

**TENTATIVE RULINGS ON LAW & MOTION MATTERS**

DEPT. CX-102  
JUDGE PETER J. WILSON

**DATE: July 18, 2019, 2019**  
**TIME: 2:00 PM**

Please consult California Rules of Court, rules 2.104 and 2.108, for type size (not smaller than 12 points) and format of papers.

If a tentative ruling is posted, you may submit on your papers without oral argument by calling the clerk at (657) 622-5302. If there is no submission or appearance by either party, the Court will decide whether the tentative ruling becomes the final ruling, or whether the motion will be taken OFF CALENDAR.

**If a tentative ruling is posted, please do not telephone the clerk to ask questions about it or to attempt an ex parte communication with the clerk. The Court will not entertain a request for continuance nor filing of further documents once the ruling has been posted.**

The court typically posts rulings on the Internet by 3:00 p.m. the day before the hearing, but there may not be a tentative ruling for every motion. If no tentative ruling appears below for your matter, that means one has not yet been posted. Please do not telephone the clerk.

**NOTICE: DEPARTMENT CX102 DOES NOT PROVIDE COURT REPORTERS FOR ANY MATTERS HEARD IN THIS DEPARTMENT. PLEASE SEE THE COURT'S WEBSITE FOR RULES AND PROCEDURES FOR COURT REPORTERS OBTAINED BY THE PARTIES, OR FOR PARTIES WITH A FEE WAIVER.**

| #        | Case Name                                                        | Tentative Ruling                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>1</b> | <b>Alemzay vs. Farmers Insurance</b><br><br><b>2017-00962736</b> | <p>Defendant Farmers Insurance Exchange's (Defendant") Motion for Summary Judgment is GRANTED.</p> <p>A defendant moving for summary judgment bears the initial burden to show the plaintiff's action has no merit. It may do this by demonstrating the action has no merit, that plaintiff cannot prove an element of his or her claim, or that it has a complete defense entitling it to judgment as a matter of law. (Code Civ. Proc., § 437c(p)(2); <i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal.4th 826, 850-851 (<i>Aguilar</i>).)</p> <p>As to Plaintiff's breach of contract claim, Defendant contends it properly denied Plaintiff's claim because the policy at issue allows it to "deny coverage for any claim or loss and void this policy if any insured has concealed or misrepresented a material fact or circumstance ... in the presentation of a claim or loss, or at any time either before or after a claim or loss." (Defendant's Separate Statement ("DSS"), No. 2.)</p> <p>"[T]o void a policy based upon the insured's violation of the standard fraud and concealment clause ..., the false statement must have been knowingly and wilfully made with the intent (express or implied) of deceiving the insurer." (<i>Cummings v. Fire Ins. Exchange</i> (1988) 202 Cal.App.3d 1407, 1415 fn.7.) "[I]f the misrepresentation concerns a subject reasonably relevant to the insured's investigation, and if a reasonable insurer would attach importance to the fact misrepresented, then it is material." (<i>Id.</i> at 1417.) "[M]ateriality ... can be decided as a matter of law if reasonable minds could not disagree on the materiality of the misrepresentations." (<i>Ibid.</i>) "[I]ntent to defraud the insurer</p> |

is necessarily implied when the misrepresentation is material and the insured willfully makes it with knowledge of its falsity.” (*Id.* at 1418.)

Here, the uncontroverted evidence shows Plaintiff made material misrepresentations to Defendant during the course of its investigation. Specifically, he misrepresented the entire timeline of the theft. Plaintiff told Defendant he was visiting his daughter on March 9, 2017. He left her residence around 10:00 PM to drive back to his home. During his drive home, he heard noises from the car and parked it at a gas station around 11:00 PM. He then called his wife on his cell phone to pick him up. (DSS Nos. 3-13; Helstrong Decl., Ex. 4, p. 80; Ex. 5, pp. 3:19-4:25; Ex. 6, pp. 5:20-6:13, 8:6-22, 11:6-13.) The timeline Plaintiff gave Defendant is contradicted by Plaintiff’s uncontested Lyft driver records and phone records. His phone records show his last outgoing call on March 9 occurred at 9:01 PM. (DSS No. 13.) Further, his Lyft records show he picked up and dropped off 5 passengers between 7:09 PM and 10:11 PM during the time he was purportedly visiting his daughter and driving home. (DSS Nos. 25-29; Henderson Decl., Ex. 11, pp. 240:5-21, Ex. 13, p. 263; Dolmage Decl., Exs. 18-19.) A reasonable insurer would find the timeline of the theft important in its claims investigation.

