1. MATTER OF NICHOLSON 22CV0267

OSC Re: Name Change.

TENTATIVE RULING # 1: THE PETITION IS GRANTED.

2. MATTER OF ROSER 22CV0255

OSC Re: Name Change.

TENTATIVE RULING # 2: THE PETITION IS GRANTED.

3. BOWMAN v. GOLD COUNTRY HOMEOWNERS PC-20200539

Motion to Compel Deposition Testimony and Production of Documents, or, in the Alternative, to Strike the Advice of Counsel Defense.

TENTATIVE RULING # 3: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 6, 2022, IN DEPARTMENT NINE.

4. ESTATE OF BRACCO PP-20190004

Review Hearing Re: Status of Administration.

Letters of Administration were issued on May 23, 2019. The Final Inventory and Appraisal was filed on September 16, 2019.

The personal representative's counsel previously explained that there is pending litigation concerning the estate's real property as well as another probate case, which has been dismissed. Counsel advised the court that until the litigation is complete, they are unable to proceed in the probate case.

At the hearing on October 29, 2021, the court was advised that title had been cleared and counsel was preparing the waiver of final account. The personal representative's counsel requested a continuance of the hearing, and the court continued the hearing to January 7, 2022.

At the hearing on January 7, 2022, the court was advised that counsel expected to have all the documents necessary to resolve the matter but does not have them yet. He anticipated he would have them in the next couple of weeks.

At the hearing on February 25, 2022, counsel stated that he was unable to file the proof of service yesterday and will file it today.

Proof of Publication of notice to creditors within the last publication on February 14, 2022, was filed on February 25, 2022. Sixty days after the last publication of notice to the creditors was April 15, 2022. Inasmuch as the 1st and Final Report and Petition for Final Distribution on Waiver of Account was filed on February 25, 2022, the personal representative will need to address the issue of whether any creditor claims were filed and served on the personal representative on or before April 15, 2022.

The 1st and Final Report and Petition for Final Distribution on Waiver of Account was filed on February 25, 2022; however, it did not state the date and time for a hearing on the caption page and therefore it was not calendared. The court sets the hearing on the 1st and Final Report and Petition for Final Distribution on Waiver of Account for 8:30 a.m. on Friday, May 13, 2022, in Department Nine.

TENTATIVE RULING # 4: THE COURT SETS THE HEARING ON THE 1ST AND FINAL REPORT AND PETITION FOR FINAL DISTRIBUTION ON WAIVER OF ACCOUNT FOR 8:30 A.M. ON FRIDAY, MAY 13, 2022, IN DEPARTMENT NINE. THE REVIEW HEARING RE: STATUS OF ADMINISTRATION IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 13, 2022, IN DEPARTMENT NINE.

5. CARTOSCELLI v. ALLIED PROPERTY PC-20200041

(1) Motion to Compel Further Responses to Special Interrogatories, Set Two.

(2) Motion to Compel Further Responses to Requests for Production, Set Two.

Motion to Compel Further Responses to Special Interrogatories, Set Two.

On July 12, 2021, plaintiff filed a 1st amended complaint for breach of contract and breach of the covenant of good faith and fair dealing against his insurer related to payment on a claim against plaintiff's insurance policy. The complaint also sought recovery of punitive damages. Defendant's motion to strike the claim for punitive damages was denied on October 1, 2021.

The parties have had a previous discovery dispute regarding the first set of interrogatories and requests for production. On April 1, 2021, plaintiff filed voluminous motions to compel further responses to numerous form interrogatives, special interrogatories, and requests for production. Plaintiff moved to compel further responses and sought an award of $7,460 in monetary sanctions for the motion to compel further responses to interrogatories and $6,060 in monetary sanctions for the motion to compel further responses to requests for production. Weeks after the motion was filed, on April 26, 2021, defendant served verified further responses to the special and form interrogatories and requests for production and defendant produced documents. Defendant opposed the motions on several grounds, including an assertion that the motions were moot as further responses were provided and the only outstanding issue is sanctions, which should be denied, or the amount awarded reduced.

The court's final ruling found that the further verified responses superseded the prior responses rendering the motion to compel further responses to the initial discovery responses moot. The court imposed monetary sanctions on defendant in the amount of $10,000.

On October 14, 2021, plaintiff served on defendant special interrogatories, set two. After being granted extensions of time to respond, defendant served responses and objections to the special interrogatories on January 3, 2022. On January 28, 2022, plaintiff filed a voluminous motion to compel further responses to form interrogatory numbers 197, 199-201, 203, 207, 211, 215, 220, 230, 234-243, and 246-257. Plaintiff contends defendant's objections are meritless; the responses are evasive and incomplete; all objections not raised in the initial responses have been waived; the court should impose monetary sanctions against defendant in the amount of $7,185; and the court should also impose issue, evidence and terminating sanctions against defendant.

On February 22, 2022, plaintiff filed amended responses to some of the form interrogatories, set two, and filed an opposition to the motion.

Defendant argues in opposition: the motion should be denied due to plaintiff's failure to meet and confer in good faith; special interrogatory numbers 199, 201, 203, 207, 211, 215, 220, 230, and 234 as clarified by amended responses are sufficient responses; special interrogatory numbers 197, 200, 201, and 203 concernig legal propositions are not a proper subject for interrogatories, particularly the existence of a genuine dispute pled as an affirmative defense which was made by and argued by counsel based upon a legal interpretation of the facts of the use and occupancy of the subject property; the amended responses to special interrogatory numbers 197, 200, 201, and 203 are sufficient; special interrogatory numbers 235-242 and 252-257 seeking disclosure of other claims of other insureds are overboard as to time, scope, geographical reach, and seek irrelevant information; even if discovery is permitted regarding other claims by insureds in bad faith actions, only substantially similar claims are potentially relevant; the discovery violates the privacy rights of other insureds; the human resources and financial information sought in form interrogatory numbers 246-251 is irrelevant

and overbroad in time, geographic scope, lines of insurance (commercial vs. personal), and the type of coverage; special interrogatory numbers 235-242 are unduly burdensome and oppressive; plaintiff's requests for sanctions should be denied; and defendant should be awarded monetary sanctions jointly against plaintiff and plaintiff's counsel.

Plaintiff replied: the amended responses to special interrogatory numbers 197, 199-201, 203, 207, 211, 215, 220, 230, 234, 247-249 and 251 render the substantive portion of the motion related to those special interrogatories moot, however, plaintiff remains entitled to an award of sanctions for having to file this motion in order to obtain further responses; plaintiff has drafted revisions of special interrogatory numbers 235-242 to address the claim they are overbroad and the court is free to adopt them for the purposes of compelling a response to them; the court should compel further responses to special interrogatory numbers 246, 250, and 252-257; and discovery sanctions should be imposed against defendant.

Meet and Confer Activities

A motion to compel further responses to interrogatories shall be accompanied by a meet and confer declaration under Code of Civil Procedure, § 2016.040. (Code of Civil Procedure, § 2030.300(b).)

"It is a central precept to the Civil Discovery Act of 1986 (Code Civ.Proc., § 2016 et seq.) (hereinafter "Discovery Act") that civil discovery be essentially self-executing. (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1111, 1 Cal.Rptr.2d 222.) The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o); *DeBlase v. Superior Court* (1996) 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229.) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184

Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. (*DeBlase v. Superior Court*, supra, 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229; see also *Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981) 122 Cal.App.3d 326, 330, 175 Cal.Rptr. 888.)" (Townsend v. Superior Court (1998) 61 Cal.App.4th 1431, 1434-1435.)

The motion to compel further responses must be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. (Code of Civil Procedure, §§ 2030(l), 2031(m), and 2033(l).) "'The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o)....) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. [Citations.]' (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435, 72 Cal.Rptr.2d 333.)" (Stewart v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, 1016.) "A determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the 'reasonable and good faith attempt' standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for

success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. (See, e.g., Gov.Code, § 68607 [judge has responsibility to manage litigation]; Code Civ. Proc., § 128, subd. (a)(5) [judge has power to control conduct of judicial proceeding in furtherance of justice].) Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. (Citations omitted.)" (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 431.) "Although some effort is required in all instances (see, e.g., *Townsend*, supra, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances." (Obregon, supra at pages 432-433.)

It appears under the totality of circumstances presented, including, but not limited to, the history of this litigation, the nature of the interaction between counsel, the nature of the issues, the type, and scope of discovery requested, and the prospects for success, that the meet and confer activities were sufficient.

Motion to Compel Further Responses to Special Interrogatories

If the propounding party deems that the response to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents is unwarranted or the specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general, that party may move for an order compelling a further response. (Code of Civil Procedure, § 2030.300(a)(1).)

"(a) The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following: ¶ (1) An answer containing the information sought to be discovered. ¶ (2) An exercise of the party's option to produce writings. ¶ (3) An objection to the particular interrogatory. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party. ¶ (c) Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding interrogatory, but the text of that interrogatory need not be repeated." (Code of Civil Procedure, § 2030.210.)

"(a) Each answer in response shall be as complete and straightforward as the information reasonably available to the responding party permits. ¶ (b) If the interrogatory can not be answered completely, it shall be answered to the extent possible. ¶ (c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code of Civil Procedure, § 2030.220.)

"If the information which is sought is not in the possession of the party served or of its agent, then it is a sufficient answer to indicate that the information is unavailable or to refer to the person or entity which can provide the information. Where the information sought is equally available to the propounder of the interrogatory, the burden and expense of any research which may be required should be borne by the party seeking the information. (*Bunnell v. Superior Court* etc., 254 Cal.App.2d 720, 723—724, 62 Cal.Rptr. 458.)" (Pantzalas v. Superior Court of Los Angeles County (1969) 272 Cal.App.2d 499, 503.)

With the above-cited principles in mind, the court will rule on plaintiff's motion to compel further responses to special interrogatories.

Plaintiff having conceded that the substantive portion of the motion related to the responses to special interrogatory numbers 197, 199-201, 203, 207, 211, 215, 220, 230, 234, 247-249 and 251 were rendered moot by the amended responses provided, there remains the sufficiency of the defendant's responses and objections to special interrogatory numbers 235-243, 246, 250, and 252-257 to resolve.

Special Interrogatory Numbers 235-243, 246, and 252-257

Plaintiff redrafted special interrogatory number 235 as follows: "IDENTIFY the names of other individuals whose property and/or homeowner's insurance claims relating to fire destruction of an insured residence were handled by WILLIAM CHANG between 2017 present.

Plaintiff redrafted special interrogatory number 236 a follows: "IDENTIFY the names of other individuals whose property and/or homeowner's insurance claims relating to fire destruction of an insured residence were handled by SHAWN DALTON between 2017 present"

Plaintiff redrafted special interrogatory number 237 a follows: "IDENTIFY the addresses of other individuals whose property and/or homeowner's insurance claims relating to fire destruction of an insured residence were handled by SHAWN DALTON [sic WILLIAM CHANG?] between 2017 present"

Plaintiff redrafted special interrogatory number 238 a follows: "IDENTIFY the addresses of other individuals whose property and/or homeowner's insurance claims relating to fire destruction of an insured residence were handled by SHAWN DALTON between 2017 present"

Plaintiff redrafted special interrogatory number 239 a follows: "IDENTIFY the names of each and every one of YOUR former or present insured who presented a property and/or

homeowner's insurance claim to YOU relating to fire destruction of an insured residence in whose claim was denied, either in whole or part between 2017 to present."

