

CAALA VEGAS 2017

ROCK of AGES

SECTION 15

DISCOVERY


PROVING SPOILIATION OF EVIDENCE
By Aimee Kirby



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PROVING SPOILIATION OF EVIDENCE

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PROVING SPOILIATION OF EVIDENCE
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WHAT IS SPOILIATION OF EVIDENCE

CACI JURY INSTRUCTION 204

You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party.

(Evidence Code 413)

WHAT IS SPOILIATION OF EVIDENCE

- In *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 12 [74 Cal.Rptr.2d 248, 954 P.2d 511], a case concerning the tort of intentional spoliation of evidence, the Supreme Court observed that trial courts are free to adapt standard jury instructions on willful suppression to fit the circumstances of the case, "including the egregiousness of the spoliation and the strength and nature of the inference arising from the spoliation."

WHAT IS SPOILIATION OF EVIDENCE

- Federal Court, Fed. Rule of Civil Procedure 37.
- Choice of Law-Diversity-most courts apply Federal Law. *Hodge v. Walmart, Inc.*

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**SPOILIATION OF EVIDENCE-
SEPARATE TORT**

- CEDARS-Sinai Case-Birth Injury Case/Lost Fetal Monitoring Strip.
- No Separate Tort-Attempted to Amend.
- Temple case (no third party) and Cooper case (exception).

**SPOILIATION OF EVIDENCE –
PROTECTING YOUR CLIENT**

- IMMEDIATE PRESERVATION LETTER.
- PRE-FILING DISCOVERY BY MOTION OR STIPULATION (CCP SECTIONS 2035.010- 2035.030)

**SPOILIATION OF EVIDENCE –
PROTECTING YOUR CLIENT**

CCP SECTION 2035.010 Pre-Filing)

- (a) One who expects to be a party or expects a successor in interest to be a party to an action that may be cognizable in a court of the state, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating that person's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed.

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CCP SECTION 2035.010 (Pre-Filing)

- (b) One shall not employ the procedures of this chapter for purposes of either ascertaining the possible existence of a cause of action or a defense to it, or of identifying those who might be made parties to an action not yet filed.

**SPOILIATION OF EVIDENCE –
PROTECTING YOUR CLIENT**

CCP SECTION 2035.030

- One who desires to perpetuate testimony or preserve evidence for the purposes set forth in Section 2035.010 **shall file a verified petition in the superior court** of the county of the residence of at least one expected adverse party, or, if no expected adverse party is a resident of the State of California, in the superior court of a county where the action or proceeding may be filed....

**SPOILIATION OF EVIDENCE –
PROTECTING YOUR CLIENT**

PROVING IT

1. PMK DEPOS
2. REQUEST TO PRODUCE
3. PRESERVATION LETTER-MOTION

PROVING SPOILIATION OF EVIDENCE

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SPOILIATION OF EVIDENCE- DAMAGES

- The Supreme Court in *Cedars-Sinai* outlined the remedies available to the trial court:
- They include monetary sanctions, contempt sanctions, issue sanctions ordering that designated facts be taken as established or precluding the offending party from supporting or opposing designated claims or defenses, evidence sanctions prohibiting the offending party from introducing designated matters into evidence, and terminating sanctions that include striking part or all of the pleadings, dismissing part or all of the action, or granting a default judgment against the offending party.(*Id.* at 12 (Emphasis added).
- The fact that records are “lost” as opposed to “destroyed” is immaterial. In *Bihun v. AT&T Information Systems, Inc.*, (1993) 13 Cal.App.4th 976, 993, the court held that “a willful suppression of evidence instruction does not require direct evidence of fraud.” The question of whether the suppression of evidence was deliberate is of no moment. (*Ibid.* (citing *Thor v. Boska*.)

SPOILIATION OF EVIDENCE- DAMAGES

- Terminating Sanctions-no need for a prior order if “willful abuse. Karison case.

LIABILITY OF BUSINESS OWNERS AND SOCIAL HOSTS

By David R. Lira & Nicole F. DeVanon

1. INTRODUCTION:

This article will review the ever-changing tapestry of case law addressing the circumstances under which a business owner or social host may be held liable for injuries of a patron or guest. This article also will address circumstances under which a duty to prevent criminal acts arise. Emphasis will be on specific issues every lawyer must consider when handling these cases, including establishing a duty, causation, discovery, jury instructions and experts.