Plaintiff’s intent to defraud is necessarily implied here. (*Cummings v. Fire Ins. Exchange* (1988) 202 Cal.App.3d 1407, 1418.) As set forth above, the misrepresentations were material. The uncontested record also shows the misrepresentation were made willfully. Plaintiff consistently told Defendant he had visited his daughter and parked the car on his way home from her house. As set forth above, this timeline is contradicted by Plaintiff’s Lyft driver records, which Plaintiff admits are accurate. (Dolmage Decl., Exs. 18-19.) Further, Plaintiff never told Defendant he was driving for Lyft the night the car was stolen. The consistency of the misrepresented timeline, combined with his concealment of the Lyft activity, shows Plaintiff’s misrepresentations to Defendant were willful and not accidental. And Plaintiff elected to simply ignore these material discrepancies in his declaration filed in support of his opposition herein.

As the Court concludes that there is no material dispute of fact as to whether Plaintiff willfully misrepresented material facts to Defendant in the presentation of his claim, his claim for breach of contract fails.

Since Defendant’s denial of Plaintiff’s claim was not unreasonable, Plaintiff’s bad faith claim also fails. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 723.)

#### Evidentiary Objections

Plaintiff did not file separate objections to Defendant’s evidence. Since the objections do not comply with CRC 3.1354(b), the Court has not considered them. (*Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 7-9.)

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|   |                                                                                                                     | <p>As to Defendant's objections, Objection Nos. 1-5, 7-8, and 10 are overruled. Objection No. 22 is sustained. The other objections are immaterial to the Court's ruling. (Code Civ. Proc., § 437c(q).)</p> <p>Defendant's requests for judicial notice of coordinate locations (Exhibits 21-26) are granted. (Evid. Code, § 452(h).)</p> <p>All future events in this matter are taken off calendar. Defendant is to file and serve a proposed Judgment within 5 court days.</p> <p>Moving party to give notice.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 2 | <p><b>Alpirez Tapia vs. International Aluminum Corporation, a Texas Corporation</b></p> <p><b>2015-00819914</b></p> | <p>The hearing is CONTINUED to August 22, 2019, at 2:00 p.m. in department CX102 to permit the parties to respond to the following issues. Any supplemental briefing shall be filed at least 9 days before the hearing.</p> <p><i>As to the motion</i></p> <ol style="list-style-type: none"> <li>1. The settlement administrator's declaration does not state when any of the re-mailed notices were sent. Thus, it is unclear whether the 15-day response deadline for re-mailed notices has lapsed for all re-mailed notices. The administrator should provide an updated declaration clarifying this issue, including, if applicable, when the last deadline will lapse. She must also state whether any additional notices have been deemed undeliverable.</li> <li>2. Plaintiffs' counsel should state how it intends to provide notice to the class of the judgment. (See CRC 3.771(b).) This should also be included in the proposed order.</li> <li>3. Plaintiffs' counsel must disclose whether they have any fee-splitting arrangement with any other counsel or confirm none exists. (<i>Barnes, Crosby, Fitzgerald &amp; Zeman, LLP v. Ringler</i> (2012) 212 Cal.App.4th 172, 184; California Rules of Court, rule 3.769(b).)</li> <li>4. Should the Settlement be approved, the Court will hold a status conference for a final accounting. Plaintiffs shall submit a final report at least 10 days prior to that conference regarding the status of the settlement administration. Counsel should include a date for the final accounting in the proposed order. The final accounting should occur after the deadline for class members to cash their checks. The final report must include all information necessary for the Court to determine the total amount actually paid to class members. Plaintiffs shall also submit, at least 10 days prior to the conference, a [Proposed] Amended Judgment directing Defendant (or the Claims Administrator on Defendant's behalf) to pay the sum of the unpaid residue or unclaimed or abandoned class member funds plus any interest that has accrued thereon as follows: 50% to the State</li> </ol> |

