Tentative Rulings: Department 1 Friday, May 27, 2022
Law and Motion Calendar 1:30 p.m.

If you wish to appear for oral argument, you must so notify the Court and all other parties by 4:00 p.m. one court day before the hearing, pursuant to California Rules of Court, rule 3.1308. The phone number for Department 1 is (209) 588-2383. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

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1. CV63114 Jaycee Alameda vs. City of Sonora, et al.
Tentative ruling: See below

This is a personal injury action, stemming from a vehicular accident on SR-108 in an unincorporated portion of Tuolumne County. The accident occurred just after midnight on June 22, 2019.

Before the Court this day are two matters. First, this Court has on calendar a defense motion to compel compliance with a subpoena directed at non-parties Confie Holding II Co., and Freeway Insurance Services America LLC. Second, this Court has under submission a referee's recommendation regarding numerous discovery motions referred for initial consideration.

The majority of discovery disputes between the parties involve this central question: does an injured plaintiff with liability insurance in effect on the day of an accident "establish financial responsibility as required by the financial responsibility laws of this state" (Civil Code §3333.4(a)(3)) for purposes of recovering noneconomic damages from a negligent defendant, even if the plaintiff did not have a valid driver's license, a motorcycle endorsement, or an SR-22 on file with the DMV. Although the weight of legal authority appears to answer the question in the affirmative, this Court is not looking at a substantive motion designed to answer that question. This is discovery, and in that context litigants have a presumptive right to inquire about any matter which – based on reason, logic and common sense – might (1) be admissible, (2) lead to admissible evidence, or (3) reasonably assist that party in evaluating the case, preparing for trial and/or facilitating resolution. See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. Although the scope of discovery from third-parties is less deferential (see *Board of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1030-1032), both sides agree that plaintiff has no memory of things pre-accident due to the extent of injuries suffered. As such, on the continuum between direct relevance (the usual test for non-party discovery) and a fishing expedition (the colloquial test for party discovery), in a case like this the line should be drawn closer to the center.

The Motorcycle and the Progressive Policy

Plaintiff's friend Lara Yesenia was, on the date in question, the registered owner of a red 2009 Honda Vt750c Shadow Spirit, bearing license plate number 19W2153 and VIN number JH2RC53119K200331 (hereinafter "motorcycle"). It was registered with the DMV on March 10, 2019, which *suggests* that at least three months prior to the subject accident the motorcycle was covered by liability insurance. See Vehicle Code §§ 4000.37. Based on the limited information known to this Court, she apparently dropped that insurance policy, leaving the motorcycle uncovered (otherwise, plaintiff would likely have been covered by her own insurance – see *Goodson v. Perfect Fit Enterprises, Inc.* (1998) 67 Cal.App.4th 508, 512-515).

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On May 28, 2019, plaintiff completed an application for motorcycle insurance with Freeway Insurance Services, a brokerage offering many policy choices. Progressive West is one of those insurers who offered "non-owner" insurance to protect someone using an uninsured vehicle with the registered owner's permission. See Vehicle Code §16452. Plaintiff identified the motorcycle as his principal vehicle, but noted that his license did not include a motorcycle endorsement. He disclosed both of his prior accidents, including the one for which he pled no contest to a wet reckless. He selected extra coverage for liability, but only the minimum for UM/UIM. He tendered via credit card the initial payment required to bind the policy, and the policy (Motorcycle Policy No. 930080890) was issued. The policy was in effect on the day of the subject accident, but subsequently cancelled on September 15, 2019 for nonpayment of the second installment.

Defendants make much ado of the fact that the application describes plaintiff's license status as "valid," even though DMV records suggest that his license was in fact suspended as of March 16, 2019, pursuant to Vehicle Code §16484. It is not clear if plaintiff received notice of this suspension (Vehicle Code §13106), but it is arguably immaterial since the "suspension" was due to a lack of proof of insurance and that suspension would only "remain in effect until adequate proof of financial responsibility is filed." *Id*. In other words, assuming plaintiff was in fact required to have an SR-22 on file with the DMV (see Order dated June 20, 2021), and that whatever SR-22 he apparently had on file actually lapsed, it was *Progressive's* duty to send in the new SR-22 as soon as the new policy went into effect. As defendants posit, someone with a suspended license cannot get insurance, but that is technically not true (and illogical since the only way to lift that kind of suspension is to get insurance). See Vehicle Code §16072.

