply  
3 with any facts. He simply gave me a laundry list of  
4 titles of affirmative defenses but no facts. So  
5 unless he wants to make a frivolous argument that the  
6 facts supporting affirmative defenses might not lead  
7 to relevant evidence, I think I won that point hands  
8 down. He was wrong for not supplying facts to that.

9 Again, he doesn't explain why it is in his  
10 rebuttal materials that he did not answer my second  
11 set of discovery requests which were served on him  
12 October 19th. Anything that he might have been able  
13 to show he doesn't show. Again, all he says is I --  
14 when I obtained names and addresses from him in his  
15 earlier discovery answers, I sent vitriolic emails to  
16 certain non-parties. That's completely irrelevant,  
17 even if true.

18 I maintain that defendant answered my  
19 interrogatory one in discovery set one with perjury.  
20 I asked for the defendant's Social Security number.  
21 I'd like to make clear here that counsel did not  
22 object. All he did was supply the last four, and  
23 then he said we have moved for protective order, in  
24 the past tense, which at the time was not true. He  
25 hadn't moved -- his only motion for protective order

1 is the one that's going to be heard today. He now  
2 says that's a typo. He meant to change that after he  
3 decided not to move, but the \$64,000 question is why  
4 didn't he timely move if he planned to move for that  
5 protection order? What was it? Again, in his  
6 rebuttal materials he doesn't say. He keeps it a  
7 secret.

8 THE COURT: Mr. Doscher, I want you to wrap it  
9 up. I will let you know, I did last week and again  
10 this week review all of the pleadings that you filed.

11 MR. DOSCHER: Okay. Your Honor, last time I  
12 came before you, you said you looked at Judge [REDACTED]  
13 order in the prior discovery, and I got the  
14 impression that you thought he was protecting the  
15 defendant against all future discovery requests,  
16 which of course couldn't be true because the order  
17 says no such thing, and, first of all, counsel did  
18 not even argue that order protected him against such  
19 a thing. And so I show all of -- yeah, I think I  
20 would just wrap up with that.

21 He has not argued that my motion is frivolous, so  
22 I believe sanctions are appropriate, and I don't  
23 believe he should be allowed to argue excuses to you  
24 today because anything that could be a reasonable  
25 excuse for violating discovery does not appear in his

1 opposition brief. He just talks about how I mouthed  
2 off to non-parties. That's completely irrelevant.  
3 That's all.

4 THE COURT: Thank you.

5 Good morning, [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED]  
7 [REDACTED]  
8 Plaintiff's assertion that this Court is compelled  
9 to make any particular ruling on a motion for  
10 sanction misstates the collective body of [REDACTED]  
11 State case law which firmly establishes that this  
12 Court has wide latitude and discretion to fashion  
13 appropriate remedies and rulings concerning discovery  
14 matters given the circumstances unique to each  
15 situation. The [REDACTED] case that he cites was a  
16 matter where a document was withheld clear through  
17 trial that would have had a substantive effect on the  
18 trial. That is clearly not an analogous situation.

19 Mr. Doscher is held to the same standard as an  
20 attorney, and his use of the discovery materials  
21 previously provided raises a substantial question as  
22 to whether he has forfeited his right to continued  
23 discovery. Notwithstanding that, we don't disagree  
24 in a vacuum that someone who is facing a  
25 jurisdictional motion to dismiss certainly has a

1 right to obtain relevant material germane to that  
2 issue.

3 I reviewed plaintiff's second interrogatories.  
4 I've identified eight interrogatory questions and  
5 clearly informed the issue of jurisdiction. I have  
6 prepared a proposed order denying sanctions and  
7 implementing a protection order which compels  
8 answering those eight questions in the next two weeks  
9 and further stays discovery proceedings until May 6th  
10 when our dispositive motion can be heard.

11 When Judge ██████ previously entertained this  
12 matter, the briefing -- the second interrogatory set  
13 had not yet been served when the matter was briefed.  
14 It had been served prior to oral argument. I  
15 indicated to Judge ██████ that there was a second set  
16 pending of a substantial amount of questions. Judge  
17 ██████ indicated substantial concern orally on the  
18 record, indicated that if a protection order which  
19 wasn't before him now was pending, he would seriously  
20 consider that given the fact that we were  
21 entertaining answering a hundred interrogatory set  
22 questions, which we have done.