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|   |                                                                   | <p>Treasury for deposit in the Trial Court Improvement and Modernization Fund and 50% to the Equal Access Fund. (See Code Civ. Proc, § 384(b).)</p> <p>5. Counsel must serve the moving papers and this order on the LWDA, with a proof of service submitted to the Court.</p> <p><i>As to the Proposed Order</i></p> <p>6. The Proposed Order is to be revised consistent with the issues addressed above.</p> <p>7. The settlement and amendment should be attached to the proposed order as exhibits.</p> <p>8. Paragraph 2 should identify the class member that opted out.</p> <p>9. Paragraph 15 should state "Settlement Agreement and Amendment" not "ad Amendment."</p> <p>Plaintiffs to give notice.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 3 | <b>Castellon vs. GBS Linens, Inc.</b><br><br><b>2017-00935887</b> | <p>Having reviewed the documents submitted by Plaintiff in support of the Motion for Final Approval, including the Supplemental Declaration of Counsel Mehrdad Bokhour filed on July 9, 2019, the Motion for Final Approval is GRANTED.</p> <p>The Court finds that the settlement amount is fair and reasonable and GRANTS final approval on the terms set forth below:</p> <ol style="list-style-type: none"> <li>1. The Court approves administrative costs in the amount of \$10,000.</li> <li>2. The Court approves an enhancement payment to Plaintiff in the amount of \$5,000.</li> <li>3. The Court approves attorneys' fees to Plaintiff's Counsel in the amount of \$275,000, which is roughly 30.7% of the Gross Settlement Fund and represents a 1.5 multiplier of the lodestar. The Court finds this amount to be reasonable. This order does not approve any particular hourly fee rate.</li> <li>4. The Court approves litigation costs in the amount of \$10,282.40.</li> </ol> <p>Counsel should amend the Proposed Order to reflect the amounts indicated above.</p> <p>Pursuant to <i>C.C.P. § 384(b)</i>, Plaintiff shall submit to the Court a final report, 5 court days prior to the Final Accounting, set for March 19, 2020. The final report should include the actual amounts paid to class members and other amounts distributed pursuant to the settlement. Upon receiving the report, the Court will determine whether further reports and/or hearing will be necessary.</p> <p>Plaintiff to give notice, including to the LWDA.</p> |

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| <p><b>4</b></p> | <p><b>DUBOC vs. IRVINE COMPANY, LLC</b></p> <p><b>2016-00894459</b></p> | <p><b>Motion to Compel Responses to Requests for Production</b></p> <p>The Motion to Compel Responses to Requests for Production, Set One, brought by Defendants The Irvine Company Apartment Communities, Inc., Newport Bluffs, LLC and The Irvine Company, LLC, against twenty-one (21) Plaintiffs, is MOOT in part and GRANTED in part.</p> <p>Plaintiffs Jeffery Yarchever, Sierra Yarchever and Evan Dorian were dismissed with prejudice, via Requests for Dismissal filed between June 25, 2019 and June 27, 2019. (See ROA Nos. 356, 358 and 360). Accordingly, the requests for discovery responses from these parties has been rendered MOOT.</p> <p>Additionally, per Plaintiffs' Counsel, verified discovery responses were served by mail on June 26, 2019, on behalf of Plaintiffs Amy Booty, General Booty, Avery Booty, John Booty, Charles Leonard, Guiliana McDaniel, Megan Woodruff-McDaniel, Kyle McDaniel, Olivia McDaniel, Billie Christine Walker, Beverly Moor Ben Lulu, Yael Ben-Lulu, Anthony Waner and Gerry Casman. (See ¶13 of Urzua Declaration and Exhibit E thereto).</p> <p>Similarly, Plaintiffs indicate a verification has since been served by Plaintiff Catherine Duboc. (See ¶14 of Urzua Declaration and Exhibit E).</p> <p>Defendants do not dispute the above representations; however, they assert the verifications submitted on behalf of Plaintiffs Amy Booty, Avery Booty, John Booty, Billie Christine Walker, Beverly Moore Ben-Lulu and Yael Ben-Lulu, remain deficient. <i>C.C.P. §2015.5</i> requires that verifications state the date of execution, and the verifications attached as Exhibit A to the Declaration of Counsel Schaffer, filed on July 11, 2019, on behalf of Plaintiffs Amy Booty, Avery Booty and John Booty, are undated. (See ¶2 of Schaffer Declaration and Exhibit A thereto).</p> <p>Consequently, the Court orders Plaintiffs Amy Booty, Avery Booty and John Booty to provide verifications to their responses to Request for Production, Set One, which comply with <i>C.C.P. §2015.5</i>, within 15 days of this order.</p> <p>With respect to the verification provided by Plaintiff Billie Christine Walker and attached to the Declaration of Defense Counsel Schaffer, the same refers to <i>Form Interrogatories</i>, to which no Motion was filed or submitted.</p> <p>Lastly, with respect to the verifications submitted by Plaintiffs Beverly Moore Ben-Lulu and Yael Ben-Lulu, while the same are dated in 2018, Defendants cite no provision which indicates the date invalidates the verifications. While Defendants suggest the verifications were executed prior to completion of the discovery responses, there is no conclusive evidence of the same, nor any authority which indicates the verifications cannot be enforced against the identified Plaintiffs.</p> |
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Lastly, as to Plaintiffs Tarek Abousheta, Dennis Dankoski and Sarah Tallerico, Counsel indicates they "have not returned verified discovery responses," despite "numerous phone calls and written correspondences." (See ¶15 of Urzua Declaration).

