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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GLORIA GRENING WOLK,	)	
	)	
Plaintiff(s),	)	No. C06-5025 BZ
	)	
v.	)	<b>ORDER GRANTING IN PART</b>
	)	<b>PLAINTIFF'S SECOND MOTION TO</b>
PHILIP R. GREEN,	)	<b>COMPEL</b>
	)	
Defendant(s).	)	
_____	)	

Before me is plaintiff's second motion to compel defendant to further answer interrogatories, requests for admissions and requests for production of documents. For the reasons discussed, plaintiff's motion is **GRANTED IN PART AND DENIED IN PART.**

Plaintiff requests an order compelling further responses to interrogatory numbers 1, 4, 5, 8, 13, 15, and 16; requests for admission numbers 16, 17, 18, 19, 25, 27, and 29; and requests for production of documents numbers 1, 8, 11, 18, 24, 25, 26, and 27. I ordered defendant to provide further responses to these discovery requests in my orders dated October 29, 2007 and December 5, 2007.

1 In her moving papers, plaintiff contends that defendant  
2 did not serve further responses to her interrogatories  
3 pursuant to my October 29, 2007 order. However, defendant  
4 attached a copy of his revised interrogatory responses as an  
5 exhibit to his opposition which includes a certificate of  
6 service stating that it was served on plaintiff by mail on  
7 November 13, 2007. As such, it is presumed that defendant  
8 served timely responses. Plaintiff has not produced evidence  
9 to rebut that presumption.

10 Interrogatory numbers 1 and 4 ask defendant to identify  
11 lawsuits in which he obtained a positive verdict for his  
12 client and in which he represented a defendant in a  
13 defamation lawsuit. In his responses, defendant refers to  
14 six cases but contends that he cannot remember a single case  
15 name or number, he fails to indicate the courts in which the  
16 suits were filed and he responds that such information is  
17 "readily obtainable . . . as they constitute publicly  
18 available information."

19 Federal Rule of Civil Procedure 33(b)(3) requires that a  
20 party "must" answer each interrogatory "separately and fully  
21 in writing under oath." "Parties must provide true,  
22 explicit, responsive, complete, and candid answers to  
23 interrogatories." Hansel v. Shell Oil Corp., 169 F.R.D. 303,  
24 305 (E.D.Pa. 1996). "If a party is unable to supply the  
25 requested information, the party may not simply refuse to  
26 answer, but must state under oath that he is unable to  
27 provide the information and 'set forth the efforts he used to  
28 obtain the information.'" Id., quoting Milner v. National

1 School of Health Tech., 73 F.R.D. 628, 632 (E.D.Pa 1977).

2 Here, defendant fails to explain what efforts, if any, he  
3 made to attempt to determine the names of his previous cases.  
4 I find it highly unlikely that defendant is unable to recall,  
5 after conducting a reasonable inquiry, such basic requests.  
6 Nor does he provide any authority for the proposition that a  
7 response that information can be gleaned from the public  
8 record is an adequate response. In any event, the burden on  
9 defendant, an attorney, to conduct a search to identify his  
10 previous California cases is much less than it would be for a  
11 pro se plaintiff who resides in North Carolina. I therefore  
12 **GRANT** plaintiff's motion as to interrogatory numbers 1 and 4.  
13 Defendant's revised responses shall include the case name,  
14 number, and identify the court in which the six cases  
15 referred to in the responses were filed.

16 I also **GRANT** plaintiff's motion for a further response  
17 to interrogatory 8. The interrogatory requests a description  
18 of the research defendant and anyone on his behalf conducted  
19 in regard to the underlying lawsuit. In his response,  
20 defendant states that he conducted the research in  
21 conjunction with law clerks and that the "research consisted  
22 of examining and analyzing relevant case law." The response  
23 is evasive and non-responsive as defendant fails to describe  
24 the research conducted.

25 I **DENY** plaintiff's motion to compel further responses to  
26 interrogatory numbers 5, 13, 15, and 16. I find the  
27 responses adequate. Plaintiff takes issue with many  
28 responses because they are contradicted by the record in the

1 earlier case or by defendant's previous discovery responses.  
2 Such inconsistencies are better dealt with by cross-  
3 examination, at deposition or trial.

4 Plaintiff's motion to compel further responses to  
5 requests for admission numbers **16, 18, 19, and 29** is **GRANTED**.  
6 In his moving papers, defendant opines that "admissions are  
7 properly answered when based on a party's personal  
8 recollection of past facts or occurrences." (Def.'s Opp'n 3.)  
9 However, a responding party must make a "reasonable inquiry  
10 and secure such knowledge and information as are readily  
11 obtainable by him." Fed.R.Civ.P. 36, Adv.Comm.Notes 1970.  
12 Defendant is **ORDERED** to provide a straight forward response  
13 to each request or the court will deem his responses to be  
14 admissions.

15 Defendant's responses to request for admission numbers  
16 **17, 25, and 27** are adequate and plaintiff's motion is **DENIED**.  
17 Again, defendant's allegedly false responses to the requests  
18 for admissions may be used to impeach defendant at deposition  
19 or at trial but do not warrant issuing a further order to  
20 compel.

