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JUDGE MARY E. ROBERTS

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ROUSSO GREEN
P.L.L.C.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

LEE H. ROUSSO,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendant.

NO. 07-2-22438-6 KNT

ORDER ON DEFENDANT'S MOTION
TO COMPEL DISCOVERY RESPONSES

This matter came before the court on the defendant's Motion to Compel Responses to Defendant's First Set of Discovery Requests and for an Award of Reasonable Attorney's Fees and Costs. The court considered the materials submitted in support of and in opposition to the motion, as well as oral argument on March 28, 2008 by H. Bruce Marvin on behalf of the defendant, and by Lee H. Rouso on his own behalf.

The State has propounded very broad discovery requests in this declaratory judgment action challenging the constitutionality of Washington's laws prohibiting internet gambling. The interrogatories in question request, *inter alia*, the following information:

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- A list of all screen names or pseudonyms used by Mr. Rousso while engaged in internet gambling (Interrogatory No. 3);
- A description of Mr. Rousso's position, activities, and associations related to Poker Players Alliance (Interrogatory No. 4);
- The circumstances under which Mr. Rousso opened an account with Pokerstars, including the disclosure of all computers used, and identification of any bank account used (Interrogatory No. 5);
- A full description of all internet gambling activities in which Mr. Rousso has engaged for the past five years, including identification of all computers and bank accounts used, and the names of opponents (Interrogatory No. 6);
- The identity of all persons with knowledge of Mr. Rousso's internet gambling over the past five years (Interrogatory No. 7);
- The amount of money paid by Mr. Rousso to participate in internet gambling, as well as the amounts of money wagered, won, or lost, over the past five years (Interrogatory No. 8);
- Identification of all locations where Mr. Rousso has engaged in non-internet gambling in Washington State over the past five years (Interrogatory No. 9);
- Facts to support Mr. Rousso's assertion in his Complaint that Pokerstars "acts as a neutral stakeholder." (Interrogatory No. 10)
- Facts to support Mr. Rousso's assertion in his Complaint that he has played internet poker with citizens of other states as well as citizens of U.S. territories

1 and of foreign countries, including the identities of the players, and all related
2 financial information (Interrogatory No. 11);

- 3 • Identification of all instance in which Mr. Rousso has engaged in internet
4 gambling since the passage of the law being challenged in this lawsuit, including
5 information about opponents (Interrogatory No. 16);

6 In addition, the State propounded requests for production of documents broadly
7 requesting documents that relate to the above-described interrogatories (Requests for
8 Production Nos. 1-6). The State claims that these discovery requests are aimed at
9 eliciting information necessary to its standing defense.

10 The plaintiff, Mr. Rousso, first sought a protective order prohibiting any
11 discovery whatsoever, arguing that (1) this case presents a pure issue of law that can be
12 litigated without discovery, (2) any facts necessary to establish standing could be
13 provided by way of affidavit from Mr. Rousso, and (3) that the State's discovery requests
14 were propounded to harass, oppress, intimidate, and threaten Mr. Rousso and to attempt
15 to infringe on his right against self-incrimination, and (4) that the discovery requests seek
16 information neither relevant nor reasonably calculated to lead to the discovery of
17 admissible evidence. The court (another judge earlier assigned to this case) denied that
18 motion for protective order, which decision was then unsuccessfully submitted by Mr.
19 Rousso for discretionary review by the Court of Appeals. The commissioner ruled as
20 follows:

21 The scope of the State's discovery requests is troubling. Indeed, at oral argument
22 the State acknowledged that some of the interrogatories and requests for
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1 production may go beyond what is necessary to determine standing. But in his
2 motion for a protective order, Rousso asked the court to close discovery and to
3 resolve the declaratory judgment action at an upcoming hearing. Given the
4 absolute nature of Rousso's request, it was not obvious or probably error for the
5 trial court to deny Rousso's motion for a protective order.

6 Commissioner's Ruling Denying Discretionary Review, Wash. Ct. App., No 60759-6-1
7 (01/15/08), pp. 2-3.

8 This court is likewise troubled by the scope of the State's discovery requests,
9 especially in light of the State's insistence that the sole purpose of eliciting the
10 information is to inform the State's standing defense. The discovery requests go far
11 beyond what is necessary for this purpose. The requests for financial records,
12 information about Mr. Rousso's possible internet gambling after the enactment of the law
13 at issue in this case, information about non-internet gambling, the disclosure of others
14 with whom Mr. Rousso might play internet poker, and the identity of members of an
15 organization with whom he might associate are not relevant, nor are they calculated to
16 lead to the discovery of admissible evidence. The court will not infer that the broad
17 requests are intended to harass, oppress, intimidate, or threaten Mr. Rousso, although
18 they do appear to request information of the sort the state might desire in order to
19 consider criminal prosecution, as opposed to that necessary to determine the issues
20 presented in this case. General information about Mr. Rousso's internet poker playing
21 prior to the enactment of SSB 6613, however, is relevant and reasonably calculated to
22 lead to the discovery of admissible evidence pertinent to the State's standing defense.
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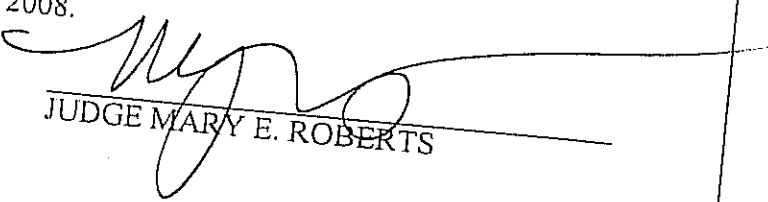
1 Based on the above, the court orders as follows: The defendant's motion to
2 compel is GRANTED IN PART, AND DENIED IN PART. The plaintiff is ORDERED
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- 5 1. Provide complete answers to Interrogatories No. 3 and 5, for the period of
6 time before June 7, 2006;
- 7 2. Answer Interrogatory No. 6, for the period of time before June 7, 2006, except
8 that the plaintiff need not provide the requested financial institution or
9 payment provider names or account numbers;
- 10 3. Answer Interrogatory No. 8, for the period of time before June 7, 2006;
- 11 4. Answer Interrogatory No. 10;
- 12 5. Answer Interrogatory No. 11, for the period of time before June 7, 2006,
13 except that the plaintiff need not provide the requested financial institution or
14 payment provider names or account numbers.

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16 The plaintiff is ORDERED to provide the above discovery responses not later
17 than April 18, 2008. If Mr. Rousso invokes his constitutional right against self-
18 incrimination as to any of the above-ordered discovery, the court will consider this
19 fact when presented with the State's summary judgment motion.

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21 The parties' requests for awards of terms, or expenses, are each denied given the
22 fact the court has granted the motion only in part.

23 DATED this 2nd day of April, 2008.

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JUDGE MARY E. ROBERTS