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| **DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO** | DATE FILED: April 20, 2017 6:58 PM  FILING ID: 6CD3B57FBEE0E CASE NUMBER: 2015CV31709 |
| **Denver County District Court Denver City & County Bldg.**  **1437 Bannock Street, Room 256**  **Denver, Colorado 80202** | ▲**COURT USE ONLY**▲ |
| **Plaintiffs: ROBERT ABRAMS and ABRAMS &**  **ASSOCIATES, LLC, a Colorado limited liability**  **company** | **Case Number: 2015CV31709**  Ctrm.: 275 |
| **v.** |  |
| **Defendant: SHAWN BEESON** |  |
| Wadi Muhaisen, 34470 **Muhaisen & Muhaisen, LLC** 1435 Larimer Street Ste 203  Denver, Colorado 80202  Phone Number: 303-872-0084  Fax Number: 303-309-3995 [wadi@muhaisenlaw.com](mailto:wadi@muhaisenlaw.com) |  |
| **RESPONSE TO MOTION TO COMPEL** | |

COMES NOW, the Defendant above named (“Shawn Beeson”), by and through counsel, Muhaisen & Muhaisen, LLC, and responds to Plaintiff’s Motion to Compel, and as grounds therefore states as follows:

# Procedural Background.

Plaintiffs served interrogatories, requests for production of documents, and requests for admissions, upon Defendant on January 12, 2017. Defendant concedes that the responses to discovery were due thirty-five days later, or by February 16, 2017.

When Defendant’s counsel’s office migrated all files and calendar entries in early 2017,

that deadline was not calendared, and therefore the deadline was not complied with. The parties agreed by email on February 22, 2017, that the discovery would be produced by 4:00 p.m. on Friday, February 24, 2017. The Plaintiffs assert in their Motion to Compel that “[s]uch has not occurred.” Mot. to Compel, ¶4, at 2. However, that is incorrect, since Defendant did send his discovery responses by the agreed-upon new deadline of February 24th. Plaintiffs filed their Motion to Compel Discovery Pursuant to C.R.C.P. 37 on March 6, 2017 alleging deficiencies in Defendant’s discovery responses. However, Plaintiffs did not comply with C.R.C.P. 121 §1-12.3 which states that [i]f relief is sought under Rule . . . 37(a), C.R.C.P., copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with the motion.” Plaintiffs did not attach Defendant’s responses, which were absolutely served on February 24, 2017. Defendant filed a Motion to Strike the Motion to Compel on March 13, 2017. On April 19, 2017, the Court denied

Defendant’s Motion to Strike, and required that the Defendant file any written response to the Motion to Compel by April 20, 2017.

# Burden of Proof.

The Colorado Rules of Civil Procedure provide that for “good cause shown”

discovery may be limited and “the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue

burden or expense ....” C.R.C.P 26(c); see also, C.R.C.P. 26(c)(4) (court may order “that

certain matters not be inquired into, or that the scope of the disclosure or discovery be

limited to certain matters”).

Where discovery issues require the judge to balance one litigant’s interests in obtaining information versus the harm caused to the other litigant if forced to provide it, “the trial judge’s discretion is very broad.” Chicago Cutlery Co. v. Dist. Ct., 568 P.2d 464, 466 (Colo.. 1977). The decision to grant a protective order is vested in the district court, and will only be reversed upon a showing of abuse of discretion. Bond v. Dist. Ct., 682 P.2d 33, 40 (Colo. 1984) (“Discovery rulings are generally within the discretion of the trial court.”); Wang v. Hsu, 919 F.2d 130, 130 (10th Cir. 1990); U.S. v. Ortiz, 804 F.2d 1161, 1164 n. 2 (10th Cir. 1986) (appellate court will not disturb a trial court’s decision absent “a definite and firm conviction that the lower court made a clear error of

judgment or exceeded the bounds of permissible choice in the circumstances.”).

# Defendant’s Responses to Plaintiffs’ Motion and Alleged Deficiencies.

* 1. Plaintiffs blatantly mislead the Court, as they traditionally have in this matter, by claiming in their Motion to Compel that *“Defendant’s deadline to answer Plaintiffs’ discovery requests was February 16,2017. To date, Defendant has failed to answer said discovery requests.*” Mot. to Compel, ¶11 (emphasis added). That representation to the court was false, since the Plaintiffs made this statement in their March 6, 2017 Motion to Compel, even though the Defendant had already served Plaintiffs with his answers to

discovery on February 24, 2017 with the acquiescence of Plaintiffs. The Court noted the inconsistency in its April 19, 2017 order in ¶2.

