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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 DANIEL DELGADO,

10 Plaintiff,

11 v.

12 MARK TARABOCHIA, *et al.*,

13 Defendants.

NO. C17-1822RSL

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION TO QUASH  
SUBPOENAS

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15 This matter comes before the Court on "Plaintiff's Motion to Quash Subpoenas Issued by  
16 Defendants." Dkt. # 15. Plaintiff injured his hand while on board the F/V JOYCE MARIE and  
17 has sued the vessel and vessel owner(s) for Jones Act negligence and unseaworthiness. Plaintiff  
18 alleges that he lost his balance and his hand went through a plate glass window on the  
19 wheelhouse, causing severe injuries with continuing disabilities. Defendants doubt plaintiff's  
20 version of events based on evidence acquired to date. Another crew member on board the F/V  
21 JOYCE MARIE at the time of the incident has indicated that plaintiff was using heroin in the  
22 days leading up to the incident and was in the midst of a heated argument with his girlfriend  
23 when he punched through the window. After plaintiff left the vessel, defendants located a  
24 computer file, apparently created by plaintiff, containing text messages, emails, and photographs  
25 dated October 2013 to July 2014 that seem to reflect drug transactions and a volatile  
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ORDER GRANTING IN PART PLAINTIFF'S  
MOTION TO QUASH SUBPOENAS

1 relationship. At his deposition, plaintiff denied using heroin after 2011, denied fighting with his  
2 girlfriend before the incident, and denied punching through the wheelhouse window.

3 Plaintiff reports that he has no feeling in three of his fingers and his thumb, that he has no  
4 coordination or grip strength in his right (dominant) hand, and that he is in constant, severe pain.  
5 Defendants have obtained surveillance video which seemingly contradicts plaintiff's testimony  
6 regarding the extent and severity of his deficits.

7 Defendants issued three subpoenas for phone records from January 2014 to the present,  
8 including all account information, call and text message logs,<sup>1</sup> and roaming data. They have also  
9 issued two subpoenas for bank records for the same period, seeking detailed summaries of credit  
10 and debit card transactions, withdrawals, and deposits. Plaintiff seeks to quash all five subpoenas  
11 as irrelevant and an unwarranted burden on his privacy interests.

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13 Having reviewed the memoranda, declaration, and exhibits submitted by the parties, the  
14 Court finds as follows:

15 Litigants in a civil action are entitled to discovery "regarding any nonprivileged matter  
16 that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R.  
17 Civ. P. 26(b)(1). In determining what is "relevant" and "proportional," the district court must  
18 consider "the importance of the issues at stake in the action, the amount in controversy, the  
19 parties' relative access to relevant information, the parties' resources, the importance of the  
20 discovery in resolving the issues, and whether the burden or expense of the proposed discovery  
21 outweighs its likely benefit." *Id.* "The court must limit discovery that is not proportional to the  
22 needs of the case." Hancock v. Aetna Life Ins. Co., 321 F.R.D. 383, 390 (W.D. Wash. 2017).

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25 <sup>1</sup> Defendants revised the subpoenas to explicitly exclude the actual text of text messages to avoid  
26 any chance of obtaining privileged communications between plaintiff and his attorney and/or any  
conflict with the requirements of the Storage Communications Act, 18 U.S.C. § 2702(a)(1).

1 Additionally, courts may limit unreasonably cumulative, overly broad, unduly burdensome, or  
2 irrelevant discovery. Fed. R. Civ. P. 26(b)(2)(c).

3 In their opposition, defendants rely on an outdated standard in support of their relevance  
4 argument. Dkt. # 19 at 5. Rule 26(b)(1) now states “[p]arties may obtain discovery regarding any  
5 nonprivileged matter that is relevant to any party’s claim or defense and proportional to the  
6 needs of the case.” Notably, the 2015 Amendments to Rule 26 deleted the provision for  
7 discovery of relevant but inadmissible information that appears “reasonably calculated to lead to  
8 the discovery of admissible evidence.” The Committee Notes indicate that the phrase had been  
9 incorrectly used to define the scope of discovery, sometimes to the exclusion of concepts of  
10 proportionality.