As to these remaining Plaintiffs, as Counsel concedes the subject discovery requests were received and responses have not been provided, the Motion to Compel Responses to Requests for Production is GRANTED, pursuant to *C.C.P. §2031.300(b)*. Absent the filing of Requests for Dismissal, as referenced by Counsel, Plaintiffs are ordered to produce verified discovery responses, without objections, within 20 days of this order.

Moreover, Plaintiffs Tarek Abousheta, Dennis Dankoski and Sarah Tallerico are ordered to pay sanctions to Defendants, in the amount of \$114.00, each, pursuant to *C.C.P. §2031.300(c)*, *C.C.P. §2023.030(a)* and *C.C.P. §2023.010(d)*, within 30 days-notice of this order.

Given the volume of discovery in this action and the apparent attempts at cooperation by the remaining Plaintiffs, the Court finds "substantial justification" for the delayed responses of the remaining Plaintiffs and DENIES the remaining request for sanctions.

### **Motion to Compel Responses to Requests for Production**

The Motion to Compel Responses to Requests for Production, brought by Defendants The Irvine Company Apartment Communities, Inc., Newport Bluffs, LLC and The Irvine Company, LLC, against Plaintiffs Kimberly Coleman, Christine Games, Adelaide Games, Bielle Games, and Courtney Lockhart is DENIED.

Pursuant to *C.C.P. §2031.320(a)*, a demanding party may move for an order compelling compliance, where a responding party fails to produce documents, as agreed.

Defendants assert Plaintiffs Kimberly Coleman, Christine Games, Adelaide Games, Bielle Games and Courtney Lockhart served responses to Requests for Production, Set One, on March 1, 2019, wherein Plaintiffs agreed to produce documents. (See ¶7 of Schaffer Declaration). Per Defendants, "[t]o date, Plaintiffs still have not produced any documents in response to discovery." (See ¶10 of Schaffer Declaration). However, Counsel for Plaintiffs declares Plaintiffs submitted CDs on March 5, 2019, which included responsive documents for all relevant Plaintiffs. (See ¶7 of Urzua Declaration).

Counsel for Plaintiffs additionally declares that Supplemental Discovery Responses were provided on June 18, 2019, following efforts to meet and confer. (See ¶10 of Urzua Declaration). Finally, Plaintiffs' Counsel declares that additional documents were offered by Plaintiff Kimberly Coleman on June 27, 2019. (See ¶11 of Urzue Declaration).

Based on the above testimony, Plaintiffs indicate they produced responsive documents prior to the filing of this Motion.

While Defendants argue in their Reply that “[b]ased on Plaintiffs’ responses, there is no way to determine whether Plaintiffs have additional responsive documents to produce,” (See Reply: 4:19-20), this Court similarly has no basis upon which to determine documents have been withheld and order further production.

Lastly, to the extent Defendants intended to challenge the means of production, the Motion fails. Defendants cite *C.C.P. §2031.280(a)*, which indicates that documents shall be produced either “as they are kept in the usual course of business” or “organized and labeled to correspond with the categories in the demand;” however, at no point in the Motion do Defendants acknowledge a production occurred or indicate the production failed to comply with this provision.