2. IS THERE A DUTY?

A. LANDOWNER

While an owner or possessor of land or business is not an insurer of the safety of persons on the premises, a business owner has a duty of reasonable care to protect against known or reasonably foreseeable risks. “Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person.” *Civil Code* § 1714 (a). This duty not only relates to the condition of the premises but may include the duty to prevent third party criminal conduct.

B. SOCIAL HOSTS

Social hosts who furnish alcohol have limited duties pursuant to statutory law. Specifically, *Civil Code* § 1714 (c) provides “no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of any third person, resulting from consumption of those beverages.” There is one caveat to the exception, which is “knowingly furnishing alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age.” *Civil Code* § 1714(d)(1).

Some cases have attempted to distinguish situations in which the social host merely provides the atmosphere, but not the alcohol. In such situations, a duty will only exist if a special relationship can be established. However, most cases find that liability cannot be imposed on the social host, especially cases involving minors. See *Allen v. Liberman* (2014) 227 Cal.App.4th 46; *Andre v. Ingram* (1985) 164 Cal.App.3d 206. Thus, social hosts have no additional duties imposed upon them when alcohol is furnished by the host or others, except, when individuals under 21 are served/consume alcoholic beverages.

C. DUTY TO PREVENT FORESEEABLE RISKS

California law requires landowners to maintain land in their possession and control in a reasonably safe condition. This duty includes the duty to take reasonable steps to prevent foreseeable criminal acts of third parties. *Ann M. v. Pacific Plaza Shopping Center*, (1993) 6 Cal.4th 666, 674. The question of foreseeability is central to one's analysis. Foreseeability hinges upon the ability to show prior criminal acts of a similar nature on the premises, thus putting the property owner on notice. While case law does establish that prior instances are not required to establish foreseeability, and that the court should evaluate foreseeability based upon “totality of the circumstances”, prior instances remain crucial. (*Id.* at 677.)

“If the place or character of the landowner's business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally or at some

particular time, he may be under a duty to take precautions against it and to use such means of protection as are available to afford reasonable protection.” *Nola M. v. University of Southern California*, (1993) 16 Cal.App. 4th 421, 426.

There are several key case law decisions which address the duty to prevent foreseeable risks. They include, but are not limited to, the following cases:

- ***Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112;**
- ***Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666; and**
- ***Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181.**

In *Isaacs*, the plaintiff was shot in the parking lot of a hospital. While the plaintiff produced evidence that the hospital was located in a high crime area, that there had been prior assaults near the emergency room, that emergency room area was frequented by persons under the influence of drugs or alcohol, the plaintiff could not prove notice of prior crimes of the same or similar nature in the same or similar portion of the hospital. The trial court granted defendant's motion for nonsuit. The Supreme Court reversed noting that “foreseeability” is a “flexible concept,” and a “rigidified approach” requiring prior similar incidents should not be utilized. *Isaacs* 38 Cal. 3d at 125. “Prior similar incidents are helpful to determine foreseeability but they are not necessary.” *Id.* at 127.

In *Ann M.* the plaintiff was raped in a shopping center, the defendant shopping center moved for summary judgment which was granted. The Supreme Court concluded that a “high degree of foreseeability” was required to impose a duty to undertake more onerous measures such as hiring security guards. *Ann M.* 6 Cal. 4th at 679. The Court noted that the “high degree of foreseeability” could rarely be established in the absence of prior similar incidents, thus departing from the ruling in *Isaacs*. *Id.* The Court focused on the nature of the prior instances, bank robberies and purse snatchings versus the incident in this case, rape. Further, there was no evidence that the defendant had any notice regarding these prior instances. The Court ruled that summary judgment had been properly granted since a violent criminal assault was not sufficiently foreseeable to impose a duty upon the defendant to provide security guards in the common areas.

In *Sharon P.*, plaintiff was sexually assaulted in an underground parking garage. Plaintiff argued that the owner should have had security guards in the garage because underground parking structures are inherently dangerous. The Supreme Court rejected plaintiff's argument and followed the Court's prior ruling in *Ann M.* The prior instances of crime at the location did not involve violent attacks against anyone and were not sufficiently similar to the sexual assault to justify the imposition of hiring a security guard. In other words, the evidence was insufficient to establish that the assault was foreseeable, and therefore insufficient to impose the burden of hiring a security guard on the defendant. *Sharon P.* 21 Cal. 4th at 1195.