11 As the Committee Note to the 2000 amendments observed, use of the “reasonably  
12 calculated” phrase to define the scope of discovery “might swallow any other  
13 limitation on the scope of discovery.” The 2000 amendments sought to prevent  
14 such misuse by adding the word “Relevant” at the beginning of the sentence,  
15 making clear that “ ‘relevant’ means within the scope of discovery as defined in  
this subdivision ...” The “reasonably calculated” phrase has continued to create  
problems, however, and is removed by these amendments.

16 Fed. R. Civ. P. 26, Committee Note to the 2015 Amendment.

17 The question of whether the third-party information defendants seek is discoverable  
18 depends on a balancing of defendants’ need to obtain all relevant evidence with plaintiff’s need  
19 for protection from far-reaching, burdensome, and invasive discovery. “[C]ourts are properly  
20 encouraged to weigh the expected benefits and burdens posed by particular discovery requests  
21 (electronic and otherwise) to ensure that the collateral discovery disputes do not displace trial on  
22 the merits as the primary focus of the parties’ attention.” Regan–Touhy v. Walgreen Co., 526  
23 F.3d 641, 648–49 (10th Cir. 2008) (citations omitted).

24 With regards to the pre-incident phone records, defendants have identified a specific need  
25 to confirm events and authenticate communications that are directly relevant to a determination  
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1 of whether defendants' negligence and/or the vessel's unseaworthiness caused plaintiff's  
2 injuries. To the extent these records mirror the electronic files found on the vessel's computer  
3 and corroborate the other crewman's statements, they are of vital importance to defendants'  
4 theory of the case. While much will be disclosed that has nothing to do with this case, plaintiff's  
5 privacy interests do not outweigh the need to obtain relevant information regarding the cause of  
6 plaintiff's injuries in this case where plaintiff says he is entitled to damages of \$3,000,000.

7 With regards to the pre-incident bank records, defendants offer no reason to suspect that  
8 these records will authenticate or corroborate the electronic files plaintiff left behind. Production  
9 of plaintiff's pre-incident finances, including every purchase and every deposit, is unlikely to  
10 result in admissible evidence (there is no reason to suspect that plaintiff used a credit card to  
11 purchase heroin or that defendants would be able to identify such transactions from a list of  
12 charges or withdrawals). Because of its minimal relevance and the outsized burdens it would  
13 impose on plaintiff's privacy interests, discovery of the pre-incident bank records is not  
14 proportional to the needs of the case.<sup>2</sup>

15 With regards to the post-incident phone and bank records, defendants are fishing.  
16 Defendants have evidence that plaintiff recently engaged in activities that he arguably should not  
17 be able to do if his testimony regarding the extent of his injuries were truthful. While focused  
18 discovery regarding plaintiff's post-injury activities may be fruitful, the discovery sought here --  
19 records of all communications and bank records from the accident to the present -- reflects  
20 nothing more than defendants' hope that they will catch plaintiff calling a bowling alley, paying  
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22 <sup>2</sup> In a footnote, defendants argue that plaintiff's pre-incident bank records will provide  
23 information regarding his pre-injury earnings. Dkt. # 19 at 7 n.7. Defendants presumably paid plaintiff  
24 for his work on the F/V JOYCE MARIE and are aware of those amounts. If plaintiff had other forms of  
25 income pre-injury, it would benefit him to disclose them in comparison to his current earnings.  
26 Defendants have not shown why an invasive review of plaintiff's finances is proportional to the needs of  
this case.

1 for a round of golf, or doing something else defendants feel he should not be able to do. The  
2 balance of the benefits and burdens of these post-incident discovery requests are not in  
3 defendants' favor: they are not prompted by any specific need for information and are likely to  
4 drive discovery and generate disputes that are wholly collateral to the primary issues in this case.  
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6 For all of the foregoing reasons, plaintiff's motion to quash is GRANTED in part. The  
7 subpoenas to the banks are QUASHED, as are the subpoenas issued to the wireless providers to  
8 the extent they seek post-incident records. Any responsive records produced by the wireless  
9 providers related to the period January 1, 2014 through June 16, 2015 shall be used only for  
10 purposes of this litigation  
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12 Dated this 4th day of May, 2018.

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14 Robert S. Lasnik  
15 United States District Judge  
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