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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE:	
TIMOTHY JOSEPH GRANT,	Debtor.
PELLON LAY,	Plaintiff,
v.	
TIMOTHY JOSEPH GRANT,	Defendant.
AND RELATED COUNTERCLAIM.	

Case No.: 20-cv-02465-DMS (JLB)

**ORDER DENYING
PLAINTIFF/COUNTERCLAIM
DEFENDANT PELLON LAY’S
MOTION FOR PROTECTIVE
ORDER RE: PSYCHIATRIC AND
PSYCHOLOGICAL TREATMENT
AND MENTAL HEALTH
COUNSELING RECORDS**

[ECF No. 49]

Before the Court is a Motion for Protective Order re: Psychiatric and Psychological Treatment and Mental Health Counseling Records filed by Plaintiff/Counterclaim Defendant Pellon Lay (“Lay”). (ECF No. 49.) Lay requests that the Court issue a protective order directing that Lay’s psychological and psychiatric treatment and mental health counseling records (collectively, “mental health records”) not be produced directly to Defendant/Counterclaim Plaintiff Timothy J. Grant (“Grant”). (*Id.* at 6.) Instead, Lay

1 requests that the Court order the appointment of a discovery referee/special master
2 (“special master”) to review Lay’s mental health records and recommend an appropriate
3 resolution and require Lay and Grant to each be responsible for one half of the cost of this
4 appointment. (*Id.*) Grant opposes the motion. (ECF No. 50.) Lay filed a reply. (ECF
5 Nos. 51; 52.) For the reasons set forth below, the Court **DENIES** Lay’s Motion for
6 Protective Order.

7 **I. BACKGROUND**

8 **A. Procedural Background**

9 On or about April 3, 2020, Grant filed a voluntary petition for relief under Chapter 7
10 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the Southern
11 District of California, Case No. 20-01895-LT7. (ECF No. 16 (“Compl.”) ¶¶ 1, 5.) The
12 present dispute was initiated by Lay on June 12, 2020, when he filed an adversarial
13 complaint for non-dischargeability of debt in Grant’s bankruptcy case, which was assigned
14 Adversary No. 20-90082-LT. (*Id.* ¶ 1.) Lay filed suit for willful and malicious injury
15 stemming from a 2019 incident between the parties that occurred at a Mobil gas station in
16 San Diego, California. (*Id.* ¶¶ 6–20.)

17 On December 18, 2020, the parties stipulated and jointly moved to have the
18 adversary proceeding transferred to U.S. District Court for a trial on Lay’s personal injury
19 tort action pursuant to 28 U.S.C. § 157(b). (ECF No. 1.) Thereafter, the matter will be
20 returned to the Bankruptcy Court for further proceedings regarding dischargeability under
21 28 U.S.C. § 523(a)(6). (*See* ECF No. 4 at 1.) The Honorable Dana M. Sabraw granted the
22 parties’ joint motion on February 10, 2021. (*Id.* at 1–2.)

23 **B. Factual Background¹**

24 The incident took place on November 7, 2019, as the parties were emerging from
25 the car wash at a Mobil gas station. (Compl. ¶ 6; *see also* ECF No. 18 ¶ 12.) When Lay
26

27 ¹ Except as otherwise noted, the following allegations are taken from Lay’s
28 Complaint.

1 began to exit the car wash, he found he could not leave because Grant was blocking the
2 exit. (Compl. ¶ 7.) Lay honked his horn, but Grant did not respond. (*Id.*) Eventually, Lay
3 exited his car and approached Grant to ask him to move his car. (*Id.* ¶ 8.) Grant, who was
4 texting on his mobile phone, “responded with a barrage of abusive language, threatening
5 harm to Lay.” (*Id.* ¶¶ 8–9.) Grant then exited his car and “struck [Lay] with a metal
6 steering wheel security arm bar.” (*Id.* ¶ 10.) Grant chased Lay through the car wash
7 parking lot and hit him on his “face, head, neck, shoulders, and about his body.” (*Id.* ¶ 11.)
8 Lay was left bleeding and had a cut behind his left ear. (*Id.* ¶ 12.) His head/neck area was
9 also bruised and became swollen and painful. (*Id.*) Lay required medical care, including
10 numerous stitches to close the open wounds on his head. (*Id.*) Two car wash employees
11 prevented Grant from leaving the scene and the San Diego Police Department arrived in
12 response to a 911 emergency call. (*Id.* ¶ 13–14.)