Defendants also take issue with the fact that Progressive issued an insurance policy to plaintiff when he did not have a motorcycle endorsement (see Vehicle Code §12500(b)), and was possibly barred from operating a motorcycle altogether per Vehicle Code §13353.6(g)(5) (even though the Merced orders are imprecise regarding an IID). Possession of a valid driver's license is not a prerequisite to having insurance.

The Subject Subpoenas

On or about October 8, 2021, defense counsel caused to be served upon Confie Holding II Co. and Freeway Insurance Services America LLC subpoenas calling for the deposition of a personal most knowledgeable regarding six (6) areas of inquiry, and the production of documents responsive to six (6) categories of business records (which mirrored the PMK topics). Although certain technical errors exist with the service of those subpoenas, no protective order was sought, and both entities in fact responded substantively to the subpoenas.
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On February 11, 2022, both Confie and Freeway jointly proffered Matthew Simmons for deposition, who is the district sales manager overseeing the office from which plaintiff's application for insurance emanated. He confirmed at the outset of the deposition that he was not producing anything in response to the six (6) categories identified in the subpoena. (Rptr Tx 12:19-21.) The deposition lasted for several hours, and essentially confirmed for all present that plaintiff had proof of financial responsibility at the time of the subject accident. (Rptr Tx 122:15-125:5.)

The Motion to Compel

The mechanism for securing judicial intervention for a dispute involving a non-party deposition is a motion to compel "directing compliance with [the subpoena] upon those terms or conditions as the court shall declare." CCP §1987.1. The motion is to track CCP §2025.480 (see *Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 127), which requires a meet and confer declaration, a separate statement, and a showing of "good cause" for documents sought. See CCP §2025.480(b); CRC 3.1345(a)(3)-(4); *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223-224.

The declaration accompanying the moving papers does not reflect any meet and confer effort by defense counsel. Although there are emails back and forth complaining about Freeway's selection of a PMK, those are not verified and not genuine efforts to resolve whatever the real issue is. Given the lack of a proper meet and confer effort, the motion could be denied. *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294.

The separate statement filed by defendants is entirely non-compliant. Pursuant to CRC 3.1345(c), the separate statement must provide all the information necessary to understand each discovery dispute, including the text/content of each response at issue and a cogent legal explanation for why a further response/production is needed. See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778-779. The separate statement here does not identify any defective response to a question, nor does it identify a category of documents omitted. With no assistance from counsel, this Court took the time to actually read the transcript, and did not see any cited matters. Although the deposition transcript confirms that the deponent did not bring documents to exchange at the "Zoom" deposition, it is obvious that defense counsel had a stack of records to show the deponent which were provided in advance by Robin Simpson.

Regarding the question of good cause, "a party seeking to compel production of records from a nonparty must articulate specific facts justifying the discovery sought; it may not rely on mere generalities. In assessing the party's proffered justification, courts must keep in mind the more limited scope of discovery available from nonparties." *Board of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1039. This Court invites defense counsel to revisit this

Court's discovery orders entered May 18, 2021, and June 30, 2021, in which the putative "good cause" of insurance records was carefully addressed. This Court has already held that plaintiff's right to recover pain and suffering has *most likely* been preserved because he had "proof of financial responsibility in effect" at the time of the accident. Although defendants appear convinced that said insurance was procured by negligence, ignorance or fraud, "the right to declare the insurance policy obtained by [plaintiff] void was a right belonging to the insurance company, not [defendants]." *Landeros v. Torres* (2012) 206 Cal.App.4th 398, 413. The insurer (Progressive) has already confirmed it has no intention of rescinding the policy. Defendants offer no legal theory upon which to find that defendants can force Progressive to rescind a policy and trigger the Civil Code §3333.4 bar, and in fact the law states otherwise. See, *e.g., Barrera v. State Farm Mut. Automobile Ins. Co.* (1969) 71 Cal.2d 659, 670; *Nipper v. California Automobile Assigned Risk Plan* (1977) 19 Cal.3d 35, 46-47; *Fireman's Fund Ins. Co. v. Superior Court* (1977) 75 Cal.App.3d 627, 633-635.

