Tentative Rulings for October 5, 2021
Department 501

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

20CECG02318 ***Michael Christopher, et al. v. Tarlton Fresno, LLC, et al.*** **(Dept. 501)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

20CECG00767 ***Matsuoka vs. HITS Enterprise, Inc.*** **is continued to Thursday, October 14, 2021, at 3:30 p.m. in Dept. 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20) **Tentative Ruling**

Re: ***Soto v. Amware Pallet Services, LLC***
Superior Court Case No. 20CECG00227

Hearing Date: October 5, 2021 (Dept. 501)

Motion: by Plaintiff for Preliminary Approval of Class Settlement

Tentative Ruling:

To deny without prejudice.

Explanation:

Certification of Class for Settlement

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected, although there is less scrutiny of manageability issues. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240; see *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1803, fn. 9, 19.a) The trial court has a "fiduciary responsibility" as the guardian of the absentee class members' rights to decide whether to approve a settlement of a class action. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313.)

Plaintiff bears the burden of establishing the propriety of class treatment with admissible evidence. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 [trial court's ruling on certification supported by substantial evidence generally not disturbed on appeal]; *Lockheed Martin Corp. v. Superior Court*, *supra,* 29 Cal.4th at pp. 1107-1108 [plaintiff's burden to produce substantial evidence].)

Plaintiff presents no admissible evidence of the number of persons falling within the class definition proposed (or the class definition of the Complaint). The sole evidence offered is a statement by plaintiff's counsel who states that defendant's counsel states

that there are roughly 1,500 individuals in the class. (See Szilagyi Decl., ¶ 16.) That is certainly a sizeable class, but this requirement is not satisfied by vague hearsay failing to present actual evidence. Approval of class settlements is not permitted where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 129.) Numerosity has not been established with admissible evidence.

Under the third prong of the community of interest requirement, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Usually, in wage and hour class actions or PAGA class claims, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

Here, it is not shown that plaintiff has claims typical of the class, which includes employees working in a range of different positions (repairmen, utility workers, examiners, inspectors, painters and similar positions) at different work facilities apparently throughout the state. (See Szilagyi Decl., ¶ 17.) This also raises concerns over whether there was any common policy or practice across so many different positions and in different locations.

In *Pena v. Taylor Farms Pacific, Inc.* (E.D. Cal. 2015) 305 F.R.D. 197, the Court refused to certify a class for failure to provide sufficient evidence of any policy of placing incorrect information on wage statements. The only evidence was a single wage statement from a class representative. The Court found that plaintiffs "have not shown the solitary stub makes the same omission as every paycheck delivered to every non-exempt hourly employee, regardless of position or department, over the relevant multi-year time period. They have not even shown all class members received paystubs. Because the plaintiffs bear the burden to show common issues exist and predominate, certification of the wage statement subclass is denied." (*Id.* at p. 224.)

Here, similarly, plaintiff submitted merely a single wage statement with his declaration. Handbooks and manuals or other written evidence of employer policies are commonly used to determine employer practices, typicality, and possible predominant issues of fact and law. (See, e.g., *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.* (C.D. Cal. 2015) 311 F.R.D. 590, 595 and 603; *Clausnitzer v. Federal Exp. Corp.* (S.D. Fla. 2008) 248 F.R.D. 647, 649 and 656; *Butler v. DirectSAT USA, LLC* (D. Md. 2014) 47 F. Supp. 3d 300, 308; *Romulus v. CVS Pharmacy, Inc.* (D. Mass. 2017) 321 F.R.D. 464, 469; *Williams v. Sweet Home Healthcare, LLC* (E.D. Pa. 2018) 325 F.R.D. 113, 127.) "California courts consider pattern and practice evidence, statistical evidence, sampling evidence, expert

testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards similarly situated plaintiffs makes class certification appropriate." (*Jaimez v. DAIOHS USA* (2010) 181 Cal.App.4th 1286, 1298.) No *evidence* of a common practice or policy is presented here.

The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. "The adequacy inquiry … serves to uncover conflicts of interest between named parties and the class they seek to represent. To assure 'adequate' representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class." (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212, citations omitted.)