Plaintiff redrafted special interrogatory number 240 a follows: "IDENTIFY the addresses of each and every one of YOUR former or present insured who presented a property and/or homeowner's insurance claim to YOU relating to fire destruction of an insured residence in whose claim was denied, either in whole or part between 2017 to present."

Plaintiff redrafted special interrogatory number 241 a follows: "IDENTIFY the names of each and every one of YOUR former or present insured who presented a property and/or homeowner's insurance claim to YOU relating to fire destruction of an insured residence in whose claim was paid, either in whole or part between 2017 to present."

Plaintiff redrafted special interrogatory number 242 a follows: "IDENTIFY the addresses of each and every one of YOUR former or present insured who presented a property and/or homeowner's insurance claim to YOU relating to fire destruction of an insured residence in whose claim was paid, either in whole or part between 2017 to present."

Defendant provided no substantive responses to these special interrogatories and only objected to answering the interrogatory. Defendant's initial objections to the prior version of special interrogatory numbers 235-243 were: vague, ambiguous and overbroad as to time and subject matter; unduly burdensome; not reasonably calculated to lead to the discovery of admissible evidence; it seeks information protected by the attorney client privilege and work product doctrine as it includes information and documents prepared in anticipation of litigation; it seeks information protected by contractual non-disclosure agreements; and violates uninvolved third party privacy rights.

The vague, ambiguous, and overbroad objections are overruled.

Obtaining information from defendant's own files concerning property/homeowner's insurance claims for destruction of an insured residence by fire handled by defendant's agents and/or employees in the past five years is not unduly burdensome.

- Relevancy Objection

"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…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial

(The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"Indirect evidence of the elements of punitive damages may be suggested by a pattern of unfair practices. In *Neal, supra*, for example, we affirmed an award of punitive damages based on a failure to settle where the evidence indicated that defendant insurance company's refusal "to accept [plaintiff's] offer of settlement, and its subsequent submission of the matter to its attorney for opinion, [fn. omitted] were all part of a conscious course of conduct, firmly grounded in established company policy ...." (21 Cal.3d at p. 923, 148 Cal.Rptr. 389, 582 P.2d 980.) Similarly, in *Delos v. Farmers Insurance Group* (1979) 93 Cal.App.3d 642, 664, 155 Cal.Rptr. 843, hearing denied August 29, 1979, the court upheld an award of punitive damages based in part on "an inextricable involvement with conduct aptly described ... as a 'nefarious scheme to mislead and defraud thousands of policyholders' with defendants' decision to deny [plaintiff's] claim." (See also *Ferraro v. Pacific Finance Corp.* (1970) 8 Cal.App.3d 339, 352–353, 87 Cal.Rptr. 226.) [FN 9] ¶ FN 9. Furthermore, evidence regarding Sharkey's previous dealings may be relevant to prove ratification or authorization by Equifax and Colonial of his alleged unfair acts. This proof may also be relevant to the issue of punitive damages. (See *Egan v. Mutual of Omaha Ins. Co., supra*, 24 Cal.3d at pp. 822–823, 169 Cal.Rptr. 691, 620 P.2d 141.) ¶ Without doubt, the discovery of the names, addresses and files of other

Colonial claimants with whom Sharkey attempted settlements is relevant to the subject matter of this action and may lead to admissible evidence. [Footnote omitted.]" (Colonial Life & Accident Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 792.)

The relevancy objection is overruled.

- Attorney Client Privilege and Work Product Doctrine Objection

"The trial court has discretion to determine whether, under all of the facts, discovery is allowable, and the burden of showing need for protection rests on the party claiming such need. (*San Diego Professional Ass'n v. Superior Court*, 58 Cal.2d 194, 23 Cal.Rptr. 384, 373 P.2d 448.)" (Rigolfi v. Superior Court In and For Alameda County (1963) 215 Cal.App.2d 497, 502-503.)

"An attorney-client relationship exists for purposes of the privilege whenever a person consults an attorney for the purpose of obtaining the attorney's legal service or advice. (*People v. Gionis* (1995) 9 Cal.4th 1196, 1208, 1210, 40 Cal.Rptr.2d 456, 892 P.2d 1199.) This is so even if the attorney is never hired. [Footnote omitted.] (*Id.* at p. 1208, 40 Cal.Rptr.2d 456, 892 P.2d 1199; *People v. Canfield* (1974) 12 Cal.3d 699, 705, 117 Cal.Rptr. 81, 527 P.2d 633.) As is true with respect to the attorney-client relationship in other contexts, no formal agreement or compensation is necessary to create an attorney-client relationship for purposes of the privilege. (Cf. *Lister v. State Bar* (1990) 51 Cal.3d 1117, 1126, 275 Cal.Rptr. 802, 800 P.2d 1232.) In contrast, no attorney-client relationship arises for purposes of the privilege if a person consults an attorney for nonlegal services or advice in the attorney's capacity as a friend rather than in his or her professional capacity as an attorney. (*People v. Gionis, supra,* 9 Cal.4th at p. 1212, 40 Cal.Rptr.2d 456, 892 P.2d 1199.)" (Kerner v. Superior Court (2012) 206 Cal.App.4th 84, 116-117.)

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Emphasis added.) (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

The identities of fire insurance claimants and their claims made to defendant insurer are not protected by the attorney-client privilege even if their identities and claims were then provided to counsel. The attorney-client privilege objection is overruled.

"It is the policy of the state to do both of the following: ¶ (a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases. ¶ (b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts." (Code of Civil Procedure, § 2018.020.)

"A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances." (Code of Civil Procedure, § 2018.030(a).)

"The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (Code of Civil Procedure, § 2018.030(b).)

"The person claiming protection under the attorney work product doctrine bears the burden of proving the preliminary facts to show the doctrine applies. (*Mize v. Atchison, T. & S.F. Ry. Co.* (1975) 46 Cal.App.3d 436, 447, 120 Cal.Rptr. 787.)" (League of California Cities v. Superior Court (2015) 241 Cal.App.4th 976, 993.)

An appellate court in Dowden v. Superior Court (1999) 73 Cal.App.4th 126 explained the purpose and intent of the work-product doctrine as follows: "Section 2018's stated purpose and the underlying reasons for its creation emphasize the need to "limit[ ] discovery so that 'the stupid or lazy practitioner may not take undue advantage of his adversary's efforts....' " (Pruitt, *Lawyers' Work Product, supra,* 37 State Bar J. at pp. 240–241.)" (Dowden v. Superior Court (1999) 73 Cal.App.4th 126, 133.)

"In determining whether particular matter is privileged as work product, the reviewing court should be guided by the underlying policies of section 2018. Specifically, the policy of promoting diligence in preparing one's own case, rather than depending on an adversary's efforts. A practical guide for ascertaining its scope is found in *Mack v. Superior Court, supra,* 259 Cal.App.2d at pp. 10–11, 66 Cal.Rptr. 280 and *Fellows v. Superior Court, supra,* 108 Cal.App.3d at pp. 69–70, 166 Cal.Rptr. 274. In *Mack,* the court indicated that material of a derivative character, such as diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed on the initiative of counsel in preparing for trial, are protected as work product. (*Mack v. Superior Court, supra,* 259 Cal.App.2d at pp. 10–11, 66 Cal.Rptr. 280;

see also *Fellows v. Superior Court, supra,* 108 Cal.App.3d at pp. 69–70, 166 Cal.Rptr. 274.)" (Dowden v. Superior Court (1999) 73 Cal.App.4th 126, 135.)

Defendant has not proven the preliminary facts to show the attorney work product doctrine applies. It is not established that the identities of other individuals whose property and/or homeowner's insurance claims relating to fire destruction of an insured residence and the facts obtained from them related to the claims submitted to defendant insurer between 2017 and the present was only obtained by defendant insurer's counsel in anticipation of this litigation. It reasonably appears that those identities and facts obtained by the defendant insurer and its claims adjusters were obtained in the ordinary course and scope of claims adjusting service by defendant insurer. The attorney work product objection is overruled.

- Contractual Non-Disclosure Agreement Information Privacy

There is a privacy interest in precluding the dissemination or misuse of sensitive and confidential information ("informational privacy"). (Estate of Gallio (1995) 33 Cal.App.4th 592, 597.)

"The "informational privacy" protection is qualified and requires that a court balance the right of privacy against the need for discovery. (*Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 665, 4 Cal.Rptr.2d 564.) "There must be a compelling and opposing state interest justifying the discovery. [Citation.] Even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must be a careful balancing of the compelling public need for discovery against the fundamental right of privacy. [Citation.]" (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014, 9 Cal.Rptr.2d 331.)" (Estate of Gallio (1995) 33 Cal.App.4th 592, 597.)

"A discovery proponent may demonstrate compelling need by establishing the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit.

(*Planned Parenthood Golden Gate v. Superior Court, supra,* 83 Cal.App.4th at p. 367, 99 Cal.Rptr.2d 627; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1071, 95 Cal.Rptr.2d 864.)" (Digital Music News LLC v. Superior Court (2014) 226 Cal.App.4th 216, 229.)

Information concerning insurance claims of other individuals whose property and/or homeowner's insurance claims relating to fire destruction of an insured residence that were handled by defendant insurer between 2017 to the present is directly relevant and essential to the fair resolution of this lawsuit. Having carefully balanced the compelling public need for discovery against the right of privacy of information protected by a contractual non-disclosure agreement, the court finds that a compelling and opposing state interest justifies the discovery and overrules the objection that special interrogatory numbers 235-243 seek information protected by contractual non-disclosure agreements.

- Privacy Interests of Nonparty Insurance Claimants

"An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is: ¶ (a) With the written authorization of the individual, and meets either of the conditions specified in paragraph (1) or (2): ¶ (1) If the authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization meets the requirement of Section 791.06. ¶ (2) If the authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization is: ¶ (A) Dated. ¶ (B) Signed by the individual. ¶ (C) Obtained one year or less prior to the date a disclosure is sought pursuant to this section. (Insurance Code, § 791.13(a).)

"An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with

an insurance transaction unless the disclosure is: ¶ (h) In response to a facially valid administrative or judicial order, including a search warrant or subpoena." (Insurance Code, § 791.13(h).)