13 As a proximate result of the acts and omissions of Grant, Lay alleges: (1) that he was
14 injured and has received and continues to receive medical care for his injuries, which may
15 lead to some permanent disability to him and residual damages (*id.* ¶ 16); (2) that he
16 sustained, and will sustain, special damages consisting of medical bills and related
17 healthcare expenses (*id.* ¶ 17); (3) that he “suffered general damages, pain and suffering,
18 interruption of the enjoyment of life, and emotional distress” (*id.* ¶ 18). In his prayer, Lay
19 seeks, *inter alia*, punitive damages. (*Id.* at 4.)

20 On July 9, 2020, Grant, proceeding *pro se*, filed an Answer and Counterclaim in
21 Bankruptcy Court. (ECF Nos. 17; 18.) Grant brought claims against Lay for battery,
22 assault, intentional infliction of emotional distress, and negligence related to the incident
23 at the gas station car wash. (ECF No. 18 ¶¶ 74–102.) Grant alleges that while he was still
24 seated in his car, Lay approached him, berated him, and then punched him in the face with
25 his left fist “without warning or provocation.” (*Id.* ¶¶ 19–25.) He further alleges that he
26 struck Lay with the metal steering wheel security arm bar or “club” in self-defense. (*Id.* ¶¶
27 39–44.) Grant alleges that after the incident he was arrested on the charge of assault with
28 a deadly weapon. (*Id.* ¶ 53.) Grant alleges he suffered injuries to his ear and neck for

1 which he was subsequently treated on two occasions at Urgent Care. (*Id.* ¶¶ 57–59.) Grant
2 further alleges that the blow to the face “and the resulting concussion” triggered some or
3 all of his “current psychological issues and the consequent need for [] psychological
4 treatment, resulting in [his] stopping work due to the medical disability.” (*Id.* ¶¶ 61–69.)

5 In February 2020, Grant entered a guilty plea to the felony charge of assault with a
6 deadly weapon (Cal. Pen. Code § 245(a)(1)), “including the admitted ‘personal use of a
7 dangerous or deadly weapon’” (*id.* § 11927(c)(23)) in *People v. Timothy Joseph Grant*,
8 Case No. SCD284113 (San Diego Superior Court). (ECF No. 18 ¶¶ 63–64.) As a result
9 of his felony conviction, Grant, who is a California attorney, had his license to practice law
10 suspended on an interim basis by the California State Bar on November 3, 2020. (ECF No.
11 29 at 2.)

12 **II. LEGAL STANDARD**

13 Federal Rule of Civil Procedure 26 provides that parties:

14 may obtain discovery regarding any nonprivileged matter that is relevant to
15 any party’s claim or defense and proportional to the needs of the case,
16 considering the importance of the issues at stake in the action, the amount in
17 controversy, the parties’ relative access to relevant information, the parties’
18 resources, the importance of the discovery in resolving the issues, and whether
the burden or expense of the proposed discovery outweighs its likely benefit.

19 Fed. R. Civ. P. 26(b)(1). The December 2015 amendment to Rule 26 reinforced the
20 proportionality factors for defining the scope of discovery and, thus, under Rule 26,
21 relevancy alone is not sufficient to obtain discovery. *See* Fed. R. Civ. P. 26(b)(1) advisory
22 committee’s note to 2015 amendment. Discovery must also be proportional to the needs
23 of the case. *Doherty v. Comenity Cap. Bank*, No. 16cv1321-H-BGS, 2017 WL 1885677,
24 at *2 (S.D. Cal. May 9, 2017) (citing *Mora v. Zeta Interactive Corp.*, No. 1:16-cv-00198-
25 DAD-SAB, 2017 WL 1187710, at *3 (E.D. Cal. Feb. 10, 2017)). Rule 26 requires that
26 courts “limit the frequency or extent of discovery otherwise allowed by these rules or by
27 local rule if it determines that . . . the proposed discovery is outside the scope permitted by
28 Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C)(iii).