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.) Counsel has substantial class action experience. (See Szilagyi Decl., ¶¶ 35-42.) But as noted above, plaintiff has not established that he has claims consistent with those of the rest of the class in varying job positions.

A relevant consideration is the incentive award.

> "Where, as here, the class representatives face significantly different financial incentives than the rest of the class because of the conditional incentive awards that are built into the structure of the settlement, we cannot say that the representatives are adequate. *See Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 627, 117 S. Ct. 2231, 138 L Ed 2d 689 (1997) ('The settling parties, in sum, achieved a global compromise with no structural assurance of fair and adequate representation....')"

(*Radcliffe v Experian Information Solutions, Inc.* (2013) 715 F.3d 1157, 1165.)

> "The propriety of incentive payments is arguably at its height when the award represents a fraction of a class representative's likely damages; for in that case the class representative is left to recover the remainder of his damages by means of the same mechanisms that unnamed class members must recover theirs. The members' incentives are thus aligned. But we should be most dubious of incentive payments when they make the class representatives whole, or (as here) even more than whole; for in that case the class representatives have no reason to care whether the mechanisms available to unnamed class members can provide adequate relief."

(In re Dry Max Pampers Litigation (6th Cir. 2013) 724 F.3d 713, 722.)

The settlement agreement in the instant case provides that plaintiff gets up to $10,000 as class representative. The administration expenses, attorney costs and fees, PAGA payment to the LWDA, and incentive awards total $434,750 of the $1,100,000, a little less than half of the total settlement. That leaves $665,250, or $443.50 for each class member if there are 1,500 members.

The class representative incentive award is 22.55 times that, and about 0.9% of the class fund. The usual amount approved is 1.5% or less. So $10,000 is in the ballpark. Plaintiff has submitted a declaration explaining his involvement in the case, though he doesn't provide much detail as to how much work he put into it. He says he made himself available for a full day deposition (Soto Decl., ¶ 6), but does not state that the deposition took place. He states that he made himself available for mediation by telephone (Soto Decl., ¶ 7), but apparently did not attend it, and does not mention if he was contacted at all. Other than preparing for his deposition (Soto Decl., ¶ 6), there is no evidence that plaintiff expended much time or energy on this case. A more detailed declaration would be helpful when the matter is submitted for final approval. Adequacy may not be a problem if further information is provided, such as a declaration detailing plaintiff's actual work done in prosecuting this case, the number of hours expended, if his deposition was taken, and the amount of his recovery under the class settlement as a class member without the incentive award. A more detailed declaration should be submitted with the motion for final approval.

Settlement Approval

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished … [therefore] the factual record must be before the … court must be sufficiently developed." (*Id.* at p. 130.)

Clark v. America Residential Services (2009) 175 Cal.App.4th 785 vacated approval of a class settlement coupled with class certification, an award of $25,000 each to two named plaintiffs, and more. The problem was that the plaintiffs presented "no evidence regarding the likelihood of success on any of the 10 causes of action, or the number of unpaid overtime hours estimated to have been worked by the class, or the average hourly rate of pay, or the number of meal periods and rest periods missed, or the value of minimum wage violations, and so on." (*Id*. at p. 793.)

Counsel utilizes an unusual method for valuing the various causes of action for settlement purposes. For example, regarding the wage statement claim counsel takes 65% of the $2,015,300 maximum exposure ($1,309,945), and then takes 60% of $1,309,945 to come up with his $785,967 valuation for settlement purposes. Counsel should explain this methodology of taking a percentage of a percentage and calling that the valuation.

Aside from that, the valuation is short on *evidence* of likelihood of success for the various causes of action. Counsel says that the wage statement claim valuation is "[b]ased on a sampling of pay data produced for mediation" (Szilagyi Decl., ¶ 24), but does not explain how many violations were found or could be claimed based on the data available. Counsel does not show how he came up with the $2,015,300 figure, and

there really isn't a clear explanation of the chance of class certification and chance of proving liability percentages.