The appellate court in Colonial Life & Accident Ins. Co., supra, was faced with an objection that the information sought in discovery was protected by Insurance Code, §§ 791.10, et seq. The trial court had ordered Equifax to produce the names and addresses of all persons whose claims for benefits under Colonial's policies were assigned a specific adjuster for settlement, which amounted to about 35 claims, and the trial court approved a letter to be sent by plaintiff's counsel to these individuals requesting that they consent to the release of their records by Equifax. The trial court expressly prohibited the parties and counsel from initiating any contact with nonparty insurance claimants pending their response to the letter. The trial court later issued an additional protective order preventing plaintiff's counsel from disclosing to any other person the names, addresses or records of nonparty claimants or from 'making use thereof except for preparation for trial and trial in this action.' (Colonial Life & Accident Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 789.) The appellate court approved of this procedure and protective order as meeting the requirements of Insurance Code, § 791.13. The appellate court stated in relation to Section 791.13: "The procedure for contacting other claimants approved by the trial court should satisfy these requirements if the authorization form, included in the letter sent to claimants, is returned within a year." (Colonial Life & Accident Ins. Co., supra at page 792, fn 10.) That procedure was focused on disclosure of privileged information identifying claimants.

On the other hand, the U.S. District Court, Sothern District of California in an unpublished opinion in 2010 focused on protecting the privileged information concerning specific claimants and tailored a discovery order to allow for discovery of the claims filed concerning similar

claims handled by the insurer in California. The District Court held: "AMCO contends disclosing information about other insureds violate state and federal laws designed to protect the personal information of financial consumers. In general, the federal Gramm-Leach-Bliley Act ("GLBA") together with section 791.13 of the California Insurance Information Privacy Protection Act ("IIPPA") prevent an insurance company from disclosing the nonpublic personal and privileged information of its insureds, subject to certain exceptions. *See* Gramm-Leach-Bliley Act 15 U.S.C. § 6801-6809; Cal. Ins. Code § 791 et seq. To the extent AMCO is concerned that disclosure of information pertaining to other insureds' claim files violate their privacy, the Court believes the limitations imposed on the scope of discovery, as set forth below, properly address these concerns. ¶ **IV. CONCLUSION** ¶ The Court finds the requested information pertaining to the claim files of other AMCO insureds is relevant to Worth Bargain's claims and is likely to lead to the discovery of admissible evidence. The Court further believes the amendments to the scope of the discovery requests, as set forth below, satisfy the requirements for disclosure under the GLBA and IIPPA, and properly address AMCO's concerns regarding the requests' burden. ¶ Worth Bargain may discover claim files of certain AMCO insureds, regardless of whether the other insureds' claims were handled by the same claims adjuster or supervisor as Worth Bargain's claim, subject to the protective order in place in this matter [Doc. no. 14] and the following limitations: ¶ (1) The insured's claim must involve a business interruption policy; ¶ (2) The loss suffered by the insured must be due to a covered event; ¶ (3) AMCO must have admitted coverage; ¶ (4) The insured's dispute must not concern the existence of coverage, but only whether AMCO has paid the proper amount to the insured under the terms of the policy; ¶ (4) The insured must have filed a lawsuit or retained counsel with regard to a dispute regarding the claim; ¶ (5) The claim files must be limited to insureds who are California residents; ¶ (6) The request shall apply only to claims made during the time

period of January 1, 2004 to February 17, 2009; ¶ (7) AMCO must be the insurer; ¶ (8) AMCO must redact the personal information of the insured, including claim number, names, addresses, telephone numbers, Social Security numbers, date of birth, age, and race." (Emphasis added.) (Worth Bargain Outlet, Inc. v. AMCO Insurance Company (S.D. Cal., 2010) 2010 WL 11508880, at *3.)

Therefore, the U.S. District Court issued a facially valid judicial order that allowed discovery, while at the same time protected the privileged identifying information concerning the claimants.

Special interrogatory numbers 235-243 seek information identifying third party insurance claimants, which is protected from disclosure by Section 791.13. The information plaintiff really seeks appears to be the facts underlying a purported pattern of conduct while handling claims similar to his fire insurance claim and not necessarily the specific identities of the claimants. The court finds that in order to compel a further response to special interrogatory numbers 235-243 disclosing the identities and addresses of the claimants and at the same time provide due consideration of the privacy interests of the third-party claimants it must incorporate the same procedure and protective order specified in footnote 10 of Colonial Life & Accident Ins. Co., supra.

The court grants the motion to compel a further response to proposed amended special interrogatory numbers 235-243 with the following protective provisions: a letter to be sent by defense counsel to the individuals who had property and/or homeowner's insurance claims relating to fire destruction of an insured residence that were handled by defendant insurer's personnel between 2017 to the present requesting that they consent to the release of their identities and addresses by defendant be drafted for court approval; the court approved letter is to be sent by defendant to those claimants; the parties and counsel are prohibited from

initiating any contact with nonparty insurance claimants pending their response to the letter; the names and addresses are to be released by defendant to plaintiff upon defendant's receipt of an executed release from the claimant; and plaintiff's counsel from shall not disclose to any other person the names, addresses or records of nonparty claimants or from making use thereof except for preparation for trial and trial in this action.

Special Interrogatory numbers 252-257 seek plaintiff to identify all arbitrations where bad faith was alleged against defendant; all court cases where bad faith was alleged against defendant in any state in the U.S.; all court cases where a court of record made a finding of bad faith against defendant in any state in the U.S.; all cases where a jury made a finding of bad faith against defendant in any state in the U.S.; all cases where a court awarded punitive damages against defendant in any state in the U.S.; and all court cases where a jury awarded punitive damages against defendant in any state in the U.S.

Defendant provided no substantive responses to these special interrogatories and only objected to answering the interrogatories. Defendant asserts the following objections to each of these special interrogatories: vague, ambiguous and overboard as to time and subject matter; unduly burdensome; not reasonably calculated to lead to the discovery of admissible evidence; it seeks information protected by the attorney client privilege and work product doctrine as it includes information and documents prepared in anticipation of litigation; it seeks information protected by contractual non-disclosure agreements; violates uninvolved third party privacy rights; it seeks an improper compilation of information; and the information is equally available to plaintiff.

Special interrogatory numbers 252-257 are overbroad as to time and subject matter as they have no time limitation and they do not limit the requests to information concerning cases and

arbitrations that involved insurer bad faith concerning property and/or homeowner's insurance claims relating to fire destruction of an insured residence.

The motion to compel further responses to special interrogatory numbers 252-257 is denied.

Special Interrogatory Numbers 246 and 250

Special interrogatory numbers 246 and 250 request defendant to identify all human resources manuals used by defendant in dealing with defendant's insurance adjusters; and to identify all documents evidencing claim department budgets.

Defendant provided no substantive response to these special interrogatories and only objected to answering the interrogatories. Defendant asserted the following objections: vague, ambiguous and overboard as to time and subject matter; unduly burdensome; not reasonably calculated to lead to the discovery of admissible evidence; it seeks identification of documents protected by defendant's proprietary interest in such documents and/or trade secrets; and it seeks information protected by the attorney-client privilege and work product doctrine as it includes information and documents prepared in anticipation of litigation.

Special interrogatory numbers 246 and 250 are overbroad as to time as they seek information concerning manuals and budgets without any time limitation whatsoever.

The motion to compel further responses to special interrogatory numbers 246 and 250 is denied.

Sanctions

"The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to

the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code of Civil Procedure, § 2030.300(d).)

The court may award sanctions under the Discovery Act in favor of the moving party even though no opposition to the motion to compel was filed, or the opposition was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. (Rules of Court, Rule 3.1348(a).)

The court finds it appropriate to order defendant to pay plaintiff $6,435 in monetary sanctions within ten days.

The requests for issue, evidence, and terminating sanctions are denied.

Motion to Compel Further Responses to Requests for Production, Set Two.

On July 12, 2021, plaintiff filed a 1st amended complaint for breach of contract and breach of the covenant of good faith and fair dealing against its insurer related to payment on a claim against plaintiff's insurance policy. The complaint also sought recovery of punitive damages. Defendant's motion to strike the claim for punitive damages was denied on October 1, 2021.

The parties have had a previous discovery dispute regard the first set of interrogatories and requests for production. On April 1, 2021, plaintiff filed voluminous motions to compel further responses to numerous form interrogatives, special interrogatories, and requests for production. Plaintiff moved to compel further responses and sought an award of $7,460 in monetary sanctions for the motion to compel further responses to interrogatories and $6,060 in monetary sanctions for the motion to compel further responses to requests for production. Weeks after the motion was filed, on April 26, 2021, defendant served verified further responses to the special and form interrogatories and requests for production and defendant produced documents. Defendant opposed the motions on several grounds, including an

assertion that the motions are now moot as further responses were provided and the only outstanding issue is sanctions, which should be denied, or the amount awarded reduced.

The court's final ruling found that the further verified responses superseded the prior responses rendering the motion to compel further responses to the initial discovery responses moot. The court also imposed monetary sanctions on defendant in the amount of $10,000.

On October 14, 2021, plaintiff served on defendant requests for production, set two. After being granted extensions of time to respond, defendant served responses and objections to the special interrogatories on January 3, 2022. On January 28, 2022, Plaintiff filed a voluminous motion to compel further responses to requests for production numbers 20-46, 54-58, 60-67, 70-74, 76-85, 87-89, 92, 93, and 96-98. Plaintiff contends defendant's responses are not code compliant; defendant's objections are meritless; and the court should impose monetary, issue, evidence and terminating sanctions against defendant,

On February 16, 2022, plaintiff served a notice of supplemental document production and on February 17, 2022, plaintiff served amended responses to some of the form requests for production, set two. Defense counsel further declares that defendant also produced an additional CD to plaintiff's counsel on February 9, 2022, which contained a further 120 audio and/or video recordings. (Declaration of Randy A Moss in Opposition to Motion, paragraph 19.)

Defendant opposes the motion on the following grounds: discovery concerning other claims or other insureds sought in requests for production, numbers 24, 39-46, 96, 97, and 98 is irrelevant to plaintiff's bad faith claims, only substantially similar claims are potentially relevant, and that the discovery sought violates the privacy rights of other insureds; discovery sought in requests for production numbers 20-23, 25-32, 62-64, and 84-89 concerning claims guidelines, training materials, underwriting guidelines and document retention policy has been addressed in responses to these requests; the personnel information concerning all of defendants

adjusters violates the privacy rights of the adjusters and is protected by Insurance Code, § 791.13 and Code of Civil Procedure, § 1985.3 and subject to that objection, defendant has produced documents related to the handlers of plaintiff's claims; requests for production numbers 54-58 seeking discovery of insurance reserve information concerning all homeowners and property claims is irrelevant to the claims in this case as a loss reserve for defense and indemnity for third party liability claims may be potentially relevant to bad faith conduct in denying a duty to defend its insured or in failing to accept a settlement demand against its insured within policy limits, it has no relevance to first party property claims where the insured seeks benefits for his or her own losses and then claims bad faith denial of coverage and not the amount of the loss; since defendant did not rely on a policy exclusion in its initial denial of coverage, requests for production numbers 60 and 61 seeking discovery of the drafting and regulatory history of defendant's policy exclusions is irrelevant; defendant responded to requests for production numbers 65-67 and 70-82 identifying underwriting and/or claims files, produced all non-privileged documents from these files, and provided a privilege log identifying documents that were withheld; requests for production numbers 92-93 seeking Department of Insurance Complaints has been sufficiently responded to by amended responses; and requests for production number 24, 39-46, 96 and 97 are unduly burdensome and oppressive as described in Paul Fogel's declaration in opposition.