### **Motion to Deem Requests for Admission Admitted**

The Motion to Deem Requests for Admission Admitted brought by Defendants The Irvine Company Apartment Communities, Inc., Newport Bluffs, LLC and The Irvine Company, LLC, against twenty-one (21) Plaintiffs, is MOOT in part, CONTINUED in part, and GRANTED in part.

Per Counsel for Plaintiffs, verified responses to Requests for Admission were served on Defendants on June 26, 2019, for Plaintiffs Amy Booty, General Booty, Avery Booty, John Booty, Charles Leonard, Guiliana McDaniel, Megan Woodruff-McDaniel, Kyle McDaniel, Olivia McDaniel, Billie Christine Walker, Beverly Moor Ben Lulu, Yael Ben-Lulu, Anthony Waner and Gerry Casman. (See ¶13 of Urzua Declaration and Exhibit E thereto).

Similarly, Plaintiffs’ Counsel declares that Plaintiff Catherine Duboc submitted an executed verification to her Requests for Admission. (See ¶14 of Urzua Declaration).

Pursuant to *C.C.P. §2033.380(c)*, where a party fails to respond to Requests for Admission, the Court shall deem the matters admitted, “unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220.” Here, although the Court has not been provided a copies of the responses, Defendants do not dispute this compliance, as to the majority of Plaintiffs. Thus, the requests for orders deeming the matters admitted must be DENIED, as to the majority.

As to Plaintiffs Jeffery Yarchever, Sierra Yarchever and Evan Dorian, these Plaintiffs were dismissed with prejudice, via Requests for Dismissal filed between June 25, 2019 and June 27, 2019. (See ROA Nos. 356, 358 and 360). Thus, the Motion is MOOT, as to these parties.

As in the accompanying Motion to Compel Requests for Production, Defendants demonstrate the verifications

submitted by Plaintiffs Amy Booty and John Booty fail to comply with *C.C.P. §2015.5*. (See ¶2 of Schaffer Declaration and Exhibit A thereto). Thus, as to Plaintiffs Amy Booty and John Booty only, the instant Motion is CONTINUED to August 22, 2019 to permit Plaintiffs to serve verifications which comply with *C.C.P. §2015.5*.

As to Plaintiffs Tarek Abousheta, Dennis Dankoski and Sarah Tallerico, Counsel indicates they "have not returned verified discovery responses," despite "numerous phone calls and written correspondences." (See ¶15 of Urzua Declaration). As to these remaining Plaintiffs, as Counsel concedes the subject discovery requests were received and responses have not been provided, the Motion to Deem Requests Admitted is GRANTED, pursuant to *C.C.P. §2033.220*.

Lastly, pursuant to *C.C.P. §2033.280(c)*, "[i]t is mandatory that the court impose a monetary sanction...on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion."

Here, while Counsel for Plaintiffs asserts they were substantially justified in their delay, *C.C.P. §2033.280(c)* does not include an exception for substantial justification.

Consequently, all Plaintiffs which were the subject of this Motion, with the exception of Plaintiffs Jeffery Yarchever, Sierra Yarchever and Evan Dorian, who have been dismissed, are ordered to jointly pay sanctions in the amount of \$1,035.00 to Defendants, within 30 days-notice of this order.

As to Plaintiffs Jeffery Yarchever, Sierra Yarchever and Evan Dorian, there has been no showing that this Court retains jurisdiction to issue discovery sanctions against these individuals, after dismissal.

Moving parties to give notice.

**5 NDR PACIFIC INC. vs. HEALTH NET, INC.**  
**2017-00914277**

The Motions for Protective Order brought by Plaintiffs NDR Pacific, Inc. and RNR Recovery, Inc. are DENIED, without prejudice to future Motions in Limine or applicable objections should Defendants seek to introduce inadmissible evidence.

First, the orders Plaintiffs seek to have imposed are broad and ambiguous, and thus impermissibly vague. For example, Plaintiffs request the Court issue an order quashing all subpoenas which "implicate Plaintiffs' right to privacy." (See Notice of Motion). While Plaintiffs attach seven subpoenas to the Declaration of Babak Semnar (See Exhibits A through G), Plaintiffs phrase their request to extend beyond these subpoenas and potentially affect subpoenas which have not been identified to the Court. (See also Proposed Order attached to Motion). No blanket order is possible or permissible where there is no particular delineation of the "Plaintiffs' right to privacy" that is allegedly implicated.