The unpaid wage claim valuation is based on plaintiff's declaration, which counsel says shows that plaintiff and class members worked 30 minutes of off-the-clock each shift, five days per week, amounting to 2.5 hours per week. (Szilagyi Decl., ¶ 25.) But plaintiff was only providing an estimate as to himself (based apparently on nothing but his recollection of his 10 months of work in 2018). (See Soto Decl., ¶ 3.) There is no evidence that other employees had the same or similar experience. Thus, counsel's valuation is without foundation. Counsel says that "[a]pproximately 75% of the estimated 53,181 workweeks qualified for overtime wages when Class Members worked off-the-clock." (Szilagyi Decl., ¶ 25.) There is no evidence supporting this figure, or showing as to how counsel reached it. Counsel also states that "Defendant's exposure was further reduced by some retroactive payments of wages there were found made to Class Members" (*Ibid.*), but offers no evidence of such payments or their amounts.

The remaining valuations are likewise unsupported by evidence, statistical or otherwise. Counsel neither explains the $2,128,200 potential exposure for the PAGA claim, nor justifies the $40,000 allocation. Counsel states that "Plaintiff estimated at least one violation in each of the estimated 21,282 pay periods worked by Plaintiff and Class Members during the PAGA period", but offers no evidence supporting this estimation. (Szilagyi Decl., ¶ 30.)

All in all, the valuations are unsupported by evidence.

Regarding the amount of attorneys' fees, again, the amount sought is within the ballpark of what is typically awarded. However, in the final approval motion the court expects plaintiff's counsel to address the reasonableness of the percentage fee through a lodestar calculation. (See *Laffitte v. Robert Half International, Inc*. (2016) 1 Cal.5th 480, 503-504.)

It is required by case law that the notice to the class advise the class of the estimated amount of fees that will be sought. (*Grunin v. International House of Pancakes* (8th Cir. 1975) 513 F.2d 114, 122 (*cert. denied*); *In RE BMC Engine Interchange Litigation* (7th Cir. 1979) 594 F. 2d 1106, 1129-1130 (*cert. denied*).)

An attorney's fees motion must be filed and available (such as by posting on counsel's website or that of the administrator) *prior* to the due date for objections. The notice to the class need provide a link for the fees motion so that class members can view it to determine if they wish to object. (See *Allen v. Bedolla* (9th Cir. 2015) 787 F.3d 1218, citing *In re Mercury Interactive Crop. Securities Litigation* (9th Cir. 2010) 618 F.3d 988, 993.) To do otherwise "borders on a denial of due process because it deprives objecting class members of a full and fair opportunity to contest class counsel's fee motion." (*Id*.)

The class notice should be revised to provide a link for the fees motion.

Finally, the court notes that the release in this case is overbroad. Case law requires that releases in class cases be limited to claims arising from the same factual predicate.

(*Strube v. Am. Equity Inv. Life Ins. Co.* (M.D. Fla. 2005) 226 F.R.D. 688, 700; *Class Plaintiffs v. Seattle* (9th Cir. 1992) 955 F.2d 1268, 1287.) Here, the Agreement releases

> any and all claims, actions, demands, causes of action, suits, debts, obligations, guarantees, costs, expenses, attorneys' fees, damages, restitution, injunctive relief, penalties, rights or liabilities, of any nature and description whatsoever, arising during the Class Period or the PAGA Period, which were alleged or *could have been alleged* in Plaintiff's Operative Second Amended Complaint, First Amended Complaint, or Complaint, during the Class Period, including but not limited to (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to authorize or permit rest periods, (5) failure to furnish accurate itemized wage statements wage statement violations, (6) failure to pay all wages due upon separation of employment, (7) violation of California Business and Professions Code §§17200, et seq., and (8) claims asserted under the Private Attorney General Act, based on the preceding claims, including claims for failure to pay minimum wage, straight time wages, regular wages, and overtime wages, unpaid premium pay for violations of California's meal period and rest break law, waiting time penalties, penalties for noncompliant wage statements and failure to keep accurate payroll records, and failure to pay wages upon separation and claims pursuant to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, and claims under Business and Professions Code section 17200, et seq. ("Released Claims").

(See Settlement Agreement, ¶ 5.01, emphasis added.)