21 Plaintiff's motion is **GRANTED** as to request for  
22 production numbers **8, 24, and 25**. Defendant is **ORDERED** to  
23 produce any notes of his conversations with Mr. Wisbaum or  
24 amend his response to reflect that such documents do not  
25 exist. Defendant is further **ORDERED** to produce the documents  
26 responsive to numbers 24 and 25 by **February 11, 2008**.

27 Plaintiff's motion to compel further response to her requests  
28 for production of documents numbers **1, 11, 18, 24, and 27** is

1 **DENIED** as defendant's responses are adequate.

2 Defendant has repeatedly refused to disclose a complete  
3 copy of his liability insurance policy, and insists that the  
4 declarations page is sufficient to satisfy Federal Rule of  
5 Civil Procedure 26(a)(1)(A)(iv) (formerly Rule 26(1)(D)).

6 However, the plain language of the rule requires a party to  
7 disclose, and to provide for inspection, "any insurance  
8 agreement", not just the declarations page of the policy.

9 Fed.R.Civ.P. 26(a)(1)(A)(iv); see also Morock v. Chautauqua  
10 Airlines, Inc., 2007 WL 2875223, \*1 (M.D.Fla. 2007)

11 (disclosure of declarations page and assurance that policy  
12 would adequately cover plaintiff's claims insufficient) ;

13 Boyer v. Riverhead Cent. School Dist., 2006 WL 3833040, \* 2 -  
14 3 (E.D.N.Y. 2006) (summaries of policies insufficient).

15 Plaintiff's motion to compel defendant to produce the  
16 complete insurance policy is **GRANTED**.

17 Plaintiff also seeks an order to compel defendant to  
18 return four of her books that she allegedly provided to him  
19 in the underlying litigation, or to compensate her for the  
20 costs of the books. Defendant contends that he does know  
21 where the books are, and believes that he returned them to  
22 her. A motion to compel is not the appropriate method for  
23 plaintiff to recover the books. The motion to compel their  
24 production is **DENIED**.

25 Plaintiff also requested an order compelling defendant  
26 to provide a copy of a deposition transcript that she  
27 contends should have been a part of her litigation file from  
28 the underlying case. After she filed the motion, defendant

1 provided her with a copy of the deposition transcript, but it  
2 was not certified by a court reporter. In his responses to  
3 her discovery, defendant has repeatedly claimed that he  
4 already provided plaintiff with her entire litigation file  
5 from the underlying case. Defendant's failure to produce the  
6 deposition transcript until after plaintiff filed a motion to  
7 compel is troubling. Defendant is **ORDERED** to review all of  
8 his files in order to ensure that he has provided plaintiff  
9 with a copy of all documents from plaintiff's litigation file  
10 in the underlying case and shall file a sworn declaration  
11 certifying he has done so by **Wednesday, February 6, 2008**.  
12 Defendant is also **ORDERED** to serve, via post and email,  
13 amended discovery responses and further documents that  
14 comport with this order by **Wednesday, February 6, 2008**.

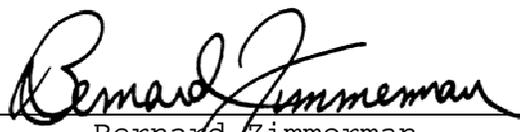
15 Defendant failed to completely produce all responsive  
16 documents in his possession to plaintiff's requests for  
17 production of documents, he has repeatedly responded to  
18 discovery requests stating he is unable to remember the  
19 information called for in the requests, and some of his  
20 responses to discovery are allegedly contradicted by the  
21 record in the underlying case or by his previous discovery  
22 responses. In light of this, it is **HEREBY ORDERED** that  
23 defendant will be precluded from introducing at trial  
24 documents responsive to plaintiff's discovery requests that  
25 should have been produced, but were not. Moreover, defendant  
26 will be precluded from providing testimony that he is able to  
27 remember facts at trial that he was unable to remember when  
28 responding to discovery. Finally, plaintiff will be

1 permitted to point out the inconsistencies of defendant's  
2 responses, if relevant and admissible, when examining  
3 defendant at trial.

4 Plaintiff's request to extend the pretrial schedule to  
5 provide additional time for discovery is **DENIED**. I have  
6 supervised this matter since April 27, 2007 and believe that  
7 plaintiff received adequate discovery to permit her to  
8 prepare for trial.

9 Plaintiff's request for the issuance of sanctions is  
10 **DENIED** without prejudice. In her moving papers, plaintiff  
11 refers to an "accompanying motion for sanctions" but the  
12 docket does not reflect such a motion. However, the court  
13 believes that some of defendant's responses, particularly the  
14 failure to produce the insurance policy, were without  
15 substantial justification and is considering whether to  
16 impose sanctions sua sponte.

17 Dated: January 31, 2007

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19 \_\_\_\_\_  
20 Bernard Zimmerman  
21 United States Magistrate Judge

22 G:\BZALL\BZCASES\WOLK\ORDER GRANTING IN PART PLAINTIFFS 2ND MOTION TO COMPEL.2.wpd  
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