Undeterred, defendants have insisted that they are entitled to drill down past the facial policy issued by Progressive and determine if the policy was validly issued. Defendants cite *Honsickle v. Superior Court* (1999) 69 Cal.App.4th 756, for the proposition that "evidence of financial responsibility" was supposed to be proof of "bona fide" insurance, and that a policy issued to an unlicensed driver cannot be bona fide. Although the Court in *Honsickle* did observe that "an application for insurance coverage for an unlicensed driver is an absurdity on its face" (*id*. at 766), this statement was offered to explain why there is no basis for creating a good-faith exception to Civil Code §3333.4 for those who fail – but tried – to get insurance. *Honsickle* says nothing of the unlicensed driver who actually succeeds in securing liability coverage (as is the case here). In *Landeros v. Torres* (2012) 206 Cal.App.4th 398, the Fifth DCA had occasion to consider this very issue from *Honsickle*, and concluded that (1) unlicensed drivers still qualify as permissive users under someone else's policy absent an express exclusion, and (2) even if a policy covering an otherwise ineligible driver was procured by fraud, the driver still has evidence of financial responsibility for purposes of Civil Code §3333.4 so long as the policy was in effect at the time of the accident.

Along this same line, defendants contend that all the underlying insurance records are relevant to show that Freeway and Progressive are liable *to defendants* for negligent undertaking. "California recognizes a legal duty of care in certain circumstances where the defendant undertakes to render services to someone ***other than the plaintiff***." *Peredia v. HR Mobile Services, Inc.* (2018) 25 Cal.App.5th 680, 687 (emphasis added). To show that negligent undertaking is relevant in this case, defendants would have to proffer at least some evidence supporting the following essential elements:
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(1) Freeway/Progressive undertook, gratuitously or for consideration, to render services to plaintiff;
(2) the services rendered were of a kind that Freeway/Progressive should have recognized as necessary for the protection of third persons;
(3) Freeway/Progressive failed to exercise reasonable care in the performance of its undertaking;
(4) the failure to exercise reasonable care resulted in physical harm to defendants Brickley/City; and
(5) Freeway/Progressive's carelessness increased the risk of such harm, or the harm was suffered because of the reliance of the defendants Brickley/City upon the undertaking.

See *Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 613-614; *Peredia* at 688.

There is no question that Progressive (and perhaps Freeway as its agent per *Nowlon v. Koram Ins. Center, Inc.* (1991) 1 Cal.App.4th 1437, 1446-1447) owe the general public a duty to promptly determine insurability after issuance of an automobile policy, but that duty only runs to those who are injured by a negligent driver and who thereafter suffer financial harm resulting from the carrier's delayed decision to rescind the policy based upon the negligent driver's misrepresentation. See *Barrera* at 674-675. The duty to investigate insurability is not intended to ensure proper licensure; to the contrary, the duty to investigate is to make sure that after a reasonable period of time, there is no risk of the policy being rescinded and leaving the injured plaintiff with an uncollectible judgment. Moreover, there is no causal connection between Progressive's failure to realize that plaintiff's driving privileges were suspended, or that he lacked a motorcycle endorsement, because there is no evidence from which to find that plaintiff was actively misled by Freeway/Progressive and that but for such misrepresentation he would have left the motorcycle home and taken an Uber to the concert. See, *e.g.*, *Vice v. Automobile Club of Southern California* (1966) 241 Cal.App.2d 759, 734-735.