* 1. The text and tone of Plaintiffs’ Motion state and/r insinuate that this is a simple matter of Defendant being late and not providing discovery answers. However, even though Defendant did not respond by the February 16, 2017 deadline due to the technical glitch, Plaintiffs expressly agreed to extend said deadline to February 24, 2017, which was a rare professional courtesy that the Defendant gives Plaintiffs credit for, and the Defendant acknowledges. The fact is that Defendant complied with the new deadline that Plaintiffs agreed to, therefore Defendant has responded to the discovery in accordance with the new deadline, and therefore responded in a timely fashion.
  2. Defendant incorporates his previous objections (where applicable) to Plaintiffs’ discovery requests, and provides additional specific responses to the alleged deficiencies stated in Plaintiffs’ February 28, 2017 Letter1. A timely objection to an Interrogatory stays the obligation to answer those portions of the Interrogatory objected to until the court resolves the objection. No separate motion for protective order pursuant to

C.R.C.P. 26(c) is, or was required. Mr. Beeson's objections were timely made based on the agreement of the parties for the February 24, 2017 extension.

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| **DOCUMENTS** |  |
| 1. Documents identified and/or relied upon in your responses to the interrogatories and requests for admission. These have not been previously produced, are not in Plaintiffs’ possession, and are  not unreasonably burdensome. | Defendant’s response to this request  speaks for itself. |
| 2. Tax returns. These are not privileged | Defendant objected to this Request, and in |

1 Verbatim from Plaintiffs’ Letter.

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| documents and are reasonably calculated to lead to the discovery of admissible  evidence as it relates to Defendant’s claim for diminished wages resulting from injuries allegedly caused by Plaintiffs. | addition submits that Colorado Court decisions generally consider tax returns to be irrelevant and not discoverable on the question of present and future damages in personal injury actions. - in See Hoyal v. Pioneer Sand Co., Inc (Colo. 2008) |
| 3. Employment Records. These are highly relevant to Defendant’s claim for damages and go to show that he has suffered no  economic harm as a result of any injuries allegedly caused by Plaintiffs. | Defendant maintains his objection to this request as irrelevant, since he is not seeking loss of income for the past five years in this case. |
| 4. All copies and records of medical imaging procedures on back and shoulder in last ten years. No medical imaging records have been disclosed at any stage of the proceedings, they are not in Plaintiffs’ possession, and Plaintiffs have no way of obtaining them from some other source. Further, production of such documents cannot be overly burdensome as Defendant put a few documents into evidence in May of 2015 regarding this dispute. | As stated in his response, Defendant is not in possession of the requested items.  Additionally, the requested items are not discoverable at this point in the litigation because the Court only extended deadlines for discovery on the limited issue of **future** damages arising out of Defendant’s claim of battery. *See* December 30, 2016 Court Order: Shawn Beeson's Motion for Extension of Discovery for Injury Claim and to Designate Experts. Plaintiffs' request #4 is for **past** medical records, and Plaintiffs chose not to serve interrogatories on past damages when it had the opportunity previously, and  cannot now based on the limited expansion of discovery in this case. |
| 5. All medical records relating to the evaluation and/or treatment of shoulder or back injuries in last ten years. Production of such documents cannot be overly burdensome as Defendant put a few documents into evidence in May of 2015 regarding this dispute. Further, any records of preexisting injuries are not duplicative, because they have not been disclosed at any stage of the proceedings, they are not in Plaintiffs’ possession, and Plaintiffs have no way of obtaining them  from some other source. Note, any medical records plaintiffs may have had from the | Again, the requested items are not discoverable at this point in the litigation because the Court only extended deadlines for discovery on the limited issue of **future** damages arising out of Defendant’s claim of battery. *See* December 30, 2016 Court Order: Shawn Beeson's Motion for Extension of Discovery for Injury Claim and to Designate Experts. Plaintiffs' request #5 is for **past** medical records, and Plaintiffs chose not to serve interrogatories on past damages when it had the  opportunity previously, and cannot now based on the limited expansion of |