Plaintiff replied: the amended responses to requests for production, set two, numbers 20-40, 55-58, 62-67, 70-74, 76-85, 87-89 92, 93, and 98 renders the substantive portion of the motion related to those requests for production moot, however, plaintiff remains entitled to an award of sanctions for having to file this motion in order to obtain further responses; plaintiff has drafted revisions of requests for production numbers 41-46, 96 and 97 to address the claim they are overbroad and the court is free to adopt them for the purposes of compelling a

response to them; the court should compel further responses to request for production numbers 54, 60, and 61; and discovery sanctions should be imposed against defendant.

Meet and Confer Activities

A motion to compel further responses to interrogatories shall be accompanied by a meet and confer declaration under Code of Civil Procedure, § 2016.040. (Code of Civil Procedure, § 2030.300(b).)

"It is a central precept to the Civil Discovery Act of 1986 (Code Civ.Proc., § 2016 et seq.) (hereinafter "Discovery Act") that civil discovery be essentially self-executing. (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1111, 1 Cal.Rptr.2d 222.) The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o); *DeBlase v. Superior Court* (1996) 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229.) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. (*DeBlase v. Superior Court*, supra, 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229; see also *Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981) 122 Cal.App.3d 326, 330, 175 Cal.Rptr. 888.)" (Townsend v. Superior Court (1998) 61 Cal.App.4th 1431, 1434-1435.)

The motion to compel further responses must be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. (Code of Civil Procedure, §§ 2030(l), 2031(m), and 2033(l).) "'The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party

declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o)....) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. [Citations.]' (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435, 72 Cal.Rptr.2d 333.)" (Stewart v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, 1016.) "A determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the 'reasonable and good faith attempt' standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. (See, e.g., Gov.Code, § 68607 [judge has responsibility to manage litigation]; Code Civ. Proc., § 128, subd. (a)(5) [judge has power to control conduct of judicial proceeding in furtherance of justice].) Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. (Citations omitted.)" (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 431.) "Although some effort is required in all instances (see, e.g., *Townsend*, supra, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and

may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances." (Obregon, supra at pages 432-433.)

It appears under the totality of circumstances presented, including, but not limited to, the history of this litigation, the nature of the interaction between counsel, the nature of the issues, the type, and scope of discovery requested, and the prospects for success, that the meet and confer activities were sufficient.

Motion to Compel Further Responses to Requests for Production and Production of Documents

"(a) The party to whom an inspection demand has been directed shall respond separately to each item or category of item by any of the following: ¶ (1) A statement that the party will comply with the particular demand for inspection and any related activities. ¶ (2) A representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item. ¶ (3) An objection to the particular demand. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party. ¶ (c) Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated. (Code of Civil Procedure, § 2031.210.) "A statement that the party to whom an inspection demand has been directed will comply with the particular demand shall state that the production, inspection, and related activity demanded will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." (Code of Civil

Procedure, § 2031.220.) "(a) Any documents demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. ¶ (b) If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form." (Code of Civil Procedure, § 2031.280.)

"A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (Code of Civil Procedure, § 2031.230.)

"(a) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category." (Code of Civil Procedure, § 2031.240(a).)

"If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made. ¶ (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with

Section 2018.010), that claim shall be expressly asserted." (Code of Civil Procedure, § 2031.240(b).)

"(c)(1)If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Code of Civil Procedure, § 2031.240(c).)

"Privilege logs have long been used by practitioners to list and describe the items to be protected. But the expression " 'privilege log' " appeared nowhere in the Code of Civil Procedure, rather it was merely "jargon, commonly used by courts and attorneys to express the requirements of [section 2031.240, subdivision (b)]." (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292, 4 Cal.Rptr.3d 883 (*Hernandez*); see *Lockyer, supra,* 122 Cal.App.4th at pp. 1073–1074, 19 Cal.Rptr.3d 324; *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1188–1189, 15 Cal.Rptr.3d 154 (*Best Products*).) " 'The purpose of a "privilege log" is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production. [Citation.] The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.' " (*Ibid.*) In 2012, the Legislature amended section 2031.240 "to codify the concept of a privilege log as that term is used in California case law." (§ 2031.240, subd. (c)(2).) The new section 2031.240, subdivision (c)(1), provides, "If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." In adding this

subdivision, the Legislature declared, "Nothing in this subdivision shall be construed to constitute a substantive change in case law." (§ 2031.240, subd. (c)(2).)" (Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, 1125.)

"The party to whom the demand for inspection is directed shall sign the response under oath unless the response contains only objections." (Code of Civil Procedure, § 2031.250(a).)

"On receipt of a response to an inspection demand, the party demanding an inspection may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: ¶ (1) A statement of compliance with the demand is incomplete. ¶ (2) A representation of inability to comply is inadequate, incomplete, or evasive. ¶ (3) An objection in the response is without merit or too general." (Code of Civil Procedure, § 2031.310(a).)

"A motion under subdivision (a) shall comply with both of the following: ¶ (1) The motion shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand. ¶ (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2031.310(b).)

"In the more specific context of a request to produce documents, a party who seeks to compel production must show "good cause" for the request (§ 2031, subd. (*l*))—but where, as here, there is no privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance. [Footnote omitted.] (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial 2 (Rutter 1996) ¶¶ 8:1495.6 to 8:1495.10, pp. 8H–21 to 8H–22.) That showing was made here. (Part I, *ante.*)" (Glenfed Development Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1117.)

An appellate court has expressly found that good cause for discovery of the requested documents and things may be established by reference to the pleadings of the action. That

appellate court held: "A party seeking to compel discovery must therefore "set forth specific facts showing good cause justifying the discovery sought." (§ 2031.310, subd. (b)(1); see *Calcor Space Facility, Inc. v. Superior Court, supra,* 53 Cal.App.4th at p. 223, 61 Cal.Rptr.2d 567.) To establish good cause, a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact. ¶ The facts of consequence in the New York lawsuit between UMG and Escape may be found in UMG's complaint and Escape's affirmative defenses and counterclaims." (Digital Music News LLC v. Superior Court (2014) 226 Cal.App.4th 216, 224.)

"Any motion involving the content of a discovery request or the responses to such a request shall be accompanied by a separate statement. The motions that require a separate statement include: ¶ (1) a motion to compel further responses to requests for admission; ¶ (2) a motion to compel further responses to interrogatories; ¶ (3) a motion to compel further responses to a demand for inspection of documents or tangible things; ¶ (4) a motion to compel answers at a deposition; ¶ (5) a motion to compel or to quash the production of documents or tangible things at a deposition; ¶ (6) a motion for medical examination over objection; and ¶ (7) a motion for issue or evidentiary sanctions." (Rules of Court, Rule 3.1345(a).)

With the above-cited principles in mind, the court will rule on the motion to compel further responses to requests for production, set two.

Plaintiff having conceded that the substantive portions of the motion related to the responses to requests for production, set two, numbers 20-40, 55-58, 62-67, 70-74, 76-85, 87-89, 92, 93, and 98 were rendered moot by the amended responses provided, there remains the sufficiency of the defendant's responses requests for production numbers 41-46, 54, 60, 61, 70-74, 96 and 97.to resolve.

Requests for Production Numbers 41-46, 96 and 97

Plaintiff has drafted revisions of requests for production numbers 41-46, 96 and 97 to address the claim they are overbroad (Reply Declaration of Nicholas Seliger, Exhibit A.) and argues the court is free to adopt them for the purposes of compelling a response to them.

These requests seek identification and production of the following documents: all documents evidencing complaints filed against any of your insurance adjusters by any individual currently or formerly insured by defendant pertaining to homeowners insurance or property claims relating to fire destruction of an insured premise or premises from 2017 to the present; all documents evidencing all homeowners or property insurance claims denied by William Chang relating to fire destruction of an insured premise or premises from 2017 to the present; all documents evidencing all homeowners or property insurance claims denied by Shawn Dalton relating to fire destruction of an insured premise or premises from 2017 to the present; all documents evidencing all homeowners or property insurance claims denied by defendant's insurance adjusters relating to fire destruction of an insured premise or premises from 2017 to the present; all documents evidencing all homeowners or property insurance claims accepted or paid by William Chang relating to fire destruction of an insured premise or premises from 2017 to the present; all documents evidencing all homeowners or property insurance claims accepted or paid by Shawn Dalton relating to fire destruction of an insured premise or premises from 2017 to the present; the claim file of other individuals who presented a homeowners or property insurance claims relating to fire destruction of an insured premise or premises that were handled by William Chang from 2017 to the present; and the claim file of other individuals who presented a homeowners or property insurance claim relating to fire destruction of an insured premise or premises that were handled by Shawn Dalton from 2017 to the present.

Defendant provided no substantive response to these requests for production and only objected to identifying the documents requested and producing the documents requested. Defendant's initial objections to the prior version of these requests for production were: the request is vague, ambiguous, and overbroad as to time and subject matter; it is unduly burdensome; it is not reasonably calculated to lead to the discovery of admissible evidence; it seeks information protected by its employees' rights to privacy; the documents are privileged under the attorney-client privilege, attorney work product doctrine, defendant's proprietary interest in the documents and trade secret protection; and the documents seek information protected by the privacy rights of uninvolved third parties.

The vague, ambiguous, and overbroad as to time and subject matter objections are overruled.

- Relevancy Objection

"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…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

"The scope of allowable discovery is broader than strict relevancy to the issues raised by the pleadings. (See generally, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) Chapter 8C, §§ 8:65-8:108.7.) There are several reasons why the system is structured this way. One such reason is to enable a plaintiff to determine whether there are grounds for amending a complaint to add additional claims. [Footnote omitted.] Moreover, in addition to discovery, investigation is always available, even without filing suit. If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted. (See, e.g., Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, supra, Chapter 6 § 6:638, 6:639.)" (Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 596.)

"Indirect evidence of the elements of punitive damages may be suggested by a pattern of unfair practices. In *Neal, supra*, for example, we affirmed an award of punitive damages based on a failure to settle where the evidence indicated that defendant insurance company's refusal "to accept [plaintiff's] offer of settlement, and its subsequent submission of the matter to its attorney for opinion, [fn. omitted] were all part of a conscious course of conduct, firmly grounded in established company policy ...." (21 Cal.3d at p. 923, 148 Cal.Rptr. 389, 582 P.2d 980.) Similarly, in *Delos v. Farmers Insurance Group* (1979) 93 Cal.App.3d 642, 664, 155

Cal.Rptr. 843, hearing denied August 29, 1979, the court upheld an award of punitive damages based in part on "an inextricable involvement with conduct aptly described ... as a 'nefarious scheme to mislead and defraud thousands of policyholders' with defendants' decision to deny [plaintiff's] claim." (See also *Ferraro v. Pacific Finance Corp.* (1970) 8 Cal.App.3d 339, 352–353, 87 Cal.Rptr. 226.) [FN 9] ¶ FN 9. Furthermore, evidence regarding Sharkey's previous dealings may be relevant to prove ratification or authorization by Equifax and Colonial of his alleged unfair acts. This proof may also be relevant to the issue of punitive damages. (See *Egan v. Mutual of Omaha Ins. Co., supra*, 24 Cal.3d at pp. 822–823, 169 Cal.Rptr. 691, 620 P.2d 141.) ¶ Without doubt, the discovery of the names, addresses and files of other Colonial claimants with whom Sharkey attempted settlements is relevant to the subject matter of this action and may lead to admissible evidence. [Footnote omitted.]" (Colonial Life & Accident Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 792.)

