

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DOUGLAS W. DAVIS,

Plaintiff,

vs.

MARIO A. NEVAREZ and SWIFT
TRANSPORTATION COMPANY, INC.,

Defendants.

CASE NO. CIV-07-427-EJL

MEMORANDUM AND ORDER
REGARDING MOTION FOR ACCESS
AND OTHER INFORMATION FROM
EL PASO MENTAL HEALTH AND
MENTAL RETARDATION FACILITY

Pending before the Court is Defendants' *Ex Parte* Motion To Compel Access To Mario Nevarez (Docket No. 66). Although titled "ex parte," Defendants' counsel filed a Supplemental Declaration in which he certifies that Plaintiff's counsel has been contacted and advised regarding the motion and has no objection.

Defendants counsel requests an Order from this Court directing El Paso Mental Health and Mental Retardation Facility to allow confirmation whether Mr. Mario Nevarez is a patient at the facility, and if not, to provide any available contact information of Mr. Nevarez in possession of the facility. Defendants further request the Court order El Paso Mental Health and Mental Retardation Facility provide the names of Mr. Nevarez' treatment providers and medical records.

Having reviewed the motion, and otherwise being duly advised, the Court finds good cause to grant Defendants' Motion for Access, in part, as set forth specifically below. The Court, however, finds insufficient information to balance the privacy interest at stake with respect to Mr. Nevarez' treatment providers and medical record information requested. *See Bio-Vita, Ltd. V. Biopure Corp.*,

138 F.R.D. 13, 17 (D. Mass. 1991). Mr. Nevarez may provide authorizations necessary for his counsel to access his medical treatment providers and information. After Defendants' counsel gains access to their client, and determines whether they are able to obtain the necessary authorizations and consents directly from their client, the matter regarding the additional information requested may be moot. Any further relief regarding this matter may be raised again at the status conference set in this case on other discovery matters for December 2, 2008.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion (Docket No. 66) is GRANTED in part, and DENIED without prejudice in part;

IT IS FURTHER ORDERED that El Paso Mental Health and Mental Retardation Facility disclose the following information regarding Defendant Mario A. Nevarez:

1.) Confirm whether Mr. Nevarez is a current patient at the El Paso Mental Health and Mental Retardation Facility;

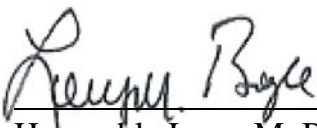
2.) Allow Defendants' attorneys liberal access to Mr. Nevarez, or an authorized representative/guardian, including by telephone or in person, if Mr. Nevarez is currently residing at the facility;

3.) Provide any current contact information of Mr. Nevarez, or an authorized representative/guardian or known friends or relative(s) with contact information, in its possession.

IT IS FURTHER ORDERED that the information disclosed to Defendants' attorneys in compliance with this Order shall be confidential information that shall not be used or for any purpose, or disclosed, outside of this litigation.



DATED: **November 25, 2008.**


Honorable Larry M. Boyle
U. S. Magistrate Judge