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| prior representation: i. Were returned to plaintiff in 2013 ii. Were attorney/client privilege and not useable in this matter iii. Are over 5 years old iv. Are in the exclusive control of defendant v. Are defendant’s  obligation to produce in this litigation | discovery in this case. |
| 6. Journal. The need for additional time after already having been granted an extension is further evidence that no action was taken in furtherance of  discovery until after the deadline passed. | Defendant will comply with this request. |

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| **INTERROGATORIES** |  |
| 1. Plaintiffs’ Interrogatory # 7 (Pattern  15.1). Defendant objects to a pattern  interrogatory as an “overbroad” “abuse of discovery.” Such pattern interrogatory has been approved by the Colorado Supreme Court and an objection thereto is unfounded. | Plaintiffs' statement is incorrect and they do not include a citation for the proposition that a party cannot object to a pattern interrogatory. In the General Instructions at C.R.C.P. 20 Form (2017), Section 1 states: "These pattern interrogatories and instructions do not affect an answering party's right to assert any privilege or objection. Parties may object to these pattern interrogatories on grounds including, but not limited to, that the interrogatories exceed the scope of permissible discovery as defined in  C.R.C.P. 26(b)(1) because the inquiry is not relevant to the claims and defenses of any party or is not proportional to the needs of the case." Here, as relevant to this case proportionally, the request is overbroad and basically asks Defendant to  plead his entire case. |
| 2. Plaintiffs’ Interrogatory # 8 (Pattern  17.1). Defendant failed to provide a response to this pattern interrogatory. | Defendant's omission of an answer to this  interrogatory was a typing mistake, and he answer it. |
| 3. Plaintiffs’ Interrogatory # 9. Defendant claims Plaintiffs are in possession of prior medical records from “the case in which [Plaintiffs] represented [him].” This is an inadequate response, as the case is five  years old, Plaintiffs returned his entire file | This interrogatory is not permissible since the information sought is not discoverable at this point in the litigation because the Court only extended deadlines for discovery on the limited issue of **future**  damages arising out of Defendant’s claim |

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| after Defendant sued Plaintiffs for same in small claims court and returned same thereunder, and any documents retained are privileged and incomplete. Defendant has an obligation to disclose all relevant records and information in support of his case at this time. Defendant sued plaintiff for injuries related to battery. Plaintiff asserts his injuries, if any, are all preexisting conditions. Plaintiff validly requested medical records of back and shoulder injuries to the issues at hand.  Defendant delivered nothing and is thereby noncompliant under Rule 37. | of battery. *See* December 30, 2016 Court Order: Shawn Beeson's Motion for Extension of Discovery for Injury Claim and to Designate Experts. Plaintiffs’ request #4 is for **past** medical records, and Plaintiffs chose not to serve interrogatories on past damages when it had the opportunity previously, and cannot now based on the limited expansion of discovery in this case. |

# Conclusion.

Plaintiffs agreed to an extension until February 24, 2017 for Defendant to serve his responses to discovery, then misled the court when they claimed such responses “. . . has not occurred,” and failed to comply with C.R.C.P. 121 § 1-12.3 by including the disputed discovery responses. As demonstrated in Section III supra, Defendant Shawn Beeson responded to Plaintiffs’ discovery requests, or objected within his rights. Finally, Plaintiffs served discovery requests that are untimely since they do not fall within the narrow area that the Court extended discovery for in its December 30, 2016 Order.

Since Defendant has complied with discovery, or any lapse is substantially justified or harmless, no C.R.C.P. 37 sanctions or remedies are warranted.

**WHEREFORE**, upon the foregoing arguments and authorities, Shawn Beeson respectfully requests that the Court deny Plaintiffs’ motion to compel.

**DATED** this 20th day of April, 2017.

Respectfully submitted, Muhaisen & Muhaisen, LLC

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\* *The "S/" is a symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document pursuant to C.R.C.P. 121 lr 1-26(1)(f). A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures is maintained by the filing party and is available for inspection by other parties or the court upon request pursuant to C.R.C.P. 121 lr 1-26(7).*

# CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing pleading entitled “Response to Motion to Compel” was [ ] hand delivered, or [X ] E-Served by the Court- authorized E-System provider, or [ ] served by facsimile to [insert fax number of opposing party or their counsel], or [ ] sent by United States mail postage prepaid, to the following on this 20th day of April 2017:

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/S/ Yvette Garcia Yvette Garcia