The relevancy objection is overruled.

- Undue Burden

"(a)The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2017.020(a).)

"The court shall restrict the frequency or extent of use of a discovery method provided in Section 2019.010 if it determines either of the following: ¶ (1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. ¶ (2) The selected method of discovery is

unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code of Civil Procedure, § 2019.030(a).)

""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.)

The technical director of personal lines property of defendant's parent organization declares in opposition: manual review of claims files is required to identify claims involving bad faith allegations from 2015 to the present; and such review and the cost of production is estimated to cost defendant $18,247-$22,233. (Declaration of Andrew Fogel in Opposition to Motion, paragraphs 10-14.)

The 1st amended complaint alleges: on August 24, 2016 plaintiff purchased a residential insurance policy from defendant; prior to issuing the policy, defendant unreasonably failed to conduct a thorough investigation into whether plaintiff used the subject real property as a primary or secondary residence and whether any other individual was on title to the property; had defendant conducted a reasonable investigation or inquired with plaintiff as to either of these issues, plaintiff would have informed defendant and defendant would have discovered that the Tahoe property was used as plaintiff's secondary residence and his sister was joint owner of the property and resided at the Tahoe property; after the policy was issued, all premiums were paid in California; the policy was subsequently renewed with effective dates of coverage from August 24, 2018 through August 24, 2019; at no time after the policy was

renewed did defendant inquire whether the Tahoe property was being used as plaintiff's primary or secondary residence, nor did defendant inquire who lived at the residence or who was on title to the residence; the policy declaration lists plaintiff as the insured and the Tahoe property as the insured home; the policy also provides ""Insured" means ¶ a. You and residents of your household who are: 1) Your relatives…"; on or about November 3, 2018, through no fault of plaintiff or his sister, the Tahoe Property was completely damaged by fire; on November 3, 2018 plaintiff notified defendant and tendered a claim under the policy for total loss of the property; on or about January 29, 2019 defendant denied the claim stating that the policy did not cover the Tahoe property; as a result of defendant's unreasonable failure to pay and unreasonable delay in payment of policy benefits to plaintiff, unreasonable investigation into plaintiff's claim, unreasonable violation of defendant's duty to investigate the claim, and improper issuance of an incorrect policy to plaintiff, the plaintiff has been unable to rebuild and use the Tahoe property; plaintiff suffered a loss under the policy; plaintiff tendered a claim on the policy on November 3, 2018 to be compensated for the total loss of the Tahoe property; defendant unreasonably and with no proper cause failed to pay and delayed payment of policy benefits; defendant had an obligation to properly investigate plaintiff's claim yet defendant failed to conduct a full, fair, prompt and thorough investigation of all of the bases of plaintiff's claim and failed to diligently search for and consider evidence that supported coverage for the claimed loss; plaintiff was harmed by the unreasonable failure to pay, delayed payment, and unreasonable investigation; defendant's unreasonable failure to pay, delay in payment, and failure to properly investigate the claim was a substantial factor in causing plaintiff's harm; and defendant's conduct in unreasonably failing to provide benefits under the policy, unreasonable investigation of the claim, defendant's violation of its obligation to investigate the claim, the inordinate delay in handling and investigating the claim, and defendant's unreasonable

investigation prior to issuing the policy was done in bad faith amounting to malicious, fraudulent, or oppressive conduct meriting an award of punitive damages. (1st Amended Complaint, paragraphs 9-18, and 24-29.)

Defendant insurer's denial letter (Complaint, Exhibit C.) stated that the claim was denied, because plaintiff did not reside in the property as a primary residence and defendant was not notified that an owner of the property lived there.

Considering the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation, the court finds that the discovery sought is not unduly burdensome or expensive. The undue burden objection is overruled.

- Privacy Interests of Nonparty Insurance Claimants

"An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is: ¶ (a) With the written authorization of the individual, and meets either of the conditions specified in paragraph (1) or (2): ¶ (1) If the authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization meets the requirement of Section 791.06. ¶ (2) If the authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization is: ¶ (A) Dated. ¶ (B) Signed by the individual. ¶ (C) Obtained one year or less prior to the date a disclosure is sought pursuant to this section. (Insurance Code, § 791.13(a).)

"An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is: ¶ (h) In response to a facially valid administrative or judicial order, including a search warrant or subpoena." (Insurance Code, §

791.13(h).)

The appellate court in Colonial Life & Accident Ins. Co., supra, was faced with an objection that the information sought in discovery was protected by Insurance Code, §§ 791.10, et seq. The trial court had ordered Equifax to produce the names and addresses of all persons whose claims for benefits under Colonial's policies were assigned a specific adjuster for settlement, which amounted to about 35 claims, and the trial court approved a letter to be sent by plaintiff's counsel to these individuals requesting that they consent to the release of their records by Equifax. The trial court expressly prohibited the parties and counsel from initiating any contact with nonparty insurance claimants pending their response to the letter. The trial court later issued an additional protective order preventing plaintiff's counsel from disclosing to any other person the names, addresses or records of nonparty claimants or from 'making use thereof except for preparation for trial and trial in this action.' (Colonial Life & Accident Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 789.) The appellate court approved of this procedure and protective order as meeting the requirements of Insurance Code, § 791.13. The appellate court stated in relation to Section 791.13: "The procedure for contacting other claimants approved by the trial court should satisfy these requirements if the authorization form, included in the letter sent to claimants, is returned within a year." (Colonial Life & Accident Ins. Co., supra at page 792, fn 10.) That procedure was focused on disclosure of privileged information identifying claimants.

On the other hand, the U.S. District Court, Sothern District of California in an unpublished opinion in 2010 focused on protecting the privileged information concerning specific claimants and tailored a discovery order to allow for discovery of the claims filed concerning similar claims handled by the insurer in California. The District Court held: "AMCO contends disclosing information about other insureds violate state and federal laws designed to protect the

personal information of financial consumers. In general, the federal Gramm-Leach-Bliley Act ("GLBA") together with section 791.13 of the California Insurance Information Privacy Protection Act ("IIPPA") prevent an insurance company from disclosing the nonpublic personal and privileged information of its insureds, subject to certain exceptions. *See* Gramm-Leach-Bliley Act 15 U.S.C. § 6801-6809; Cal. Ins. Code § 791 et seq. To the extent AMCO is concerned that disclosure of information pertaining to other insureds' claim files violate their privacy, the Court believes the limitations imposed on the scope of discovery, as set forth below, properly address these concerns. ¶ **IV. CONCLUSION** ¶ The Court finds the requested information pertaining to the claim files of other AMCO insureds is relevant to Worth Bargain's claims and is likely to lead to the discovery of admissible evidence. The Court further believes the amendments to the scope of the discovery requests, as set forth below, satisfy the requirements for disclosure under the GLBA and IIPPA, and properly address AMCO's concerns regarding the requests' burden. ¶ Worth Bargain may discover claim files of certain AMCO insureds, regardless of whether the other insureds' claims were handled by the same claims adjuster or supervisor as Worth Bargain's claim, subject to the protective order in place in this matter [Doc. no. 14] and the following limitations: ¶ (1) The insured's claim must involve a business interruption policy; ¶ (2) The loss suffered by the insured must be due to a covered event; ¶ (3) AMCO must have admitted coverage; ¶ (4) The insured's dispute must not concern the existence of coverage, but only whether AMCO has paid the proper amount to the insured under the terms of the policy; ¶ (4) The insured must have filed a lawsuit or retained counsel with regard to a dispute regarding the claim; ¶ (5) The claim files must be limited to insureds who are California residents; ¶ (6) The request shall apply only to claims made during the time period of January 1, 2004 to February 17, 2009; ¶ (7) AMCO must be the insurer; ¶ (8) AMCO must redact the personal information of the insured, including claim number, names,

addresses, telephone numbers, Social Security numbers, date of birth, age, and race." (Worth Bargain Outlet, Inc. v. AMCO Insurance Company (S.D. Cal., 2010) 2010 WL 11508880, at *3.)

Therefore, the U.S. District Court issued a facially valid judicial order allowing discovery, while at the same time protected the privileged identifying information concerning the claimants. The court finds that the analysis and holding of Worth Bargain Outlet, Inc. v. AMCO Insurance Company, supra, persuasive under the facts presented.

The requests for claims files of other individuals who presented a homeowners or property insurance claim relating to fire destruction of an insured premise or premises that were handled by defendant insurer from 2017 to the present are discoverable despite the claim that the files can not be disclosed due to privacy interests of the uninvolved third party claimants, provided the personal information of the insured, including claim number, names, addresses, telephone numbers, Social Security numbers, date of birth, age, and race are redacted from the claims documents produced. This reasonably addresses the claim of privacy and provides the protection from disclosure of personal or privileged information about an individual collected or received in connection with an insurance transaction that is provided by Insurance Code, § 791.13.

The uninvolved third-party objection is overruled, and any claims documents produced are ordered to have the personal information of the insured, including claim number, names, addresses, telephone numbers, Social Security numbers, date of birth, age, and race redacted.

- Employees' Rights to Privacy

There is a privacy interest in precluding the dissemination or misuse of sensitive and confidential information ("informational privacy"). (Estate of Gallio (1995) 33 Cal. App.4th 592, 597.)

"The "informational privacy" protection is qualified and requires that a court balance the right of privacy against the need for discovery. (*Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 665, 4 Cal.Rptr.2d 564.) "There must be a compelling and opposing state interest justifying the discovery. [Citation.] Even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must be a careful balancing of the compelling public need for discovery against the fundamental right of privacy. [Citation.]" (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014, 9 Cal.Rptr.2d 331.)" (Estate of Gallio (1995) 33 Cal.App.4th 592, 597.)

"A discovery proponent may demonstrate compelling need by establishing the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit. (*Planned Parenthood Golden Gate v. Superior Court, supra,* 83 Cal.App.4th at p. 367, 99 Cal.Rptr.2d 627; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1071, 95 Cal.Rptr.2d 864.)" (Digital Music News LLC v. Superior Court (2014) 226 Cal.App.4th 216, 229.)