To put it more bluntly, since defendants point out that plaintiff was comfortable breaking numerous laws that evening, there is no reason to believe plaintiff would have skipped the concert if Progressive notified him of cancellation a few days prior. Finally, there is no evidence of *damage* to defendants. On this point, defendants appear to be saying that any legal obligation they may have to cover plaintiff's pain and suffering is a "damage" caused by Progressive's breach of the duty to investigate insurability. Note so. Progressive discharged its duty to the extent necessary to ensure that insurance remained in effect for plaintiff, which is critical had the roles been reversed and plaintiff caused the accident. The fact that defendants cannot avoid their potential legal obligation to make plaintiff whole with damages for pain and suffering is merely a result of ordinary tort law. The idea that defendants should avoid having to pay for noneconomic damages because Progressive was "sloppy" is novel, but entirely unsupportable in the current state of the law.

In a notable pivot, defendants separately contend that in order to "establish his or her financial responsibility as required by the financial responsibility laws of this state" (Civil Code §3333.4(a)(3)) at the time of the accident, it is not enough to merely possess liability insurance because plaintiff has the added legal requirement of keeping an active SR-22 on file with the DMV. Whether or not that argument could carry weight down the road, it is irrelevant to the records held by Confie/Freeway. As brokers, neither would have the obligation of preparing or submitting the SR-22 to the DMV. If a copy of an SR-22 exists in the Confie/Freeway records, that would have already been turned over as part of their pre-deposition production. Defendants are not asking for a copy of any SR-22 from Confie/Freeway. More importantly, the DMV has apparently confirmed that plaintiff did not have an active SR-22 on file with the DMV, and thus the issue has been put to rest. The legal import (if any) remains undecided (see infra).

In conclusion, because the motion lacks the required meet and confer declaration, a meaningful separate statement, a clear explanation for what the problem is, or good cause, the motion is DENIED. Confie/Freeway requests an award of legal fees having to respond to this motion. Fees are recoverable as sanctions pursuant to CCP §§ 1987.2 and 2025.480(j). In light of the repeated findings made by this Court and the referee regarding defendants' unquenchable thirst to bleed the §3333.4 issue dry, this Court easily concludes that the motion was not made with substantial justification. Since Confie/Freeway did not provide a declaration setting forth the actual hourly rate and time spent on this motion, this Court finds that $1,165.00 is a proper (the same awarded to Progressive for last year's similar motion). This is payable by defense counsel within 10 days.

REFEREE RECOMMENDATION

Pursuant to CCP §643(c), the discovery referee "shall file with the court a report that includes a recommendation on the merits of any disputed issue, a statement of the total hours spent and the total fees charged by the referee, and the referee's recommended allocation of payment. The referee shall serve the report on all parties. Any party may file an objection to the referee's report or recommendations within 10 days after the referee serves and files the report, or within another time as the court may direct. The objection shall be served on the referee and all other parties. Responses to the objections shall be filed with the court and served on the referee and all other parties within 10 days after the objection is served. The court shall review any objections to the report and any responses submitted to those objections and shall thereafter enter appropriate orders. Nothing in this section is intended to deprive the court of its power to change the terms of the referee's appointment or to modify or disregard the referee's recommendations, and this overriding power may be exercised at any time, either on the motion of any party for good cause shown or on the court's own motion."
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As the above statute makes plain, the trial court has great leeway is deciding how to evaluate the referee's recommendation. Although the trial court must "review" the recommendations and objections, there is no requirement that the trial court review the entire discovery dispute de novo. See *Lopez v. Watchtower Bible & Tract Soc. of New York, Inc.* (2016) 246 Cal.App.4th 566, 588-589. In fact, the trial court is expected to give the referee's findings great weight, and to focus the review on the parties' objections. *Lopez* at 589. As part of this overarching flexibility, the trial court is free to fashion whatever kind of "hearing" – if any – is warranted on any objections lodged to the recommendations. *Id*.; *Marathon Nat'l Bank v. Superior Court* (1993) 19 Cal.App.4th 1256, 1258.

On or about April 29, 2022, the discovery referee issued a 20-page Report and Recommendation.

On or about May 9, 2022, defendants responded with a 19-page objection to the referee's Report and Recommendation.