1 The relevance standard is commonly recognized as one that is necessarily broad in
2 scope in order “to encompass any matter that bears on, or that reasonably could lead to
3 other matter that could bear on, any issue that is or may be in the case.” *Doherty*, 2017
4 WL 1885677, at *2 (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351
5 (1978)). Regardless of its broad nature, however, relevancy is not without “ultimate and
6 necessary boundaries.” *Id.* (quoting *Hickman v. Taylor*, 329 U.S. 495, 501 (1947)).
7 Accordingly, district courts have broad discretion to determine relevancy for discovery
8 purposes. *Id.* (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)).

9 A party may serve on any other party requests for production of documents or
10 tangible things within the scope of Rule 26(b). Fed. R. Civ. P. 34(a). In response to a
11 request for production, a party must either: (1) produce the requested document; (2)
12 indicate that the requested document is not in the party’s “possession, custody, or control”;
13 or (3) object and include the reasons for the objection. Fed. R. Civ. P. 34(a)(1), (b)(2)(B).
14 “The responding party has an obligation to conduct a reasonabl[e] inquiry into the factual
15 basis of its responses to the request to produce documents.” *Superior Commc’ns v.*
16 *Earhugger, Inc.*, 257 F.R.D. 215, 217 (C.D. Cal. 2009). If the responding party does not
17 offer a valid objection, it must produce all requested documents that are in its possession,
18 custody, or control. Fed. R. Civ. P. 34(a)(1), (b)(2)(C).

19 Because “pretrial discovery by depositions and interrogatories has a significant
20 potential for abuse,” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984), district courts
21 “may, for good cause, issue an order to protect a party or person from annoyance,
22 embarrassment, oppression, or undue burden or expense,” Fed. R. Civ. P. 26(c)(1).
23 Rule 26(c) confers broad discretion on the trial court to decide when a protective order is
24 appropriate and what degree of protection is required. *Robinson v. Chefs’ Warehouse*, No.
25 3:15-cv-05421-RS (KAW), 2017 WL 836944, at *1 (N.D. Cal. Mar. 3, 2017) (citing *Seattle*
26 *Times Co.*, 467 U.S. at 36); *see also Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp.*,
27 307 F.3d 1206, 1211–12 (9th Cir. 2002). District courts may, among other things, forbid
28 discovery, specify the terms for discovery, forbid inquiry into certain matters, or limit the

1 scope of discovery to certain matters. Fed. R. Civ. P. 26(c)(1)(A), (B), and (D). “The
2 burden is upon the party seeking the [protective] order to ‘show good cause’ by
3 demonstrating harm or prejudice that will result from the discovery.” *Rivera v. NIBCO,*
4 *Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004) (quoting Fed. R. Civ. P. 26(c)).

5 **III. DISCUSSION**

6 **A. Parties’ Arguments**

7 1. Lay’s Arguments

8 Lay argues that the release of his “sensitive and highly personal” mental health
9 records directly to Grant would have a “harmful and deleterious effect” on him without
10 appropriate protections and limitations against their use and dissemination. (ECF No. 49
11 at 3.) Lay contends that he has “suffered serious emotional distress, fear, anxiety, and post-
12 traumatic stress” as a result of Grant’s attack, and his marital and family relationships have
13 been “seriously impacted.” (ECF No. 49-3 ¶¶ 2, 7.) Lay is concerned that the production
14 of his mental health records would lead to re-victimization, further traumatization, and
15 humiliation, as well as slow, impede, or reverse his healing process. (ECF No. 49 at 3–4.)
16 Lay also fears that Grant will attack him or his family and cause him great bodily harm or
17 injury. (ECF No. 49-3 ¶ 6.) Lay points to Grant’s alleged admission that he has issues
18 with “anger management” and Grant’s constant objections to Lay’s pleadings, discovery,
19 and communications with counsel, apparently as the basis for this fear. (ECF Nos. 49 at
20 3–4; 49-2 ¶¶ 4–5.) Lay is further concerned about “the potential for abusive use of” his
21 mental health records. (ECF No. 49 at 5.) Lay points to Federal Rule of Civil Procedure
22 11, and Sections 128.5(d) and 128.7(f) of the California Code of Civil Procedure as legal
23 authority recognizing “the need to protect victims of [assault] from further harm and re-
24 victimization.” (*Id.* at 3.)