Plaintiffs' request for evidentiary sanctions to exclude any evidence acquired via unnoticed subpoenas or in violation of Plaintiffs' right to privacy is similarly vague. (See Notice of Motion and Proposed Order). (And see *Evans v. Evans* (2008) 162 Cal.App.4<sup>th</sup> 1157, 1169).

Second, even assuming the order was specifically limited, Plaintiffs cite only *C.C.P. §1987.1* in support of the Motion; however, *C.C.P. §1987.1(b)* establishes clear limits on the persons who may invoke this provision.

Notably, every subpoena attached to the Declaration of Counsel Semnar arises in the context of a separate action: *Casa Bella Recovery International, Inc. v. Health Net Inc.* (Case No. 2017-00906766). Plaintiffs have made no showing that they are parties to this action. (See *C.C.P. §1987.1(b)(1)*). While that is a related case, there has been no consolidation of the cases, and indeed the Court expressly declined a request to consolidate (even for discovery purposes only). (Minute Order 3/29/19.) Nor are Plaintiffs witnesses being subpoenaed, employees or persons whose identifying information is being sought in connection with their exercise of free speech. (See *C.C.P. §1987.1(b)(2), (4)* and *(5)*).

At best, Plaintiffs attempt to assert they are “consumers” as defined in *C.C.P. §1985.3* and thus entitled to bring Motions to Quash and to notice of each subpoena (*C.C.P. §1987.1(b)(3)*). However, *C.C.P. §1985.3(a)(2)* defines “consumer” to mean “any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.” Corporations, such as Plaintiffs, are specifically excluded from this definition. (Weil & Brown et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2018), section 8:584.)

Based on the above, Plaintiffs failed to demonstrate entitlement to the requested order pursuant to *C.C.P. §1987.1* or *C.C.P. §1985.3*.

Apart from failing to demonstrate their standing to seek relief under these sections, Plaintiffs have also not shown that any specific discovery violates their rights to privacy or the attorney-client privilege.

“[T]he burden is on the party seeking the protective order to show good cause for whatever order is sought.” (See *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4<sup>th</sup> 245, 163).

As explained by the Court in *SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4<sup>th</sup> 741, “[t]he extent of any privacy rights of a business entity is unsettled.” (*Id.* at 755). Nonetheless, the Court in *SCC* concluded “corporations do not have a right of privacy protected by the California Constitution.” (*Id.*). “While corporations do have a right to privacy, it is not a constitutional right. The corporate right to privacy is a lesser right than that held by human beings and is not considered a fundamental right.” (*Id.* at 756).

“Because the corporate privacy right is not constitutionally protected, the issue presented in determining whether... requests for production infringe that right is resolved by a

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|   |                                                                            | <p>balancing test.” (<i>Id.</i>). “The discovery’s relevance to the subject matter of the pending dispute and whether the discovery ‘appears reasonably calculated to lead to the discovery of admissible evidence’ is balanced against the corporate right of privacy.” (<i>Id.</i>) “Doubts about relevance generally are resolved in favor of permitting discovery.” (<i>Id.</i>).</p> <p>Here, Plaintiffs make no attempt to demonstrate that any particular discovery request lacks relevance to the related action, such that the balance weighs in favor of protecting the corporate right of privacy.</p> <p>Similarly, while Plaintiffs assert requests are made which violate attorney-client privilege, they make no showing the privilege applies to any request. At most, Plaintiffs assert their counsel are identified as “Providers,” however, it is undisputed the requests for information are being propounded only on third-parties. Per <i>Evidence Code §912(a)</i>, attorney-client privilege “is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone.” Necessarily, as the requests are neither being made on Plaintiffs nor their Counsel, any request for information relates to statements made by Plaintiffs’ Counsel to third-parties. Plaintiffs make no attempt to explain why waiver would not apply to information in the possession of those third parties.</p> <p>While Plaintiffs assert in their Reply that they need not demonstrate violations of privacy and attorney client privilege definitively, as the issue is lack of notice, the Motion fails to explain on what basis, other than the inapposite provision relating to “consumers,” Plaintiffs were or are entitled to demand notice of the subpoenas (or any other third party discovery).</p> <p>Accordingly the Motion for Protective Order is DENIED, along with Plaintiffs’ request for sanctions. This order is made without prejudice to a Motion in Limine or other appropriate objection should Defendant later attempt to introduce inadmissible evidence.</p> <p>As the Court finds no “substantial justification” for Plaintiffs’ Motions, the Plaintiff in each case (30-2017-914277 and 30-2017-914552) is ordered to pay sanctions to Defendants in the amount of \$2,636.10 (total \$5272.20), within 30 days hereof, pursuant to <i>C.C.P. §1987.2(a)</i>.</p> <p>Plaintiffs to give notice.</p> |
| 6 | <b>RNR RECOVERY, INC. vs. HEALTH NET, INC.</b><br><br><b>2017-00914552</b> | See Above                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 7 | <b>Pham vs. Surefire, LLC</b><br><br><b>2016-00883206</b>                  | The Court has received and considered Plaintiff’s supplemental filing in response to the Court’s 06/06/2019 Minute Order. The Court will grant preliminary approval, and enter an order for preliminary approval, upon Plaintiff filing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