D. CONTEMPORANEOUS CRIMINAL CONDUCT:

The California Supreme Court has addressed an owner's duty in the face of contemporaneous criminal conduct in the following cases:

- ***Delgado v. Trax Bar & Grill* (2005), 36 Cal.4th 224;**
- ***Morris v. De La Torre* (2005), 36 Cal.4th 260; and**
- ***Kentucky Fried Chicken of California, Inc. v. Superior Court* (1997), 14 Cal.4th 814.**

In *Delgado*, the plaintiff was assaulted in the parking lot of a bar. The plaintiff's wife expressed concern to the bar's security guard that there was going to be a fight. The security guard then observed hostile stares between the plaintiff and the other patrons. Concerned there would be a fight, the security guard asked Plaintiff to leave, but did not escort him to his car. The plaintiff was then attacked in the parking lot approximately 40 feet away. The jury found for the plaintiff, and defendant filed a motion for new trial, which was denied. Defendant appealed claiming there was no evidence of prior similar assaults, the Supreme Court affirmed the trial court. The Court concluded that a business with "actual notice of an impending assault" has a special-relationship duty that includes "an obligation to take reasonable, relatively simple, and minimally burdensome steps to avert that danger." *Delgado* 36 Cal.4th at 250.

In *Morris*, the plaintiff was a patron at defendant's 24-hour restaurant. An altercation began in the parking lot which the employees could see. An individual entered the restaurant and demanded a knife. All three employees watched the individual depart the restaurant with a 12 inch knife. Approximately 25 feet away the plaintiff was stabbed at least twice. The trial court granted the defendants' motions for summary judgment due to the lack of prior similar instances. The California Supreme Court reversed and again noted the existence of a special relationship between the plaintiff and the business. The Court concluded, based on the circumstances, a duty to respond to ongoing criminal conduct by undertaking "appropriate action as is reasonable under the circumstances." *Morris* 26 Cal.4th at 264. The Court found that as a matter of law, based upon the evidence presented on the record, it could not conclude that defendant owed no duty of care to the plaintiff to take any steps, including dialing 911. *Id.* at 278.

In *Kentucky Fried Chicken*, the Court concluded that while a business may have a duty to undertake "minimally burdensome" measures in the face of ongoing criminal conduct that does not include an obligation to comply with a criminal's demands. In that case, the robber demanded action of a KFC employee who refused. *Kentucky Fried Chicken of California, Inc.* 14 Cal. 4th at 830.

E. THE DRAM SHOP ACT:

California *Business & Professions Code* § 25602 generally immunizes an establishment from liability to third parties for injuries resulting from the furnishing of alcohol to its patrons. "However, section 25602 does not preclude all actions against innkeepers [or other establishments] merely because they furnish alcohol." *Cantwell v. Peppermill, Inc.* (1994), 25 Cal.App. 4th 1797, 1801. "[T]he proprietor of a place where intoxicating liquors are dispensed owes a duty of exercising reasonable care to protect his patrons from injury at the hands of fellow guests." [Citation.]" *Id.* "Although the proprietor is not an insurer of its patrons' safety, he has a duty of care to protect patrons from the reasonable criminal or tortious conduct of third persons." (*Ibid.*)

In *Cantwell*, the court held that section 25602 did not immunize the owner of a bar from liability to a patron who was stabbed by another intoxicated patron on the premises. The plaintiff's complaint alleged that the bar owner knew numerous assaults and other crimes related to the consumption of alcoholic beverages had been committed on its premises, and had failed to take appropriate action to protect its patrons. *Id.* at 1800. The court noted that the purpose of the statute was to prevent a plaintiff who was injured by a drunk driver from suing the person or entity who had served alcohol to the drunk driver, but it did not relieve the bar owner from liability for failing to protect its patrons from assaults by other intoxicated customers. *Id.* at 1802-1803. The court emphasized that "an innkeeper cannot with impunity encourage or permit its patrons to become drunk and belligerent to the point where they start assaulting other guests." (*Id.* at 1801.)