25 Lay contends that he “recognizes that the need for his protection must be balanced
26 against [Grant’s] discovery rights.” (*Id.* at 4; *see also* ECF No. 51 at 2.) He suggests
27 submitting his mental health records to a special master “for review and determination how
28 they may best be produced balancing the parties[’] needs.” (ECF No. 49 at 4.) Lay is

1 willing to pay half the cost of hiring a special master but contends that Grant has refused
2 to pay the other half. (*Id.*) Lay argues that it is only equitable to require Grant to pay half
3 the cost because the “need for such intervention is predicated on Grant’s conduct.” (*Id.*)
4 Lay disputes Grant’s contention that he is unable to pay this cost. (ECF Nos. 51 at 2–3; 52
5 at 2.) Lay is also agreeable to submitting his mental health records to the undersigned
6 judge for an *in camera* review. (ECF No. 49 at 5.)

7 2. Grant’s Arguments

8 Grant asks that the Court deny Lay’s motion for a protective order. (ECF No. 50.)
9 He argues that Lay has not identified any applicable privilege, either in the privilege log
10 served with his discovery responses or in his motion for protective order. (*Id.* at 5–6, 12;
11 *see also* ECF No. 50-2 at 2, 7–8.) Grant further argues that Lay already has ample
12 protections in place to protect against the abuse or dissemination of his mental health
13 records. (ECF No. 50 at 6–7.) Grant points to the Protective Order issued in this case and
14 the Criminal Protective Order issued in the related state court criminal case. (*See* ECF
15 Nos. 48; 50 at 7; 50-2 at 3–4.)

16 The Protective Order issued in this case allows Lay to designate records as
17 “Confidential” or “Confidential—For Counsel Only.”² (ECF No. 48 ¶ 4.) All documents
18 so designated must not be disclosed by the receiving party to anyone other than those
19 persons designated in the Protective Order and must not be used for any purpose other than
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23 ² In the Protective Order drafted by the parties and adopted by the Court upon
24 a joint motion, the parties recognized that Grant was proceeding *pro se* and yet provided
25 that a party may designate mental health records as “Confidential—For Counsel Only.”
26 (ECF No. 48 ¶¶ 3, 4.) The parties endeavored to reconcile this seeming conflict by further
27 providing: “With regard to any Psychological or Medical and Psychological/Psychiatric
28 records of Plaintiff/Counterclaim Defendant, said records shall not be produced absent
written agreement by the parties, review by discovery Referee, Review by the Magistrate
Judge or by Court Order.” (*Id.* ¶ 4(b).) Thus, the parties specifically anticipated putting
the determination of the production of these documents into the hands of the Court.

1 in connection with this litigation. (*Id.* ¶ 7.) In addition, such documents must be handled
2 in accordance with the Protective Order. (*Id.*)

3 The Criminal Protective Order issued in *People v. Timothy Joseph Grant*, Case No.
4 SCD284113 (San Diego Superior Court),³ dated January 13, 2021, provides that Grant
5 “must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest,
6 destroy or damage personal or real property, disturb the peace, keep under surveillance, or
7 block movements” of Lay. (ECF No. 50-2 at 3, ¶ 6.) The Criminal Protective Order also
8 provides that Grant “must have no personal, electronic, telephonic, or written contact” with
9 Lay and that he must not come within 100 yards of Lay, with the exception of some court
10 proceedings or court depositions. (*Id.* at 3, ¶¶ 11, 13.) Grant must also stay away from
11 Lay’s home, employment, school, and vehicle. (*Id.* at 3, ¶ 16.) The Criminal Protective
12 Order expires on January 13, 2024. (*Id.* at 3.)

