

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CAROLINE DAVENPORT,)	
)	Case No. 3:11-CV-632-J-JBT
Plaintiff,)	
)	
vs.)	
)	
STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY, a corporation,)	
)	
Defendant.)	
<hr style="width: 45%; margin-left: 0;"/>)	

MOTION TO COMPEL DISCOVERY

Defendant, State Farm Mutual Automobile Insurance Company, by and through undersigned counsel and pursuant to Federal Rules of Civil Procedure 26(b) and 37(a)(3)(B), hereby requests this Court for an order compelling Plaintiff Caroline Davenport to produce the items requested in accordance with Defendant’s Second Request for Production to Plaintiff dated December 14, 2011. As grounds, Defendant states:

1. On December 14, 2011, Defendant propounded a Second Request for Production to Plaintiff. Defendant requested the following:

- “1. All photographs posted, uploaded, or otherwise added to any social networking sites or blogs, including but not limited to Facebook.com, Myspace.com, Twitter.com, or any similar websites posted since the date of the accident alleged in the Complaint. This includes

photographs posted by others in which Chelsea Davenport has been tagged or otherwise identified therein.

2. All computers, cell phones, laptops, smart phones, or any similar electronic devices used by, owned by, or in any way accessible by Chelsea Davenport to gain access or post any material on any social networking sites or blogs, including but not limited to Facebook.com, Myspace.com, Twitter.com, or any similar websites.”

Defendant’s Second Request for Production to Plaintiff is attached as exhibit “A”.

2. On December 16, 2011, Plaintiff responded to Defendant’s Second Request for Production to Plaintiff. Plaintiff submitted the following response:

- “1. Objection; overbroad and vague. Further, this request violates Plaintiff’s privacy.
2. Objection; overbroad as to both substance of the request and unlimited time period, and vague. Further, providing to Defendant all of Plaintiff’s computers, cell phones, smartphones and other electronic devices violates Plaintiff’s privacy.”

Plaintiff’s Response to Defendant’s Second Request for Production to Plaintiff is attached as exhibit “B”.

3. Defendant has verified that Plaintiff is a member of the social networking

site, Facebook.

4. On January 30, 2012, the deposition of Plaintiff's childhood friend and roommate, Lauren Peters, was taken. Ms. Peters confirmed that Plaintiff uses Facebook on an almost daily basis and posts status updates about her life at least once a week. Further, Ms. Peters confirmed that Ms. Davenport has posted photographs to the social networking site since the date of the accident alleged in the Complaint.

5. During Plaintiff's deposition on November 23, 2011, Plaintiff alleged that she was unable to partake in a number of activities including, but not limited to, social gatherings, extracurricular activities, and riding horses as a result of injuries sustained in the accident alleged in the Complaint.

6. Plaintiff has placed her physical condition and quality of life at issue in the instant case. As such, Defendant is entitled to access of photographs and social networking posts depicting both her physical condition and quality of life since the accident alleged in the Complaint.

7. Pursuant to Local Rule 3.01, undersigned counsel has made a good faith effort to resolve this matter by conferring with Plaintiff's counsel. Plaintiff has agreed to disclose photographs posted *of herself by herself* to Facebook. Plaintiff continues to object to disclosure of all photographs posted to her Facebook page; including those posted or tagged by other individuals. Plaintiff continues to object to Defendant's request number two seeking access to all electronic devices from which Plaintiff gains access to or posts any

material to social networking sites or blogs.

8. As an alternative to Plaintiff producing all electronic devices from which Plaintiff gains access to or posts any material to social networking sites or blogs, Defendant is willing to agree that Plaintiff disclose her login information so that Defendant may obtain access to information posted to any social networking site since the date of the incident alleged in the Complaint. Plaintiff objects to this alternative.

MEMORANDUM OF LAW

Federal Rule of Civil Procedure Rule 26(b) allows a party to “obtain discovery regarding any nonprivileged matter relevant to any party’s claim or defense...” Federal Rule of Civil Procedure Rule 34 permits a party to serve on any other party a request to produce or permit to inspect items within the responding party’s possession custody or control “any designated documents or electronically stored information” or “any designated tangible things.”

In the instant case, Defendant clearly designated photographs posted to Plaintiff’s social networking sites or blogs since the date of the accident alleged in the Complaint and all electronic devices from which Plaintiff gains access to or posts any material to social networking sites or blogs. The information Defendant seeks is relevant both the Plaintiff’s alleged injuries and damages.

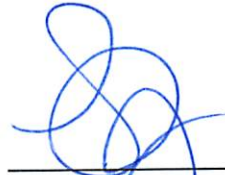
Plaintiff also asserts a privacy objection to Defendant’s Request for Production. The

court in Held v. Ferrellgas, Inc., found that since defendant mitigated plaintiff's privacy concerns by allowing plaintiff to download and produce the information himself, defendant was not seeking unfettered or unlimited access to plaintiff's Facebook; but rather, limited access during the relevant time frame. 2011 WL 3896513, 1 (D. Kan. 2011). The same is true in the instant case. In request for production number one, Defendant seeks photographs posted to Plaintiff's social networking sites or blogs since the date of the accident alleged in the Complaint.

The court in E.E.O.C. v. Simply Storage Management, LLC, went further indicating that a person's expectation or intent that her communications be maintained as private "is not a legitimate basis for shielding those communications from discovery." 270 F.R.D. 430, 434 (S.D. Ind. 2010). Accordingly, Plaintiff in the instant case should not be permitted to shield the materials requested by Defendant on the basis of privacy.

WHEREFORE, Defendant requests this Court for an Order compelling Plaintiff to comply with Defendant's Second Request for Production to Plaintiff.

Dated this 12th day of February, 2012.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document has been filed with the CM/ECF system and served upon the parties hereto by depositing same, postage prepaid, in the United States mail, this 10th day of February, 2012, addressed to :

Daniel Iracki, Esquire
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Attorney