23 At that time, we entertained answering  
24 jurisdictional questions from the first set by a  
25 certain date so that plaintiff could have opportunity



1 to review those and then the remainder of that would  
2 be answered at a time when the jurisdictional issue  
3 was briefed and before the Court and would then be  
4 decided. At that time, I had forgotten about the  
5 odyssey that I was about to entertain in setting a  
6 dispositive motion, did not realize that May would be  
7 the soonest we could have this heard. I do believe  
8 that our proposed resolution to this matter does in  
9 good faith carry the spirit of Judge [REDACTED] first  
10 order.

11 Thank you.

12 THE COURT: Thank you.

13 Mr. Doscher, I will give you just a couple of  
14 minutes for a brief response.

15 MR. DOSCHER: All right, Your Honor. I argued  
16 in my original motion, we're arguing under CR 26(g).  
17 His response -- his response to discovery was  
18 intended as a delay tactic because his brief nowhere  
19 argues the embarrassment, the annoyance, the undue  
20 oppression, the standard excuses that attorneys use  
21 to try to get away from discovery.

22 He also admits in his motion for protective order,  
23 defendant's motion for protective order should have  
24 been filed sooner. So we're not talking about  
25 whether it's meritorious. We're talking about

1 whether he has an excuse, a reasonable excuse. He  
2 doesn't argue any reasonable excuse for not filing it  
3 in a timely fashion.

4 One last thing. I quote several times from the  
5 [REDACTED] case where, even if the  
6 defendant wants to bring a summary judgment version  
7 of a motion to dismiss for lack of personal  
8 jurisdiction, full discovery must still be allowed  
9 prior to that. That's a specific holding that is not  
10 dicta, and it says [REDACTED] [REDACTED]  
11 hold that the discovery there is mandatory. This  
12 whole idea that we should delay discovery until he  
13 gets his motion to dismiss on the merits heard is  
14 completely in violation of everything that case law  
15 says about the matter.

16 So I believe that he's failed in his duty to make  
17 a strong showing and meeting of heavy burden for his  
18 CR 26 motion to compel. He has shown nothing at all,  
19 and I think what he's gonna do now is just rely on  
20 the Court's discretion and he's gonna assume that  
21 broad authority constitutes unbridled authority, and  
22 of course that's not true.

23 THE COURT: Thank you.

24 I indicated earlier that I had an opportunity last  
25 week and again this week to review the pleadings that

1 have been filed, including the cross-motions  
2 regarding discovery issues. I also reviewed the  
3 file, including Judge P [REDACTED] ruling that was entered  
4 on October 23rd that was on Mr. Doscher's motion for  
5 sanctions and the defendant's motion for discovery  
6 conference plan. Judge [REDACTED] denied Mr. Doscher's  
7 motion for sanctions, and he granted Mr. Holding's  
8 motion. He also ordered Mr. Holding to answer the  
9 questions regarding long-arm jurisdiction by a  
10 certain date - I believe it was mid to late  
11 November - and then to answer the remaining  
12 interrogatories by December 4th.

13 At that time, there is no mention in the court  
14 order of any other sets of interrogatories. I will  
15 note that the first set includes 97 interrogatories  
16 and 98 requests for production. The second set  
17 includes an additional 50 interrogatories and 50  
18 requests for production. The third set, which has  
19 subsequently been propounded, includes 57  
20 interrogatories and 21 requests for production of  
21 documents. By my rudimentary math skills, that is  
22 approximately 200 interrogatories and over 150  
23 requests for production of documents. Frankly, by  
24 any wild stretch of my imagination, that appears to  
25 be excessive. Given the issues involved in this

1 case, I can't imagine the need for that many  
2 interrogatories. The federal rules of course require  
3 limits.

4 Are you tape recording me?

5 MR. DOSCHER: I'm recording this.

6 THE COURT: This is -- we have one official  
7 recording. You can turn that off.

8 MR. DOSCHER: Well, I thought the legal  
9 analysis is whether you had a privacy expectation.

10 THE COURT: You can turn that off. The  
11 courtroom is open. The Court is not preventing  
12 anybody from participating or being present in the  
13 courtroom. Proceedings are open. However, we have  
14 one official recording.