13 Grant contends that any willful violation of the terms of the Criminal Protective
14 Order would amount to a violation of his two-year probationary period and likely result in
15 the loss of his liberty/imposition of the suspended sentence of six months in custody. (ECF
16 No. 50 at 7; *see also* ECF No. 50-1 at 2.) Grant further contends that any violation would
17 also likely result in further discipline from the California State Bar. (ECF No. 50 at 7; *see*
18 *also* ECF No. 50-1 at 2.)⁴ Grant adds that in his more than thirty-year career as an attorney
19 he has “never been held in contempt, nor had any monetary, discovery, nor issue preclusion
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22 ³ The Court grants the request to take judicial notice of the Criminal Protective
23 Order (ECF No. 50-2 at 1–4) filed by Grant in support of his opposition. *See Reyn’s Pasta*
24 *Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 (9th Cir. 2006) (courts “may take judicial
25 notice of court filings and other matters of public record”). Grant avers, and the Court has
no reason to question, that it is a true and correct copy of an order issued by the California
Superior Court. (ECF No. 50-2 at 2.)

26 ⁴ Grant represents that his bar license is “currently on interim suspension for
27 the underlying felony conviction for assault with a deadly weapon, which the State Bar
already has determined does not present a crime of moral turpitude.” (ECF No. 50-1 at 3.)
28 He expects his license “to be reinstated by the State Bar by the end of [2021], perhaps
sooner.” (*Id.*)

1 sanctions imposed against [him] for any purported misconduct.” (ECF No. 50 at 7; *see*
2 *also* ECF No. 50-1 at 3.) Thus, he argues that there is no “valid evidence” that he has any
3 sort of propensity or desire to repeat the sort of behavior that got him into this predicament
4 in the first place. (ECF No. 50 at 7.)

5 Grant further argues that Federal Rule of Civil Procedure 11 and Sections 128.5(d)
6 and 128.7(f) of the California Code of Civil Procedure do not support Lay’s request for a
7 protective order under the present circumstances. (*Id.* at 9–11.) He also questions how the
8 requested protection would prevent the feared attacks and reprisals by him, noting the lack
9 of connection between Grant reviewing Lay’s mental health records and Lay’s safety. (*Id.*
10 at 11.)

11 Lastly, Grant argues that he needs to personally review Lay’s mental health records
12 in order to assess:

- 13 (a) the nature and extent of the severe emotional distress claims presented; (b)
14 the nature and extent of therapy and prognosis to date; (c) the extent other
15 identified unrelated life stressors are impacting LAY’s mental state; (d)
16 whether or not to retain an expert psychologist, psychiatrist, or both; (e)
17 whether or not an order compelling LAY’s mental examination should be
18 sought; and (f) the nature and extent of questions to be put to LAY and his
treating or forensic experts in deposition or trial on the issue of severe
emotional distress.

19 (ECF No. 50-1 at 3.) He contends that “[a]n outcome of [his] not being able to personally
20 review LAY’s mental health records would render it near[ly] impossible for [him] to
21 effectively examine [Lay] or [Lay’s]’ treating and forensic experts during deposition or
22 trial on the mental distress claims which are at the very crux of LAY’s claim for damages.”
23 (*Id.*)

24 Grant has “no desire” to utilize a special master “to resolve this purely legal issue of
25 the Plaintiff’s duty to disclose to the opposition all relevant mental health records when a
26 claim of severe emotional distress has been made.” (ECF No. 50-1 at 4.) Grant is mindful
27 of litigation costs because he is “insolvent” and living on disability, with significant debt
28 load and limited assets or income, and claims he would be unduly prejudiced if he were

1 required to retain a special master or expert. (ECF Nos. 50 at 12; 50-1 at 4.) However,
2 Grant is open to a special master if Lay pays all of the costs. (ECF No. 50-1 at 4–5.) Grant
3 is also amenable to initially reviewing but not copying Lay’s mental health records in order
4 to first determine whether they contain any pertinent information, because if they do not,
5 this whole dispute would be rendered moot. (*Id.* at 5.)

6 **B. Analysis**

7 Lay does not dispute the relevance of his mental health records.⁵ Rather, he seeks a
8 protective order that, in practical effect, prevents Grant from obtaining these records in
9 discovery. For the reasons set forth below, Lay has failed to demonstrate good cause for a
10 protective order precluding the production of his mental health records directly to Grant.

