

UNITED STATES DISTRICT COURT  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
Northern District of California

WILLIAM MCKINNEY,  
Plaintiff,  
v.  
BAYER HEALTHCARE, LLC, et al.,  
Defendants.

No. C 09-5561 CW (MEJ)

**ORDER RE DISCOVERY DISPUTE  
(DKT. #29)**

The Court is in receipt of the parties' joint discovery dispute letter, filed on November 5, 2010. (Dkt. #29.) The dispute concerns a subpoena duces tecum issued by Defendant Bayer Healthcare LLC ("Defendant") to Kaiser Permanente, seeking production of "all records, including electronically stored information, relating to the physical or mental condition of" Plaintiff William McKinney ("Plaintiff"). (Dkt. #23.) Plaintiff moved to quash the subpoena, asserting his psychotherapist-patient privilege. (Joint Letter at 1-3.) In response, Defendant argues that Plaintiff waived his privilege by claiming the existence of a disabling mental condition. *Id.* at 4, 5.

The Court agrees with Defendant. The Court finds that Plaintiff placed his mental condition at issue by claiming that he "was 'a qualified individual with a disability'" because he "had a mental disorder or condition that substantially limited one or more of his major life activities, had a record of such disorder or condition, and/or was regarded by Defendants . . . as having such a disorder or condition," (Compl. Dkt. #1-1.) Thus, as Plaintiff must establish this claim as a crucial element of his case, he is therefore regarded to have waived the privilege. Accordingly, the Court DENIES Plaintiff's motion to quash the subpoena.

**IT IS SO ORDERED.**

Dated: December 3, 2010

  
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Maria-Elena James  
Chief United States Magistrate Judge