15 Did you turn that off or no?

16 MR. DOSCHER: Yes.

17 THE COURT: Thank you.

18 You are free to have an official transcript that  
19 the court reporter in front of me is providing. You  
20 can make arrangements with her when we finish to have  
21 that.

22 In any event, the defendant here, Mr. Holding, is  
23 alleging that the plaintiff, Mr. Doscher, is abusing  
24 the discovery process by submitting and propounding  
25 an inordinate amount of requests and also abusing and

1 harassing other people with the responses that he  
2 receives. The Court has the ability, the authority,  
3 and, frankly, the obligation to make sure that  
4 discovery is not oppressive. Parties absolutely have  
5 the right to receive discovery.

6 Mr. Doscher is correct regarding that he has the  
7 right to ask for discovery that leads to the  
8 discovery of relevant evidence. He does not have to  
9 know what it is. He does not have to be entirely  
10 specific. He certainly has that right. In this  
11 case, in this posture, however, it is my conclusion  
12 that Mr. Doscher is abusing the discovery process.

13 Mr. Doscher, I am going to ask you not to make  
14 faces or rude comments to the Court. I appreciate  
15 that most days not everybody agrees with what the  
16 Court has to say and with the Court's rulings, but I  
17 am making my record today and I am making my ruling.

18 I am finding that the defendant has more than  
19 satisfied a showing of good cause. It is my  
20 conclusion that justice in this case requires some  
21 protections and the Court to impose some limits on  
22 the discovery. I am finding that the proposed  
23 approximately 200 interrogatories and 150 requests  
24 for production are overly burdensome and oppressive  
25 and expensive. I am going to require that the

1 defendant answer the interrogatories that are  
2 intended to address the jurisdictional issues.

3 I think it is unfortunate that the Court doesn't  
4 have the ability to hear the motion or the dismissal  
5 prior to the time it was set. The Court is very well  
6 aware that it is difficult to get court dates for  
7 dispositive motions. I am not finding that there is  
8 any intent or behavior that the defendant has  
9 exhibited that is intending to delay these  
10 proceedings.

11 On the final point, this case is nothing, from my  
12 reading, like the [REDACTED]. The remedy in that  
13 case was extreme as the behavior was extreme from the  
14 defendant. I don't believe that this case is  
15 analogous to the [REDACTED] case.

16 I am going to sign the proposed order that Mr.  
17 [REDACTED] has just outlined. Mr. Doscher, I will give  
18 you a chance to take a look at it. You can choose to  
19 sign it or not, but the Court intends to sign it.

20 MR. DOSCHER: You're granting in part; isn't  
21 that correct?

22 THE COURT: I will take a look at the order.

23 MR. DOSCHER: May I approach?

24 THE COURT: You can hand the order to the  
25 clerk.

1 MR. DOSCHER: I have an objection there that  
2 my interrogatory asks for discovery on his motion to  
3 dismiss, which he never answered. That's not part of  
4 this order. Am I not allowed discovery on his  
5 affirmative defenses?

6 THE COURT: Mr. [REDACTED]

7 [REDACTED]: Your Honor, first I guess we  
8 would argue that our responses speak for themselves  
9 because the defenses were of the nature that the  
10 assertions made were true. However, I believe that  
11 those -- that the subject matter of that goes to the  
12 merits of the issue and if this matter goes forward  
13 that would be an appropriate subject for further  
14 discovery. It does not inform the question of  
15 long-arm jurisdiction. It informs the question of  
16 the merits of whether the elements of the claim can  
17 be proved.

18 So I guess I would ask that all discovery,  
19 including that issue, be stayed until after the  
20 jurisdictional issue be heard.

21 THE COURT: Mr. Doscher?

22 MR. DOSCHER: It's pretty difficult to believe  
23 that a discovery request which says please give the  
24 facts supporting any of your affirmative defenses is  
25 something that should be stayed until after his

1 motion employing those defenses has already been  
2 granted.

3 THE COURT: The Court has previously addressed  
4 and issued an order regarding the first hundred or so  
5 interrogatories and additional requests for  
6 production. This order deals with the second set and  
7 any later sets. I am going to sign the order that  
8 has been handed up to the Court.

9 Counsel and Mr. Doscher, if you wish to sign it,  
10 then the Court will sign it.

11 (Proceedings were concluded.)  
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