11 As Grant noted, Lay has not asserted any privilege in a privilege log preventing the
12 disclosure of his mental health records. (*See* ECF No. 50-2 at 2, 7–8.) For example, he
13 has not asserted the psychotherapist-patient privilege, which generally covers confidential
14 communications between a psychotherapist and her patients. *See Jaffee v. Redmond*, 518
15 U.S. 1, 15 (1996); Cal. Evid. Code § 1014. Presumably, this is because Lay recognizes
16 that he has waived that privilege under both state and federal law by seeking compensatory
17 damages for injuries to his emotional health. *See, e.g.,* Cal. Evid. Code § 1016(a) (“There
18 is no [psychotherapist-patient] privilege . . . as to a communication relevant to an issue
19 concerning the mental or emotional condition of the patient if such issue has been tendered
20 by . . . [t]he patient[.]”); *In re Lifschutz*, 2 Cal. 3d 415, 435 (1970) (there is no
21 psychotherapist-patient privilege “with respect to those mental conditions the patient-
22 litigant has disclosed by bringing an action in which they are in issue” (citation and internal
23 alterations and quotation marks omitted)); *see also Doe v. City of Chula Vista*, 196 F.R.D.
24 562, 568–69 (S.D. Cal. 1999) (finding that the plaintiff waived the federal psychotherapist
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27 ⁵ It appears Grant is only seeking the mental health records related to the
28 treatment Lay received “as a result of” the incident at issue in this case. (*See* ECF No. 50-
2 at 12.)

1 patient privilege by seeking compensatory damages for injuries to her emotional health);
2 *Williams v. Cnty. of San Diego*, No. 17CV815-MMA (JLB), 2019 WL 1499597, at *6 (S.D.
3 Cal. Apr. 5, 2019) (same). Here, Lay seeks damages, including punitive damages, for the
4 “pain and suffering, interruption of the enjoyment of life, and emotional distress” he
5 incurred as a result of Grant’s actions. (Compl. at 3–4.) Lay claims that he has suffered
6 “serious [and severe] emotional distress, fear, anxiety, and post-traumatic stress” as a result
7 of Grant’s attack on November 7, 2019. (ECF No. 49-3 ¶¶ 2, 5.) Thus, Lay has put his
8 emotional health at issue in this case.⁶

9 As Lay’s mental health records are relevant and no privilege has been asserted, either
10 in a privilege log or in this motion, Lay’s argument for a protective order rests on his
11 concerns about safety, the additional emotional distress producing the documents would
12 cause, and the potential for abuse or misuse of the documents.⁷ Although the Court is
13 sympathetic to all of Lay’s concerns, Lay does not propose a workable solution to the
14 Court. Lay has put his mental health at issue in this case and Grant is entitled to the
15 requested documents in order to put forth a robust defense. As Lay is seeking emotional
16 distress and punitive damages, the judgment against Grant, if Lay prevails, could
17 conceivably be significant. In defending himself, Grant may, among other things, need to
18 take Lay’s deposition, depose Lay’s expert, file or oppose a dispositive motion, and cross-
19 examine Lay and/or his expert at trial on the issue of damages. Lay has not explained how
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23 ⁶ As Lay does not contest the relevance of his mental health records and does
24 not assert any privilege over them, the Court declines his offer to review the documents *in*
25 *camera*. Lay has not explained what the Court would be reviewing the documents for or
26 how a review of the documents, whose relevance is not contested, would aid the Court in
27 answering the question of whether the documents should be withheld from production
28 based upon Lay’s asserted fear of Grant.

⁷ In his declaration, Lay states that the release of his mental health records
would have a “harmful and deleterious effect on [him] and heighten [his] fears for [his]
safety and that of [his] family.” (ECF No. 49-3 ¶ 4.)

1 Grant could undertake the components of these activities that turn on Lay’s mental health
2 records without himself having those records.