The release encompasses any causes of action or claims that could have been alleged in the complaints filed by plaintiff, but is not limited to those based on the same factual predicate as the claims upon which this action is based. The release needs to be redrafted so that it is limited to claims arising from the same factual predicate.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 10/4/2021 .
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: ***Gloria Renteria v. San Joaquin Community Hospital***
Superior Court Case No. 20CECG00718

Hearing Date: October 5, 2021 (Dept. 501)

Motion: by Defendant San Joaquin Community Hospital dba Adventist Health Bakersfield for Summary Judgment

Tentative Ruling:

To grant. The court intends to sign the proposed Order that was submitted by prevailing party on September 30, 2021.

Explanation:

"'[I]n any medical malpractice action, the plaintiff must establish: "(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." [Citation.]'" (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606.)

However, the standard of care against which physicians acts are measured is a matter peculiarly within the knowledge of experts. "[I]t presents the basic issue in a malpractice action and can only be proved by their testimony[.]" (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.) Thus, California courts incorporate the expert evidence requirement into their standard for summary judgment in medical malpractice cases. (*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985 ["'When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, [the defendant] is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence.'"]; see also *Hanson v. Grode, supra,* 76 Cal.App.4th at pp. 606-607 [same].)

Here, defendant submits the declaration of Howard Pitchon, M.D. He is a well-qualified expert. His declaration concludes that the treatment received was within the standard of care at all times. The declaration also sets forth the basis for Dr. Pitchon's opinion and reflects a sufficient analysis of the treatment received by decedent while at defendant's facility. Defendant's evidence is therefore sufficient to shift the burden to plaintiff. Considering plaintiff's non-opposition, defendant's motion for summary judgment is granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 10/4/2021.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Cruz v. Wal-Mart Transportation, LLC***
Superior Court Case No. 20CECG00338

Hearing Date: October 5, 2021 (Dept. 501)

Motion: by Plaintiff to Quash Deposition Subpoenas served to Person Most Knowledgeable at IAA, Inc, Freddy Portillo, Isuara Clemente, and Antonio Gonzalez

Tentative Ruling:

To deny.

Explanation:

Discovery requests are generally afforded liberal construction. (see Code of Civ. Proc., § 2017.010; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 541 ["In the absence of contrary court order, a civil litigant's right to discovery is broad."].)

"In civil litigation, discovery may be obtained from a nonparty only through a 'deposition subpoena.' [Citation.]" (*Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 127; Code Civ. Proc. § 2020.010, subd. (b).) However, "Discovery procedures are generally less onerous for strangers to the litigation. That is because they are less likely to be represented by counsel, familiar with the issues, or able to react with alacrity before responses are due." (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1289-1290.)

The court "upon motion reasonably made" by a party or a witness may make an order quashing or modifying a subpoena. (Code Civ. Proc. § 1987.1, subds. (a), (b).) "The Legislature's 'use of the term "motion" (rather than 'ex parte application') [has been interpreted to impose] the notice *and hearing* requirements generally applicable to motions.'" (*Titmas v. Superior Court* (2001) 87 Cal.App.4th 738, 743 (internal citations omitted); see also Cal. Rule of Court, rule 3.1306(a) ["Evidence received at a law and motion hearing must be by declaration …."]; *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224 ["In law and motion practice, factual evidence is supplied to the court by way of declarations."].) Accordingly, a motion not supported by evidence must be denied. (*Calcor Space Facility, Inc. v. Superior Court, supra,* 53 Cal.App.4th at p. 224.)

Plaintiff's arguments asserted in his motions to quash essentially rest on his principal contention that an insurer has already "conclusive[ly] determin[ed]" that plaintiff possessed liability coverage at the time of the collision. (See Points & Authorities, pg. 12:5-7.) The evidence offered to support this contention is one sentence from a letter by the insured's claim representative stating that a person named Junior Hernandez DOB May 29, 1990, Foreign Driver's License number HERN8457, is covered as an approved driver under the policy issued to Mr. Portillo. (See Decl. Taillieu, Ex. 3, 4.)