The documents sought concerning complaints made against defendant's insurance adjusters by any individual currently or formerly insured by defendant pertaining to homeowners insurance or property claims relating to fire destruction of an insured premise or premises from 2017 to the present and claims handled by defendants adjuster employees William Chang and Shawn Dalton relating to fire destruction of an insured premise or premises from 2017 to the present is directly relevant and essential to the fair resolution of the this lawsuit. Having carefully balanced the compelling public need for discovery against the employee's fundamental right of privacy, the court finds that a compelling and opposing state interest justifies the discovery and overrules the employee privacy objection.

- Privilege Log

Defense counsel declares in opposition: Exhibit E is a true and correct copy of a privilege log served on plaintiff prior to receipt of the meet and confer correspondence from plaintiff concerning the responses to the set two discovery requests; and argues that each of the documents to which a privilege log is demanded included other objections, which does not require defendant to provide plaintiff a privilege log unless and until the court overrules those other objections and the further applicability of the privilege objections, which have been raised on a precautionary basis to preserve them, is premature. (Declaration of Randy A Moss in Opposition to Motion, paragraph 17.)

Exhibit E is only a privilege log in response to requests for production set one, not set two.

A responding party has no discretion to withhold a privilege log concerning documents that the party claims are privileged pending the court's ruling on the other objections asserted against that category of documents sought to be produced. The statute mandates that the log accompany the responses.

"(c)(1)If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Emphasis added,) (Code of Civil Procedure, § 2031.240(c).)

The court orders that defendant provide a privilege log that complies with Section 2031.240(c) for every document defendant claims is privileged by the attorney-client privilege, attorney work product doctrine, defendant's proprietary interest in the documents and trade secret protection.

Requests for Production Number 54

Request for production number 54 seeks all documents evidencing reserve amounts established for homeowner's or property insurance claims.

Defendant provided no substantive response to this request for production and only objected to identifying the documents requested and producing the documents requested. Defendant objected to the request on the following grounds: the request is vague, ambiguous, and overbroad as to time and subject matter; it is unduly burdensome; it is not reasonably calculate to lead to the discovery of admissible evidence; the documents are privileged under the attorney-client privilege, attorney work product doctrine, defendant's proprietary interest in the documents and trade secret protection; and the documents seek information protected by the privacy rights of uninvolved third parties.

Defendant argues in opposition that request for production number 54 seeking discovery of insurance reserve information concerning all homeowners and property claims is irrelevant to the claims in this case; and while a loss reserve for defense and indemnity for third party liability claims may be potentially relevant to bad faith conduct in denying a duty to defend its insured or in failing to accept a settlement demand against its insured within policy limits, it has no relevance to first party property claims where the insured seeks benefits for his or her own losses and then claims bad faith denial of coverage and not the amount of the loss.

The request seeks identification and production of all documents evidencing reserve amounts established for any homeowners or property insurance claims without limitation as to the claim asserted against the policy and without any limitation as to time the claim was made. The objection that the request is overbroad as to time and subject matter is sustained. The motion to compel a further response to request number 54 is denied.

Requests for Production Numbers 60 and 61

Request for production number 60 requests all documents evidencing the drafting history of all exclusions for homeowner's or property insurance claims from 2010 to present.

Request number 61 seeks all documents evidencing the regulatory history of all exclusions for homeowner's or property insurance claims.

Defendant provided no substantive response to these requests for production and only objected to identifying the documents requested and producing the documents requested. Defendant objected to these requests on the following grounds: the request is vague, ambiguous, and overbroad as to time and subject matter; it is unduly burdensome; it is not reasonably calculated to lead to the discovery of admissible evidence; and the documents are privileged under the attorney-client privilege, attorney work product doctrine, defendant's proprietary interest in the documents and trade secret protection.

Request for production number 61 seeks documents concerning the regulatory history of all exclusions for homeowner's and property insurance claims without limitation as to time. The request is overbroad, and the court sustains that objection to request number 61.

The objections to request number 60 that it is vague, ambiguous, overbroad, and unduly burdensome are overruled.

- Relevancy

Plaintiff argues that the documents concerning the regulatory and drafting history of all exclusions for homeowner's or property insurance claims will allow plaintiff to explore how defendant determined it would deny plaintiff's claim and what policies they have for handling such claims; would tend to prove that defendant denied plaintiff's claim in bad faith; and is relevant to the claim for punitive damages.

Defendant argues in opposition that since defendant did not rely on a policy exclusion in its initial denial of coverage, requests for production numbers 60 and 61 seeking discovery of drafting and regulatory history of defendant's policy exclusions is irrelevant.

Defendant insurer's denial letter (Complaint, Exhibit C.) stated that the claim was denied, because plaintiff did not reside in the property as a primary residence and defendant was not notified that an owner of the property lived there. This raises the following issues: whether defendant excluded coverage for named insureds who do not live on the property as his or her primary residence; whether defendant excluded coverage where the owner who lived on the property was not a named insured; and whether those were exclusions from coverage not fairly reflected in the policy language such that the initial denial of coverage was in bad faith justifying an award of punitive damages. Plaintiff's legal conclusion that the denial was not based upon a policy exclusion is not grounds for finding that as a matter of law that the denial was not an exclusion of coverage based upon failure to reside in the residence as a primary occupant and that another owner lived there. In other words, the issues raised by the initial denial of coverage is whether defendant interprets the policy to exclude coverage for what would otherwise be a covered loss when the primary occupant is not the named insured, and another owner/occupant is not named as an insured; and whether that interpretation was made in bad faith under the circumstances and terms of the policy.

The relevancy objection to request number 60 is overruled.

- Privilege Log

A responding party has no discretion to withhold a privilege log concerning documents that the party claims are privileged pending the court's ruling on the other objections asserted against that category of documents sought to be produced. The statute mandates that the log accompany the responses.

"(c)(1) If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Emphasis added,) (Code of Civil Procedure, § 2031.240(c).)

The court orders that defendant provide a privilege log that complies with Section 2031.240(c) for every document defendant claims is privileged by the attorney-client privilege, attorney work product doctrine, defendant's proprietary interest in the documents and trade secret protection.

Requests for Production Numbers 70-74

Requests for production number 70-74 seek identification and production of the following categories of documents: all documents evidencing any communication defendant had with plaintiff regarding who was on title to the Tahoe property prior to issuing plaintiff the policy; all documents evidencing any communication defendant had with plaintiff regarding who owned the Tahoe property prior to issuing plaintiff the policy; all documents evidencing any communication defendant had with plaintiff regarding whether the Tahoe property was his primary or secondary residence prior to issuing plaintiff the policy; all documents evidencing any communication defendant had with plaintiff regarding whether Jill Cartoscelli lived at the Tahoe property prior to issuing plaintiff the policy; and all documents evidencing any communication defendant had with plaintiff regarding who lived at the Tahoe property prior to issuing plaintiff the policy.

Defendant objected to these requests on the following grounds: the request is vague, ambiguous, and overbroad as to time and subject matter; it is unduly burdensome; it is not

reasonably calculated to lead to the discovery of admissible evidence; the documents are privileged under the attorney-client privilege and attorney work product doctrine; and identification and production is not required to the extent that the documents have already been produced and/or are equally available to plaintiff.

Defendant concluded that without waiving these objections, defendant will produce the documents to the extent the responsive documents exist in defendant's possession, custody or control, they would be in the claim file documents and underwriting file documents, and non-privileged portions of which have already been produced.

The vague, ambiguous, overbroad, undue burden, and relevance objections are overruled.

The response concerning already produced and equally available documents objections does not comply with the requirements of Code of Civil Procedure, § 2031.240(b). Defendant did not identify with particularity the documents, tangible things, land, or electronically stored information falling within any category of item in the demands to which the already produced and equally available documents objections are being made.

"If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made…. (Code of Civil Procedure, § 2031.240(b)(1).)

A further response is required wherein defendant identifies with particularity the documents, tangible things, land, or electronically stored information falling within any category of item in the demands to which the already produced and equally available documents objections are being made.

- Privilege Log

A responding party has no discretion to withhold a privilege log concerning documents that the party claims are privileged pending the court's ruling on the other objections asserted against that category of documents sought to be produced. The statute mandates that the log accompany the responses.

"(c)(1) If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Emphasis added,) (Code of Civil Procedure, § 2031.240(c).)

The court orders that defendant provide a privilege log that complies with Section 2031.240(c) for every document defendant claims is privileged by the attorney-client privilege, attorney work product doctrine, defendant's proprietary interest in the documents and trade secret protection.

Sanctions

"Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust" (Code of Civil Procedure, § 2031.310(h).)

The court may award sanctions under the Discovery Act in favor of the moving party even though no opposition to the motion to compel was filed, or the opposition was withdrawn, or the

requested discovery was provided to the moving party after the motion was filed. (Rules of Court, Rule 3.1348(a).)

It appears appropriate to award plaintiff sanctions in the amount of $7,185 payable by defendant within ten days.

The requests for issue, evidence, and terminating sanctions are denied.

TENTATIVE RUING # 5: PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES IS GRANTED IN PART AND DENIED IN PART AS STATED IN THE TEXT OF THE RULING. THE MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORY NUMBERS 246, 250, AND 252-257 IS DENIED. THE COURT ORDERS THAT DEFENDANT PROVIDE FURTHER RESPONSES TO THE PROPOSED AMENDED SPECIAL INTERROGATORIES, SET TWO, NUMBERS 235-243 WITH THE FOLLOWING PROTECTIVE PROVISIONS: A LETTER TO BE SENT BY DEFENSE COUNSEL TO THE INDIVIDUALS WHO HAD PROPERTY AND/OR HOMEOWNER'S INSURANCE CLAIMS RELATING TO FIRE DESTRUCTION OF AN INSURED RESIDENCE THAT WERE HANDLED BY DEFENDANT INSURER BETWEEN 2017 TO THE PRESENT REQUESTING THAT THEY CONSENT TO THE RELEASE OF THEIR IDENTITIES AND ADDRESSES BY DEFENDANT BE DRAFTED FOR COURT APPROVAL; THE COURT APPROVED LETTER IS TO BE SENT BY DEFENDANT TO THOSE CLAIMANTS; THE PARTIES AND COUNSEL ARE PROHIBITED FROM INITIATING ANY CONTACT WITH NONPARTY INSURANCE CLAIMANTS PENDING THEIR RESPONSE TO THE LETTER; THE NAMES AND ADDRESSES ARE TO BE RELEASED BY DEFENDANT TO PLAINTIFF UPON DEFENDANT'S RECEIPT OF AN EXECUTED RELEASE FROM THE CLAIMANT; AND PLAINTIFF'S COUNSEL SHALL NOT DISCLOSE TO ANY OTHER PERSON THE NAMES, ADDRESSES OR RECORDS OF NONPARTY CLAIMANTS OR MAKE USE