F. INTOXICATED EMPLOYEES:

Office parties where alcohol is served may impose liability on the host where an intoxicated employee causes harm. Important cases addressing liability of a social host such as an

employer are the following:

- ***Purton v. Marriott Int'l, Inc.*, (2013), 218 Cal.App.4th 499;**
- ***McCarty v. Workmen's Compensation Appeals Board* (1974), 12 Cal.3d 677; and**
- ***Harris v. Trojan Fireworks Co.* (1984), 120 Cal.App.3d 157.**

In *Purton*, the hotel hosted its annual holiday party for employees. Despite a policy of providing two drink tickets to each employee, management did not enforce the two-drink limit. Later, an employee rear-ended a vehicle killing an occupant. The trial court granted summary judgment in favor of the hotel finding no vicarious liability because the intoxicated employee's actions after leaving the party were outside his scope of employment since the accident occurred after his safe return home before leaving for another drive. The Court of Appeal reversed finding that a jury could conclude that the party benefitted Marriott by improving employee morale. The Court also noted that Marriott did not follow its plan to limit consumption to two drinks.

In *McCarty*, an employee was killed when he drove into a pole after leaving his employer's office Christmas party. The Supreme Court noted that the employee's purchase of alcoholic beverages for the gathering demonstrated that the employee considered such gatherings beneficial to promoting camaraderie. [Note: This was a workers' compensation case.]

In *Harris*, an intoxicated employee left an office party and was involved in a collision which killed the driver of another vehicle. Again, the Court of Appeal found that the employee's attendance at the party was within the scope of the employee's employment. The Court also noted that it was foreseeable that an employee would leave the party intoxicated.

3. CAUSATION:

If a duty of care is imposed, the plaintiff bears the burden of proving a substantial link or nexus between the breach/omission and the injury. *Saelzler v. Advanced Group 400* (2001), 25 Cal.4th 763. In other words, the plaintiff must prove how the security conditions actually caused the injury or how different security measures would have prevented the injury. Courts have rejected claims of abstract negligence pertaining to the lighting and maintenance of property where no connection to the alleged injuries was shown.

In *Noble v. Los Angeles Dodgers, Inc.* (1985), 168 Cal.App.3d 912, the plaintiffs were assaulted in the parking lot of Dodger Stadium. The plaintiffs asserted that more security guards on duty would have averted the assault. "Plaintiffs do not contend that the Dodgers had actual advance knowledge of the conduct of the assailants or of their presence in the parking lot. Plaintiffs' theory is purely and simply that the Dodgers were negligent in failing to effectively *deter* any and everyone from acting in such a manner." *Id.* at 917. Plaintiffs' expert opined that security was inadequate and that additional security should have been employed. He did not state that the presence of additional security would have prevented the incident. The Court found that the plaintiff had established abstract negligence, in the context that the Dodgers' security didn't comport with plaintiffs' expert's or the jury's notion of "adequacy," but failing to prove any causal connection between that negligence and the injury. The *Noble* Court concluded that plaintiff "must prove more than abstract negligence unconnected to the injury." *Id.* at 916. It is worth noting that in *Noble*, the plaintiff was found to be the primary cause of his own injury, further weakening his causation argument.

To demonstrate actual or legal causation, the plaintiff must show that the defendant's act or omission was a substantial factoring in bringing about the injury. The plaintiff must do more than simply

criticize the defendant's security measures or compare them to some abstract standard put forward by an expert. *Nola M. v. University of Southern California* (1993), 16 Cal.App.4th 421. In *Nola M.* the court found that plaintiff's "expert did not, and could not, say that more security guards or guards on foot instead of in cars or lower hedges or more light would have prevented Nola's injuries. And, of course, Nola's expert conveniently ignored the fact that, on the night Nola was attacked, USC had eight officers patrolling a quarter-mile area while the Los Angeles Police Department had about the same number patrolling the surrounding ten and one-half miles." (*Ibid.*)

The Court asserted, "we think it comes down to this: when an injury can be prevented by a lock or a fence or a chain across a driveway or some other physical device, a landowner's failure to erect an appropriate barrier can be the legal cause of an injury inflicted by the negligent or criminal act of a third person." *Id.* at 436. While causation can be established based upon broader omissions, one must be careful to avoid the pitfalls of abstract negligence.

4. JURY INSTRUCTIONS/DISCOVERY:

Your discovery efforts should be focused on the elements of a premises liability case. *CACI* 400 and 1000 should be the guide in formulating discovery requests. *CACI* 1005 provides the law on a business proprietor's liability for criminal acts.