3 Lay has proposed that the Court appoint a special master, and order Grant to pay half
4 the cost. Per Lay’s proposal, the documents would be submitted to the special master “for
5 review and determination how they may best be produced balancing the parties[’] needs.”
6 (ECF No. 49 at 4.) Lay would like for the special master to “review said records and
7 recommend an appropriate resolution of this dispute.” (*Id.* at 6.) This proposal suffers, in
8 part, from the same flaw as the proposal for an *in camera* review by the Court. Specifically,
9 Lay does not suggest how the special master’s potentially very expensive review of his
10 mental health records—the relevance of which is not in dispute—might aid in the
11 resolution of the fundamental tension between Grant’s need to use the documents to mount
12 his defense and Lay’s concerns about his emotional and physical vulnerability. Where
13 neither the parties nor the Court have been able to conceive of a practical compromise that
14 would provide further comfort to Lay without depriving Grant of the tools he needs to
15 defend himself, what is the basis for expecting that a special master would be able to do
16 so?⁸ And to the extent Lay anticipates that the special master would not merely be able to
17 divine a solution but rather would be the solution himself, Lay has not offered any
18 suggestions⁹ as to what the special master’s role would be in this case.¹⁰ Despite the
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21 ⁸ “[A] court may appoint a master only to . . . address pretrial . . . matters that
22 *cannot* be effectively and timely addressed by an available . . . magistrate judge.” Fed. R.
23 Civ. P. 53(a)(1)(C) (emphasis added).

24 ⁹ In a previous telephonic conference, it was suggested that the special master,
25 rather than Grant, might be the holder of the mental health records on Grant’s behalf. This
26 option would presumably entail the special master sitting with Grant through depositions,
27 motions drafting, trial preparation, and trial, temporarily handing Grant documents on an
28 as-needed basis. This does not seem to be a practical solution and Lay does not suggest it
in this motion.

¹⁰ Any court order appointing a special master “must state,” *inter alia*, “the
master’s duties, including any investigation or enforcement duties, and any limits on the
master’s authority.” Fed. R. Civ. P. 53(b)(2).

1 Court's best efforts, it simply cannot see how involving a special master does anything
2 more than add expense and unnecessarily delay the decision about the production of these
3 documents.

4 Having given serious consideration to the issues here, the Court concludes that there
5 are already adequate orders in place to protect Lay. The Protective Order in this case, as
6 well as the Criminal Protective Order issued in Grant's criminal case, address Lay's
7 concerns about safety and the potential abuse or misuse of his mental health records. There
8 are penalties, including potentially severe ones, if Grant does not comply with these court
9 orders. (*See* CivLR 83.1; ECF No. 50-2 at 3.) Moreover, the Court does not see how
10 permitting Grant to obtain Lay's mental health records puts his safety further at risk. To
11 the extent Lay's "personal information not otherwise relevant to this action such as phone
12 numbers, home addresses, social security numbers, driver's license numbers" are included,
13 the parties have already agreed in the Protective Order that they are "confidential and
14 privileged from production or discovery." (*See* ECF No. 48 ¶ 4(b).) Lay may also redact
15 the personal information of family members or third parties, to the extent that information
16 is not relevant to this action. If, after review of the documents, there are additional, specific
17 concerns Lay has about identifying or locating information contained within his mental
18 health records, he may raise those specific concerns with the Court.

19 **IV. CONCLUSION**

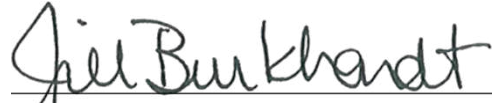
20 For the foregoing reasons, Lay's motion for protective order regarding his mental
21 health records is **DENIED**.¹¹ As Lay must have the opportunity to review and redact
22 personal information from his mental health records prior to production, the Court declines
23 Grant's request to enter an order similar to the one used in the U.S. District Court in New
24 Mexico. (*See* ECF No. 50 at 13–14.) Rather, Lay shall obtain and produce to Grant his
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28 ¹¹ This denial does not preclude the parties from agreeing to refer the matter to
a discovery referee at Lay's expense.

1 mental health records responsive to Grant's request(s) for production within **thirty (30)**
2 **days** of the date of this Order.

3 **IT IS SO ORDERED.**

4 Dated: July 9, 2021

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6 Hon. Jill L. Burkhardt
7 United States Magistrate Judge
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