THEREOF EXCEPT FOR PREPARATION FOR TRIAL AND TRIAL IN THIS ACTION. PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET TWO IS GRANTED IN PART AND DENIED IN PART. THE MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION, NUMBERS 54 AND 61 ARE DENIED. THE MOTION TO COMPEL FURTHER REQUESTS FOR PRODUCTION NUMBERS 41-46, 60, 70-74, 96 AND 97 IS GRANTED. THE COURT ORDERS DEFENDANT TO PROVIDE FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET TWO, NUMBERS 41-46, 60, 70-74, 96 AND 97 WITHOUT OBJECTIONS, EXCEPT FOR THE ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT, DEFENDANT'S PROPRIETARY INTEREST IN THE DOCUMENTS, AND TRADE SECRET PROTECTION PRIVILEGE OBJECTIONS THAT WERE RAISED IN THE INITIAL RESPONSES TO THESE REQUESTS FOR PRODUCTION, WITHIN TEN DAYS. DEFENDANT IS ORDERED TO REDACT FROM ANY THIRD-PARTY INSURANCE CLAIMS DOCUMENTS PRODUCED THE PERSONAL INFORMATION OF THE THIRD-PARTY INSURED, INCLUDING CLAIM NUMBER, NAMES, ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, DATES OF BIRTH, AGE, AND RACE. DEFENDANT IS ALSO ORDERED TO PROVIDE A PRIVILEGE LOG THAT COMPLIES WITH SECTION 2031.240(C) FOR EVERY DOCUMENT DEFENDANT CLAIMS IS PRIVILEGED BY THE ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT DOCTRINE, DEFENDANT'S PROPRIETARY INTEREST IN THE DOCUMENTS, AND TRADE SECRET PROTECTION WITHIN TEN DAYS. DEFENDANT IS ORDERED TO PAY THE TOTAL AMOUNT OF $13,620 IN MONETARY SANCTIONS TO PLAINTIFF WITHIN TEN DAYS. PLAINTIFF'S REQUESTS FOR ISSUE, EVIDENCE, AND TERMINATING SANCTIONS ARE DENIED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.),

UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY, THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, APRIL 22, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

6. MATTER OF THE SHEPHERD LIVING TRUST 22PR0001

Petition for Order Requiring Return of Personal Property to Trust, for Instructions, and for a Determination of the Validity of the 3rd Restatement of Trust.

Successor co-trustees of the Trust petition for recovery of funds transferred from the Trust in 2019 and 2021; for instructions as to the status of those funds; for a determination and instructions as to which version of the trust is in effect; and to determine whether respondent committed financial elder abuse.

The proof of service filed on February 8, 2022, declares that on February 2, 2022, respondent was personally served a summons, the petition, and notice of the hearing.

Respondent filed an answer to the petition on March 10, 2022, and a cross-complaint against petitioners asserting causes of action for breach of fiduciary duty, tortious interruption of utility services, conversion, and financial elder abuse. The proof of service declares that the cross-complaint was served on petitioner's counsel by mail on March 10, 2022.

Petitioners filed their answer to the cross-complaint on March 23, 2022.

"The court may not grant a petition under this chapter if the court determines that the matter should be determined by a civil action." (Probate Code, § 856.5.)

It is readily apparent that this matter should be determined by a civil action. Both parties are entitled to a jury trial on the claims of financial elder abuse, tortious interruption of utility services, and conversion, which they will be deprived of should the matter be resolved in the probate court.

TENTATIVE RULING # 6: THIS MATTER IS TRANSFERRED TO THE CIVIL DEPARTMENT TO BE HEARD AS A CIVIL CASE UPON APPROVAL OF THE PRESIDING JUDGE. THE

COURT SETS A CASE MANAGEMENT CONFERENCE FOR 9:30 A.M. ON MAY 23, 2022, IN DEPARTMENT TEN (APPEAR BY V-COURT).

7. STYLES v. MARIE 22CV0014

(1) Demurrer to Complaint.

(2) Motion to Strike Portions of Complaint.

TENTATIVE RULING # 7: UPON REQUEST OF PLAINTIFF, THESE MATTERS WERE PREVIOUSLY CONTINUED TO 8:31 A.M. ON FRIDAY, AUGUST 5, 2022.

8. CHANG v. GILLIHAN 21CV0281

Defendants' Motion to Set Aside and Vacate Default.

TENTATIVE RULING # 8: THIS ACTION HAVING BEEN VOLUNTARILY DISMISSED ON APRIL 20, 2022; THIS MATTER IS DROPPED FROM THE CALENDAR.

9. MUIR v. GENERAL MOTORS PC-202100130

Plaintiff's Motion to Compel the Deposition of Defendant's Person Most Qualified and Production of Documents.

TENTATIVE RUING # 9: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 13, 2022, IN DEPARTMENT NINE.

10. AMERICAN EXPRESS v. MOUNT PC-20210350

Plaintiff's Motion for Summary Judgment.

On July 8, 2021, plaintiff filed a complaint against defendant for an account stated and open book account. A case management conference is set for June 27, 2022, to set a trial date.

Plaintiff moves for entry of summary judgment on the common counts in the amount of $52,563.49, plus costs pursuant to a memorandum of costs.

Defendant opposes the motion on the sole ground that plaintiff is a foreign corporation that has not complied with Corporations Code, § 2105 by obtaining a certificate to do business in California and, therefore, can not maintain this court action upon the alleged intrastate business transacted with defendant until it complies with the registration/certificate requirement for foreign corporations. Defendant requests that the action be dismissed until plaintiff has complied with the registration requirement.

Plaintiff replies: the opposition is untimely as it was mailed only ten days before the hearing; plaintiff is a National Bank chartered under the laws of the United States and exempt from registration under the National Bank Act, 12 USC 21, 24; the registration requirement only applies to intrastate business activities and not interstate business activities such as the numerous activities of foreign lending institutions and foreign banking corporations (Corporations Code, §§ 191(a), 191(c)(1) and 191(d).); defendant's opposition is not in a proper form, fails to provide substantial evidence raising a triable issue of material fact, and fails to include a separate statement responding to plaintiff's separate statement of undisputed material facts; defendant has not submitted any evidence that defendant objected to any billing statement; and plaintiff's testimony and exhibits establish a book account and account stated.

Motion for Summary Judgment Principles

"For purposes of motions for summary judgment and summary adjudication: ¶ (1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto…" (Code of Civil Procedure, § 437c(p)(1).)

"The moving party "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar, supra,* 25 Cal.4th at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493, fn. omitted.) "In moving for summary judgment, a 'plaintiff ... has met' his 'burden of showing that there is no defense to a cause of action if' he 'has proved each element of the cause of action entitling' him 'to judgment on that cause of action. Once the plaintiff ... has met that burden, the burden shifts to the defendant ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant ... may not rely upon the mere allegations or denials' of his 'pleadings to show that a triable issue of material fact exists but, instead,' must 'set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.' [Citation.]" (*Id.* at p. 849, 107 Cal.Rptr.2d 841, 24 P.3d 493, quoting Code Civ. Proc., § 437c, subd. (*o*)(1); see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2004) ¶ 10:224.1, p. 10–81.)" (Law Offices of Dixon R. Howell v. Valley (2005) 129 Cal.App.4th 1076, 1091-1092.)

"The pleadings determine the issues to be addressed by a summary judgment motion. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d

407, revd. on other grounds *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.)" (Oakland Raiders v. National Football League (2005) 131 Cal.App.4th 621, 629.)

"The first step in analyzing a motion for summary judgment is to identify the issues framed by the pleadings. It is these allegations to which the motion must respond by showing there is no factual basis for relief or defense on any theory reasonably contemplated by the opponent's pleading. (Citations omitted.)" (6 Witkin, California Procedure (5th ed. 2008) Proceedings Without Trial, § 212, page 650.)

"Even where the complaint does present a cognizable claim, so that the court proceeds to the second or third step, the pleadings remain significant. Summary judgment cannot be granted on a ground not raised by the pleadings. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d 407, revd. on other grounds (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.) Conversely, summary judgment cannot be *denied* on a ground not raised by the pleadings. (*Lewinter v. Genmar Industries, Inc.* (1994) 26 Cal.App.4th 1214, 1223, 32 Cal.Rptr.2d 305 [complaint alleged failure to warn of manufacturing defect in boat; plaintiff could not avoid summary judgment by showing failure to warn based on post-manufacture discovery of defect]; *Danieley v. Goldmine Ski Associates, Inc.* (1990) 218 Cal.App.3d 111, 119–120, 266 Cal.Rptr. 749 [complaint alleged owner negligently maintained ski slopes; plaintiff could not avoid summary judgment by showing owner negligently cared for her after accident]; *Cochran v. Linn* (1984) 159 Cal.App.3d 245, 250, 205 Cal.Rptr. 550 [complaint alleged products liability based on manufacture and sale of liquid protein diet; plaintiffs could not avoid summary judgment by showing defendant negligently wrote book promoting diet]; see generally *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381–382, 282 Cal.Rptr. 508.) ¶ If either party wishes the trial court to consider a

previously unpleaded issue in connection with a motion for summary judgment, it may request leave to amend. (*Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 216, 32 Cal.Rptr.2d 388; *Dorado v. Knudsen Corp.* (1980) 103 Cal.App.3d 605, 611, 163 Cal.Rptr. 477.) Such requests are routinely and liberally granted. However, " ' "[I]n the absence of some request for amendment there is no occasion to inquire about possible issues not raised by the pleadings." ' " (*Metromedia, Inc. v. City of San Diego, supra,* 26 Cal.3d at p. 885, 164 Cal.Rptr. 510, 610 P.2d 407, quoting *Krupp v. Mullen* (1953) 120 Cal.App.2d 53, 57, 260 P.2d 629.) Declarations in opposition to a motion for summary judgment "are no substitute for amended pleadings." (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065, 225 Cal.Rptr. 203.) If the motion for summary judgment presents evidence sufficient to disprove the plaintiff's claims, as opposed to merely attacking the sufficiency of the complaint, the plaintiff forfeits an opportunity to amend to state new claims by failing to request it. (See *Kirby v. Albert D. Seeno Construction Co., supra,* 11 Cal.App.4th at p. 1068, 14 Cal.Rptr.2d 604.)" (Bostrom v. County of San Bernardino (1995) 35 Cal.App.4th 1654, 1663–1664.)

"To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings. (*Zavala v. Arce*, supra, 58 Cal.App.4th at p. 926, 68 Cal.Rptr.2d 571.) If the opposing party's evidence would show some factual assertion, legal theory, defense or claim not yet pleaded, that party should seek leave to amend the pleadings before the hearing on the summary judgment motion. (See *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 18, 272 Cal.Rptr. 227*; City of Hope Nat. Medical Center v. Superior Court* (1992) 8 Cal.App.4th 633, 639, 10 Cal.Rptr.2d 465; & Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2000) ¶¶ 10:257 & 10:257.2, pp. 10-96 & 10-97 (rev.# 1, 2000).)" (Distefano v. Forester (2001) 85 Cal.App.4th 1249, 1264-1265.)

"…[I]t is axiomatic that the party opposing summary judgment " 'must produce admissible evidence raising a triable issue of fact. [Citation.]' [Citation.]" (*Dollinger, supra,* 199 Cal.App.4th at pp. 1144–1145, 131 Cal.Rptr.3d 596.) This requirement is black letter law (Code Civ. Proc., § 437c, subd. (p)(2)) that applies whether the alleged cause of action is statutory or under the common law." (All Towing Services LLC v. City of Orange (2013) 220 Cal.App.4th 946, 960.)