The use of special jury instructions may complicate matters and provide grounds for appeal. Be wary of the defense request for special instructions. More likely than not, the proposition the defense is trying to advance through special instructions is out of context or will misstate the law.

However, when it comes to the failure to provide security it is worth noting that such a responsibility cannot be delegated to a third party. *Srithong v. Total Inv. Co.* (1994) 23 Cal.App.4th 721, 726. If one encounters such an argument a special instruction will be necessary in order to educate the jury that the landowner is ultimately the responsible party despite attempts by the defense to blame a third party.

5. EXPERTS:

Experts are necessary, however one must tip toe around the perils of abstract negligence. Rather than focusing on what should have been done based upon an expert's opinion, it is best to look for breaches in the defendants' own policies. By pointing out defendants' failure to follow their own policies and procedures, plaintiffs avoid the argument that the expert's standard is inapplicable. Further, it focuses the issues and forces plaintiffs to hone in on their theory rather quickly.

DISCOVERY IN THE SOCIAL MEDIA AGE

By **Ronnivashti Whitehead Otieno**

Social media is used in our daily lives and the lives of our clients. Therefore, we must consider the impact disclosing personal information on social media may have on the credibility of our clients and whether or not this information could contradict or impact the allegations and damages in our cases. It is imperative that we consider and discuss these implications with our clients during the earlier stages of the case.

Social Media Users

Social media are [computer-mediated](#) technologies that facilitate the creation and sharing of [information](#), ideas, career interests and other forms of expression via [virtual communities](#) and [networks](#). (https://en.wikipedia.org/wiki/Social_media#cite_note-1)

Some of the most popular social media websites are [Facebook](#) (and its associated [Facebook Messenger](#)), WhatsApp, YouTube, [Instagram](#), Twitter, and [LinkedIn](#). Social media websites have more than 100,000,000 users. (https://en.wikipedia.org/wiki/Social_media#cite_note-1)

The leading social networks based on number of active user accounts as of April 2017 are as follows; Facebook: 1,968,000,000, WhatsApp: 1,200,000,000, YouTube: 1,000,000,000, Instagram: 600,000,000, Twitter: 319,000,000, LinkedIn, 500,000,000.

In America, a survey reported that 84 percent of adolescents in America have a Facebook account. Over 60% of 13 to 17-year-olds have at least one profile on social media, with many spending more than two hours a day on social networking sites. According to Nielsen, Internet users continue to spend more time on social media sites than on any other type of site. At the same time, the total time spent on social media sites in the U.S. across PCs as well as on mobile devices increased by 99 percent to 121 billion minutes in July 2012 compared to 66 billion minutes in July 2011. For content contributors, the benefits of participating in social media have gone beyond simply social sharing to building a reputation and bringing in career opportunities and monetary income. (https://en.wikipedia.org/wiki/Social_media#cite_note-1)

Social Media and Discovery

Before litigation the lawyer must consider the potential implications of social media. Specifically lawyers should consider gathering “electronically stored information” (ESI). ESI is defined as “information that is stored in an electronic medium.” California Code of Civil Procedure (CCP 2016.020(e) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. CCP § 2016.020(d).

Relevance

Consider the same analysis as traditional forms of discovery. The evidence must be relevant, pursuant to CCP § 2017.010, unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property.

Relevance is a prerequisite before social media discover is allowed. California Evidence Code Section

210 - “Relevant evidence” means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

Preservation of Evidence

All parties in a lawsuit have a duty to preserve evidence. The destruction, or spoliation, of evidence is often viewed prejudicially. Prior to litigation send the potential adversary or opposing counsel a preservation of evidence letter specifically related to social media evidence.

Ethical Considerations

When developing your discovery plan during the early stages in your case include a preliminary internet and social media search on all opposing parties and all known third party witnesses. Ethical rules prohibiting counsel from directly or indirectly contacting a represented party without the consent of counsel still apply. Generally, an attorney can access social media information that is available to the general public. The attorneys may not friend or follow a represented party in a deceptive manner.

Privacy Implications

Congress passed the Stored Communications Act (SCA) to protect consumers from privacy breaches. The SCA, is a law that addresses voluntary and compelled disclosure of “stored wire and electronic communications and transactional records” held by third-party internet service providers (ISP). The majority of courts hold that ISPs and social media websites are bound to the SCA to not produce postings and emails of their subscribers /registrants in response to civil subpoena. The best practice is to directly subpoena any non-party witness and seek information directly from the adverse party via discovery
Narrowly Tailored Request

The Courts will not allow fishing expeditions you must show that the information sought will likely be contained in the requested material and that the material is relevant. The request should describe categories of material sought. The request may provide the court with guidance on how the search will be done (e.g. key word search etc.).

