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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Dennis Kravetz,) No. CV-08-1060-PHX-FJM

10 Plaintiff,) **ORDER**

11 vs.)

12 Paul Revere Life Insurance Company, et)

13 al,)

14 Defendants.)

15 _____)

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17 The court has before it non-party Kahn’s “Motion to Quash and Motion for Protective
18 Order” (doc. 24), “Plaintiff’s Response to Motion to Quash Subpoena and Plaintiff’s Motion
19 to Compel” (doc. 28 and 29), “Leo Kahn, M.D.’s Reply in Support of Motion to Quash
20 Subpoena and Response to Plaintiff’s Motion to Compel” (doc. 35), and “Plaintiff’s Reply
21 to Motion to Compel” (doc. 36).

22 Kahn was hired by defendants to perform an independent medical evaluation of
23 plaintiff. Defendants relied upon that evaluation in resolving plaintiff’s claim for disability
24 benefits. Plaintiff now wishes to show that Kahn has no real medical practice and the bulk
25 of his business is as an expert for insurance companies. While defendants have not taken a
26 position, Kahn resists plaintiff’s effort to acquire information to support its theory. Kahn
27 objects to producing communications with the defendants, guidelines or instructions from
28 the defendants, reports of other IMEs he participated in 2006, 2007 and 2008, and Form

1 1099s reflecting work as an independent medical examiner for the tax years 2006, 2007 and
2 2008. Kahn claims that the matters sought are irrelevant, burdensome, in violation of
3 privacy and HIPAA, and overly broad.

4 We reject the claim that the information sought is irrelevant. It seems plainly
5 calculated to lead to the discovery of admissible evidence on plaintiff's theory of bias.

6 Kahn's burden argument can be resolved by allowing plaintiff's counsel to inspect and
7 copy these documents or by requiring plaintiff to pay to Kahn the costs of producing and
8 copying them.

9 The privacy and HIPAA objection can be dealt with by having plaintiff's counsel
10 review the documents, copy only those that are desired, and protect them from disclosure
11 under Rule 26(c)(1)(G), Fed. R. Civ. P.

12 Kahn's claim that he does not have his Form 1099s for the tax years 2006, 2007 and
13 2008, borders on the incredible. These are years fully subject to IRS audit. Again, any
14 privacy issues can be resolved through protective order.

15 Because defendants hired Kahn, Kahn may have a contractual remedy against the
16 defendants with respect to the costs of production. In addition, Kahn has admitted that
17 "[f]rom 2006 to present, Dr. Kahn estimates that he has done an average of four to five IMEs
18 per week at approximately \$1000.00 each. A rough estimate puts Dr. Kahn's income for
19 IMEs at \$208,000.00 to \$260,000.00 a year." Kahn's Reply and Response at 5-6 (doc. 35).
20 He has thus voluntarily thrust himself into the mix of resolving insurance claims and thus,
21 in contrast to physicians who limit their practice to patient care, can reasonably be expected
22 to anticipate involvement in litigation of this sort.

23 Accordingly, IT IS ORDERED DENYING Kahn's "Motion to Quash Subpoena and
24 Motion for Protective Order" (doc. 24) and GRANTING "Plaintiff's Motion to Compel"
25 (docs. 28 and 29)

26 The parties, and non-party Kahn, are encouraged to cooperate in finding practical
27 solutions to their concerns. They are also reminded of the two page limit on discovery
28 motions under this court's order of September 12, 2008, at 3 ¶ 9 (doc. 17).

DATED this 9th day of January, 2009.

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Frederick J. Martone

Frederick J. Martone
United States District Judge