This letter, however, does not appear determinative of whether plaintiff was adequately covered under the policy. To begin with, the declaration by Olivier Tailleu Exhibits 3 and 4 states the covered driver's birthdate is May 29, 1990, which conflicts with both birthdates asserted in the reply. (See Reply, pg. 5:15-22 [stating that although plaintiff initially stated that July 8, 1986 was his birthdate, "[a]s it turns out, plaintiff was actually born on May 29, 1986."].)

Furthermore, despite plaintiff's challenges, Antonio Gonzalez' declaration states his knowledge of what Mr. Portillo told him regarding Junior Hernandez' (DOB 5/29/90), Hernandez' international driver's license, and his belief that an operator must have a foreign or U.S. driver's license to be covered under the policy he issued. Accordingly, to the extent plaintiff's challenge constitutes an objection to Antonio Gonzalez' declaration, the objection is overruled.

In addition, Antonio Gonzalez' declaration indicates that he relied on information presented by Mr. Portillo in issuing the policy. To the extent this information included Mr. Portillo's assertion that Junior Hernandez possessed a foreign driver's license bearing number HERN8457, such assertion is rebutted by the Traffic Collision Report by the California Highway Patrol which noted the driver of the Ford Focus at the scene of the accident (DOB July 8, 1986) did not have a driver's license. (See McLean Decl., Ex. A.)

Considering the disputed information provided by Mr. Portillo to Mr. Gonzalez, and whether such dispute necessarily affects the conclusiveness of Ms. Clemente's August 16, 2021 letter, the subject depositions and requests for production of documents are likely to produce evidence of plaintiff's financial responsibility relevant to proving or disproving applicability of the exclusion set forth in Civil Code, section 3333.4. Although plaintiff disputes defendants' standing to seek such discovery, the case primarily relied upon for that proposition - *Wexler v. California Fair Plan Ass'n* (2021) 63 Cal.App.5th 55, 64 – did not involve third party discovery, but rather involved non-signatory standing to sue for bad faith denial of coverage. (*Id*. at p. 64; see also *Seretti v. Superior Nat. Ins. Co.* (1999) 71 Cal.App.4th 920, 928-929 [contractual relationship essential to claim for liability for bad faith denial of insurance coverage].) In contrast to the limitations and restrictions surrounding the standing to bring suit addressed in *Wexler, supra,* 63 Cal.App.5th 55, the "right to discovery is broad." (*Williams v. Superior Court, supra,* 3 Cal.5th at p. 541.)

Finally, "[i]n order to facilitate the ascertainment of truth and the just resolution of legal claims, the state clearly exerts a justifiable interest in requiring a businessman to disclose communications, confidential or otherwise, relevant to pending litigation." (*In re Lifschutz* (1970) 2 Cal.3d at p. 425.) Even where information is theoretically sensitive and private, such as bank customer information, discovery is still preferable to "outright denial" where appropriate safeguards and limitations are imposed. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 658 (*Valley Bank*), internal citations omitted.)

The first step in assessing constitutional invasion of privacy claims requires the determination of a legally recognized privacy interest, which is generally categorized into two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information ("informational privacy"); and (2) interests in making intimate

personal decisions or conducting personal activities without observation, intrusion, or interference ("autonomy privacy")." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35 (*Hill*).) Secondly, the court must look at "customs, practices, and physical settings surrounding particular activities may create or inhibit reasonable expectations of privacy." (*Id*. at p. 36.) Lastly, the invasion must be serious. (*Id*. at p. 37; see also *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 371 ["the invasion of privacy complained of must be 'serious' in nature, scope, and actual or potential impact to constitute an 'egregious' breach of social norms, for trivial invasions afford no cause of action. [Citation.]"].)

Plaintiff contends the proposed discovery is analogous to the bank customer financial documents at issue in *Valley Bank, supra,* 15 Cal.3d 652. However, unlike the financial information in *Valley Bank*, which had been delivered to the bank in confidence by bank customers (*Valley Bank, supra,* 15 Cal.3d at p. 654), there is no indication that the information sought in the subject requests was confidentially maintained by the insured or ever intended by Mr. Portillo to remain confidential. In addition, none of the requested documents amount to "egregious" invasions of privacy (*Hill, supra,* 40 Cal.4th at p. 37.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 10/4/2021.
(Judge's initials) (Date)