On or about 05/19/22, plaintiff and Progressive filed lengthy responses to the defense objections lodged to the referee's Report and Recommendation.

Having reviewed all of the papers associated with the discovery issues handled by the referee, this Court issues the following order thereon:

Regarding defendants' subpoena to the **CA Department of Healthcare Services**, records pertaining to eligibility of any kind are not subject to civil discovery. W&I Code §14100. The fact that plaintiff stopped using Medi-Cal benefits and treated on a private lien is of no consequence, and the reasons for doing so are not discoverable. See *Qaadir v. Figueroa* (2021) 67 Cal.App.5th 790, 810. However, since the City has a right (absent undue financial hardship) to a collateral source offset for Medi-Cal benefits, evidence of the amount paid by Medi-Cal to cover treatment is discoverable. See Govt. Code §985; *Garcia v. County of Sacramento* (2002) 103 Cal.App.4th 67, 71; *Riddell v. State of California* (1996) 50 Cal.App.4th 1607, 1612-1613. The recommendation to grant the motion to quash is ADOPTED except that defendants are entitled to discover Medi-Cal collateral source data. Since defendants concede that plaintiff has already provided this, it seems that nothing remains of the DHS subpoena.

Regarding defendants' subpoena to the **Arizona Health Care Cost Containment System**, records pertaining to eligibility of any kind are confidential and evidently not subject to compelled disclosure for anything other than a government-led fraud investigation. See ARS §§ 36-509, 36-568.01, 36-160, 36-507, 36-2220, 36-2903, 41-1952; in accord, *State v. Zeitner*, 436 P.3d 484 (2019). As for the question of collateral source offsets, Govt. Code §985(f)(1) provides that the offset may be taken for a "nonfederal publicly funded source," which arguably includes AHCCCS (which holds a lien against personal injury recoveries). The recommendation

to grant the motion to quash is ADOPTED except that defendants are entitled to discover AHCCCS collateral source data.

Regarding defendants' subpoena to the **New Leaf – Dorothy B. Mitchell Counseling Center and Youth Development Institute**, there is little doubt that plaintiff has placed his physical and mental condition in issue. While defendants are certainly entitled to establish a "baseline" of functionality from before the subject accident, seeking records which precede the subject accident by 26 years is patently overbroad. Although plaintiff has waived some aspects of his physical/psychological privacy rights by claiming injury thereto in this action (see *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-1857; *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1017), the scope of that waiver must be balanced against the Constitutional right to privacy. See Calif. Const. Art. 1, § 1. The demanding party must generally show a particularized need for the breadth of information sought, to wit: the information is directly relevant to a party's cause of action, essential to a fair determination of the action, AND not available through alternative, less-intrusive means. *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859. Considerations should include "the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances." *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 658; *Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 480. To establish the requested baseline, it is more than enough to find a waiver of the right to privacy for records relating to conditions put in issue herein which precede the subject accident by no more than seven (7) years. See, *e.g.*, H&S Code §123145 and 22 CCR §72543. The recommendation to grant the motions to quash is REJECTED, but the subpoenas shall be limited to records which came into existence on or after 06/22/12.

Regarding defendants' subpoena to the **DMV**, which this Court addressed but then agreed to reconsider, the scope of relevant information from the DMV has been something of a moving target. This Court previously authorized disclosure any SR-22 on file with the DMV on the date of the accident, which mirrors the referee's recommendation. The DMV has reportedly now confirmed there to be none. Defendants want additional DMV records pertaining to any administrative hearing regarding plaintiff wet reckless from 2017, the suspension(s) of plaintiff's driving privileges, insurance covering the motorcycle when registered, and other related matters. Because a request for DMV records invades the right to privacy, and since most of those records will ultimately be inadmissible under Vehicle Code §40832, defendants need to show a particularized need for the records sought. To get there, defendants need to present a cogent, prima facie basis for finding that the records will pertain to some matter in consequence in the action. Defendants contend that plaintiff cannot "establish his or her financial responsibility as

required by the financial responsibility laws of this state" for purposes of recovering noneconomic damages by simply showing a liability policy in effect because the financial responsibility laws also include a duty on the part of plaintiff to maintain a current SR-22 on file with the DMV. Defendants are correct that this issue appears to be one of first impression. This Court touched upon the issue in its June 20, 2021, Minute Order, and will drill down a bit further for the benefit of both sides.