Objections to Overbroad Request

If your client’s information is being sought, be prepared to file a motion to quash any overbroad request or in the alternative request a narrowly tailored protective order. Review relevant information with your client prior to disclosure and be in a position to demonstrate to the court what is relevant and what is not.

SAMPLE SPECIAL INTERROGATORIES TO PARTY

1. Please identify any home or other e-mail accounts (including those associated with social media sites, e.g., john.doe@facebook.com) that you maintained or used during the entire time that you claim is relevant to this case, including a listing of the specific e-mail addresses for all such accounts, when they were first established, and if they have been terminated, the date of termination.
2. Please identify any chat rooms or social networking web-sites that you maintained an account with or used during the entire time that you claim is relevant to this case, including a listing of each such account, when they were first established, and if they have been terminated, the date of termination.
3. Please identify any chat rooms or social networking web-sites that you maintained an account with or used during the entire time that you claim is relevant to this case, including a listing of each such account, when they were first established, and if they have been terminated, the date of termination.
4. Please identify all online and internet personas or identities that you have assumed, including a listing of all such identities or personas and the date such identities and personas were used, for what purpose and the names of the websites that such identities and personas were used.
5. Please Identify all social media postings, comments, messages or other content relating to the allegations in the Complaint, including but not limited to content from Facebook, WhatsApp, YouTube, Instagram, Twitter, LinkedIn, blogs, forums and other sites.

SAMPLE DOCUMENT REQUEST TO PARTY

1. Please provide copies of all instant messaging logs or transcripts associated with any accounts identified in response to Special Interrogatory No. ____ relating to the allegations in the Complaint.
2. Please provide copies of any contributions you have made to any online forums or social media websites or online service associated with the accounts identified in response to Special Interrogatory No. ____ relating to the allegations in the Complaint.
3. Please provide copies of any Documents or electronically stored information you have created and/or stored using third party online service provider, including Facebook, WhatsApp, YouTube, Instagram, Twitter, LinkedIn, blogs, forums and other sites and accounts identified in response to Special Interrogatory No. ____ relating to the allegations in the Complaint.
4. Please provide copies of all social media postings, comments, messages or other content relating to the allegations in the Complaint, including but not limited to content from Facebook, WhatsApp, YouTube, Instagram, Twitter, LinkedIn, blogs, forums and other sites.
5. For each Facebook account maintained by you, please produce your account data for the period of _____ through present relating to the allegations in the Complaint.

SAMPLE SOCIAL NETWORKING ADVISORY

I _____, understand that online social networking such as Facebook, WhatsApp, YouTube, Instagram, Twitter, LinkedIn, blogs, forums and other sites may be assessed by defendants in my case in order to search for information and photographs of and about me and attempt to undermined and defend against my claims. I also understand that courts have permitted defendants access to such sites during the course of a lawsuit.

I therefore acknowledge the following recommendations regarding my future social networking activities:

1. To check the privacy settings of my profile and adjust them to prevent on wanted viewers from seeing or assessing it.
2. To review my friends list and to remove those from the list I do not know.
3. To not except friend invitations from people I do not know and cannot verify since it is possible that someone working for the defendant may attempt to pose as a friend two teen access to my page for the purpose of obtaining evidence to defend against and to feed my claim and to harm my chance of maximized recovery.
4. To not post anything in my profiles, on sites, on blogs or on forums that discusses my case lawsuit, activities and related injuries.
5. To refrain from posting or having others post any photographs, information or descriptions of my physical activities, injuries, case and lawsuit.
6. To advise my attorneys of any on authorized access or attempted on authorize access to my profiles.

Client Signature

Date

HOW TO SUCCEED ON YOUR DISCOVERY MOTION

By Hon. Richard J. Burdge, Jr.

- Avoid the motion entirely; informal discovery conference
- Stipulate
- Meaningful Meet and Confer
- Narrow the issues presented to the court to the ones you need decided
- Be succinct
- Be civil: in your dealings with counsel and witnesses, in your papers, in deposition and in court.