with the Court, within 5 court days of the date hereof, documents addressing the following issues:

1. Within the portion of the Amended Class Notice titled "Option Two: You can Exclude Yourself From the Settlement," include a sentence which instructs that Exclusion Forms are to be mailed to ILYM Group, Inc. and the deadline for doing so (i.e. "no later than [DATE]");
2. Within the portion of the Amended Class Notice titled "Terms of the Proposed Settlement," Plaintiff should remove the language "of up to" which precedes "thirty-three percent," such that the sentence will read: "The attorneys for the Class ('Class Counsel') will request the Court to authorize payment of their attorneys' fees not to exceed thirty-three percent (33.33%) of the total Settlement Proceeds..." This edit will avoid confusion;
3. At the end of the Amended Class Notice, prior to providing contact information for Counsel and the Claims Administrator, include the sentence: "If you have any questions, you may contact:"
4. Provide an Amended Proposed Order, which includes the word "preliminarily" within Paragraph IV, in reference to the finding Plaintiff is an adequate representative.

Plaintiff to give notice.

**8 Sorrells vs. POOLCORP  
2017-00938954**

The hearing on the Motion for Approval of PAGA Settlement is CONTINUED to August 22, 2019, at 2:00 p.m. in department CX102 to permit the parties to respond to the following issues. Any supplemental briefing shall be filed at least 9 days before the continued hearing, and respond to each of the points raised below.

1. Counsel indicates SCP Distributors, LLC was added to the definition of "Aggrieved Employees," based on Defendant Superior Pool Products, LLC's representation it is a wholly owned subsidiary of SCP Distributors, LLC and the representation "all employees of Superior Pool Products, LLC have become employed by SCP Distributors, LLC." (See Supplemental Brief: 2:15-17). The Court requests further information: What are the circumstances in which all employees of Superior Pool Products, LLC became employed by SCP Distributors, LLC? Are there Aggrieved Employees included in the Settlement, who were not included within the definition in the Complaint (i.e. are there employees of SCP Distributor, who were not employees of Superior Pool Products, LLC)? Are the claims included within the Settlement identical to the claims asserted by the Aggrieved Employees in the Complaint? If not, how do the claims differ? Are the 143 Aggrieved Employees identified in the Settlement all former employees of Superior Pool Products, LLC or has the

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|  | <p>pool of Aggrieved Employees been expanded? Do the claim valuations provided by Counsel include any claims from employees <i>only</i> of SCP Distributors?</p> <p>2. The Court previously requested Counsel provide billing records, to support their requested fees. In response, Counsel attaches a more detailed spreadsheet, which includes general dates, attorneys billed and their hourly rates. (See ¶55 of Supplemental Aiwazian Declaration and Exhibit 4 thereto). Significantly, however, this does not appear to have been compiled at the time of billing, given the items are listed out of chronological order and grouped by task. Counsel does not identify the means by which this spreadsheet was compiled or offer any foundation, which would indicate it represents a true summary of Plaintiff's billing. (See ¶55 of Supplemental Declaration).</p> <p>3. Are either Defendant or Defense Counsel aware of any other pending actions, which may be affected by this settlement?</p> <p><i>As to the Proposed Order</i></p> <p>1. The Settlement and Notice should be attached to the proposed order as exhibits.</p> <p>Plaintiff to give notice, including to the LWDA.</p> |
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