With the above-cited legal principles in mind, the court will rule on plaintiff's motion for summary judgment.

Certification to Do Business in California

The failure of a foreign corporation to qualify to transact business prior to commencing an action is a matter of abatement of the action and it is the defendant's burden to prove on demurrer prior to trial or as an affirmative defense at trial that the plaintiff lacked capacity to maintain an action arising out of intrastate business, because the action arises out of the transaction of intrastate business by a foreign corporation; and the action was commenced by the foreign corporation prior to qualifying to transact intrastate business. If the defendant establishes the lack of capacity, then the foreign corporation plaintiff must comply with Corporations Code, § 2203, subdivision (c). (United Medical Management Ltd. v. Gatto (1996) 49 Cal.App.4th 1732, 1740.)

"A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the Secretary of State, a statement and designation signed by a corporate officer stating: ¶ (1) Its name and the state or place of its incorporation or organization. ¶ (2) The address of its principal executive office. ¶ (3) The address of its principal office within this state, if any. ¶ (4) The name of an agent upon whom process directed to the corporation may be served within this state. The designation shall comply with

the provisions of subdivision (b) of Section 1502. ¶ (5)(A) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given. ¶ (B) Consent under this paragraph extends to service of process directed to the foreign corporation's agent in California for a search warrant issued pursuant to Section 1524.2 of the Penal Code, or for any other validly issued and properly served search warrant, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. This subparagraph shall apply to a foreign corporation that is a party or a nonparty to the matter for which the search warrant is sought. For purposes of this subparagraph, "properly served" means delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in Section 2110 of the Corporations Code. ¶ (6) If it is a corporation which will be subject to the Insurance Code as an insurer, it shall so state that fact." (Corporations Code, § 2105(a).)

"A foreign corporation subject to the provisions of Chapter 21 (commencing with Section 2100) which transacts intrastate business without complying with Section 2105 shall not maintain any action or proceeding upon any intrastate business so transacted in any court of this state, commenced prior to compliance with Section 2105, until it has complied with the provisions thereof and has paid to the Secretary of State a penalty of two hundred fifty dollars ($250) in addition to the fees due for filing the statement and designation required by Section 2105 and has filed with the clerk of the court in which the action is pending receipts showing the payment of the fees and penalty and all franchise taxes and any other taxes on business or property in this state that should have been paid for the period during which it transacted intrastate business." (Corporations Code, § 2203(c).)

A national bank association is a corporate body with the power to sue and be sued, complain and defend, in any court of law or equity, as fully as any natural person. (12 USC § 24.) A national bank association is not a "foreign corporation" required to register with the California Secretary of State. (See Corporations Code, §§ 171 and 2105.)

The court takes judicial notice that American Express is a National Bank and, therefore, not a "foreign corporation" required to register with the California Secretary of State. The court rejects defendant's sole argument that plaintiff can not maintain this action until plaintiff registers as a foreign corporation.

Common Counts Action

"The term "book account" means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or some fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner." (Code of Civil Procedure, § 337a.)

"A "book account" is defined as a " 'detailed statement, kept in a book, [[FN4]] in the nature of debit and credit, arising out of contract or some fiduciary relation.' It is, of course, necessary for the book to show against whom the charges are made. .... It must also be made to appear in whose favor the charges run." (*Joslin v. Gertz* (1957) 155 Cal.App.2d 62, 65, 317 P.2d 155, quoting *Wright v. Loaiza* (1918) 177 Cal. 605, 606-607, 171 P. 311.) A book account may furnish the basis for an action on a common count " '... when it contains a statement of the debits and credits of the transactions involved completely enough to supply evidence from

which it can be reasonably determined what amount is due to the claimant.' " (*Tillson v. Peters* (1940) 41 Cal.App.2d 671, 678, 107 P.2d 434, quoted in *Robin v. Smith* (1955) 132 Cal.App.2d 288, 291, 282 P.2d 135.) A book account is described as "open" when the debtor has made some payment on the account, leaving a balance due. (For more on book accounts see generally, 1 Cal.Jur.3d (1972) Accounts and Accounting, § 3, pp. 214-217.) ¶ FN4. In this age of computer accounting, it is unlikely that a court would require that a book account actually be kept in a book; certainly computer memory is a reasonable substitute for the pages of a book, given that the data stored therein can always be reduced (or, more precisely, enlarged) to writing. ¶ For present purposes, the most important characteristic of a suit brought to recover a sum owing on a book account is that the amount owed is determined by computing all of the credits and debits entered in the book account. Accordingly, when a complaint alleges a common count to recover for a sum due on a book account, and, as occurred here, the complaint is answered by a general denial, this places in issue every entry in the book account. The defendant is therefore entitled to attack each of the entries "to show that the plaintiff has no right to recover or to recover to the extent that he claims." (*Aetna Carpet Co. v. Penzner*, supra, 102 Cal.App.2d at p. 860, 228 P.2d 347; see also, *Bridges v. Paige*, supra, 13 Cal. at p. 641.)" (Emphasis added.) (Interstate Group Administrators, Inc. v. Cravens, Dargan & Co. (1985) 174 Cal.App.3d 700, 708.)

"A book account is created by the agreement or conduct of the parties in a commercial transaction. Nonetheless, the mere recording in a book of transactions or the incidental keeping of accounts under an express contract does not of itself create a book account. Parties to a written or oral contract may, however, provide that monies due under such contract shall be the subject of an account between them. (*Warda v. Schmidt* (1956) 146 Cal.App.2d

234, 237, 303 P.2d 762.)" (H. Russell Taylor's Fire Prevention Service, Inc. v. Coca Cola Bottling Corp. (1979) 99 Cal.App.3d 711, 728.)

"An open book account may consist of a single entry reflecting the establishment of an account between the parties, (*Robin v. Smith*, 132 Cal.App.2d 288, 291, 282 P.2d 135) and may contain charges alone if there are no credits to enter. *Tabata v. Murane*, 76 Cal.App.2d 887, 890, 174 P.2d 684." (Joslin v. Gertz (1957) 155 Cal.App.2d 62, 66.)

"The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due. (*Bennett v. Potter*, 180 Cal. 736, 745, 183 P. 156; *Hansen v. Fresno Jersey Farms Dairy Co.*, 220 Cal. 402, 408, 31 P.2d 359; 1 Cal.Jur.2d Accounts and Accounting, s 43, p. 317.)" (Zinn v. Fred R. Bright Co. (1969) 271 Cal.App.2d 597, 600.)

"The agreement of the parties necessary to establish an account stated need not be express and frequently is implied from the circumstances. In the usual situation, it comes about by the creditor rendering a statement of the account to the debtor. If the debtor fails to object to the statement within a reasonable time, the law implies his agreement that the account is correct as rendered. (*California Bean Growers Ass'n v. Williams*, 82 Cal.App. 434, 442, 255 P. 751; *Luse v. Peters*, 219 Cal. 625, 629, 28 P.2d 357; *Shapiro v. Equitable Life Assur. Soc.*, 76 Cal.App.2d 75, 91, 172 P.2d 725.)" (Zinn v. Fred R. Bright Co. (1969) 271 Cal.App.2d 597, 600.)

The assistant custodian of records for plaintiff declares: all American Express credit card accounts are governed by a written cardmember agreement setting forth the terms and conditions of the account; when the account is opened, the agreement is provided to the

cardmember; the agreement provides that use of the card constitutes acceptance of the agreement and this is memorialized on the back of every American Express card; all agreements expressly provide that American Express may change the terms of the agreement from time to time; American Express advises current cardmembers of such changes through change-in-terms notices either mailed to the cardmembers in separate mailings or including the change with or printed on monthly billing statements; when a cardmember uses his or her credit card, the card is commonly swiped electronically with the amount charged keyed by the merchant and electronically transmitted to American Express; once the transaction is approved, the merchant receives an approval code and the transaction is complete; approved charges are stored electronically and recorded on the cardmember's billing statement for the next closing date; the computer generated billing statement is then provided to the cardmember; computerized records are maintained by American Express once a potential cardmember has executed a written application or acceptance form, American Express accepts a telemarking solicitation, or if an applicant applies on the Internet requesting the establishment of a credit card account; pursuant to American Express' business practices, unless an application has been received by American Express no credit account would have been opened in the name of defendant; American Express maintains computerized records of the amounts due and owing to American Express for any transactions that occur when an individual uses an American Express credit card; the computerized records reflect all debits and credits in connection with the use of an American Express card; American Express either sends or otherwise makes available monthly billing statements to cardmembers who carry a balance or are otherwise required to receive a monthly billing; she has personally reviewed American Express records concerning defendant and those records reflect that defendant opened the subject American Express credit card account in March 2015; under the terms of

the agreement, defendant was responsible to notify American Express of any billing errors on her account within 60 days of receipt of the statement containing the error; there is no record that defendant ever asserted a valid, unresolved objection to the balance shown as due and owing on monthly statements provided to the defendant; American Express records reflect that defendant defaulted in making the payments due on the account; and after giving defendant credit for all payments made, the amount remaining due and owing as of November 18, 2021 is $52,563.49, plus court costs in the amount of $502. (Declaration of Vivian Hinds in Support of Motion, paragraphs 4-6, 8, 9, 14 and 15.)

Attached to the assistant custodian of records declaration are the following authenticated documents: plaintiff's Exhibit A is a copy of the cardmember agreement currently governing defendant's account; plaintiff's Exhibit B is the final billing statement pertaining to defendant's account; plaintiff's Exhibit C are authenticated copies of statements of defendant's account for the period of November 19, 2016 to March 19, 2019, which indicate a rolling balance of the account; and Exhibit D is billing statement with the last posted payment made on the account on October 17, 2018. (Declaration of Vivian Hinds in Support of Motion, paragraphs 10-13 and Exhibits A-D.)

On January 6, 2022, plaintiff filed a memorandum of costs seeking an award of $1,032 in costs for filing and motion fees, service of process expenses, and court reporter fees. The proof of service attached to the memorandum of costs declares that it was served by mail on defense counsel on January 4, 2022. There is no objection to the memorandum of costs in the courts file.

The above cited evidence meets plaintiff's initial burden to prove each element of the open book account and account stated common count causes of action entitling plaintiff to judgment

on those causes of action. Therefore, the burden of proof shifted to the defendant show that a triable issue of one or more material facts exists as to those causes of action.

Defendant not having opposed the motion with any evidence in opposition on the merits and not having submitted a separate statement of facts disputing the undisputed facts alleged by plaintiff, the court finds it appropriate to enter summary judgment in plaintiff's favor against defendant in the amount of $52,563.49 and costs in the amount of $1,032. The motion for summary judgment is granted.

TENTATIVE RULING # 10: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT SHALL ENTER IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE PRINCIPAL AMOUNT OF $52,563.549 PLUS COSTS IN THE AMOUNT OF $1,032. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY

PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY, THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, APRIL 22, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.