Plaintiff can recover noneconomic damages so long as he can "establish his financial responsibility as required by the financial responsibility laws of this state." Civil Code §3333.4(a)(3). The "financial responsibility laws" are specifically codified in Division 7 of the Vehicle Code. Pursuant thereto:

(1) The term *financial responsibility* means, in pertinent part, a covering note, a binder, or "the name of the insurance company and the number of an insurance policy that was in effect at the time of the accident, if that information is contained in the vehicle registration records of the department." See Vehicle Code §16020.

(2) Proof of financial responsibility, for purposes of one involved in an accident resulting in personal injury, means coverage "of at least fifteen thousand dollars ($15,000), and, subject to the limit of fifteen thousand dollars ($15,000) for each person injured or killed, of at least thirty thousand dollars ($30,000) for the injury to, or the death of, two or more persons in any one accident." Vehicle Code §16430; in accord Vehicle Code §§ 16000.7, 16056.

(3) Proof of financial responsibility may be given by the written certificate of any insurance carrier duly authorized to do business within the state. Vehicle Code §16431.

(4) The driver of a vehicle involved in an accident resulting in bodily injury can *establish* financial responsibility by being "an insured under a form of insurance or bond that complies with the requirements of this division and that covers the driver for the vehicle involved in the accident." Vehicle Code §16021.

Synthesizing the foregoing statutes, a party involved in a motor vehicle accident involving injuries establishes his or her "financial responsibility as required by the financial responsibility laws of this state" by having an insurance policy providing at least 15/30 coverage in effect at the time of the accident. See *Landeros* at 416 ["when analyzing section 3333.4 issues, the question is the existence of insurance" and other concerns should be "addressed by the Legislature."] Although the financial responsibility laws further provide at Vehicle Code §16431(b) that "a person whose driver's license has been revoked, suspended, or restricted under Section 13350,

13351, 13352, 13353, 13353.2, 13353.3, 13353.7, or 16370, provide, as proof of financial responsibility, a certificate or certificates that covers all motor vehicles registered to the person before reinstatement of his or her driver's license," this added requirement does not apply to plaintiff because **(1)** his suspension in March of 2019 was pursuant to Vehicle Code §16484 (not one of the enumerated statutes) and **(2)** the added requirement only applies to vehicles registered to plaintiff (which the motorcycle was not). Moreover, as noted previously, plaintiff was not required to have an SR-22 on file with the DMV merely by virtue of his *nolo* plea to a wet reckless, and it is not clear how the DMV could have proceeded with an administrative suspension under Vehicle Code §13353.2 (requiring proof of BAC .08 or more) when the evidence appears to be that no toxicology tests were conducted on plaintiff. Thus, as a practical matter, it does not appear that plaintiff was required to have an SR-22, which means that Progressive's submission was sufficient to establish plaintiff's financial responsibility at the time.

Undeterred, defendants contend that the DMV records might show something and that this Court should not preemptively foreclose defendants' efforts to drill down into this issue. Civil Code §3333.4 was expressly directed at the evils caused by "uninsured motorists, drunk drivers, and criminal felons," and there is nothing in the history of §3333.4 which suggests it was intended to address unlicensed/suspended drivers. Although prior appellate decisions refer more globally to the evils being "illegal" activity, the statute says what it says. It would be very easy for the Legislature to have included language in the referenced statutes, or more particularly in Civil Code §3333.4, to impose more requirements on aberrant drivers before recovering noneconomic damages, but it seems the Legislature had no desire to establish a need for a mini-trial each time §3333.4 was raised as an affirmative defense. Nevertheless, the motion before this Court is not one for adjudication on the merits. This is a discovery motion, and parties are entitled to conduct discovery even if the material is ultimately not admissible (or even material). Having considered the issue more closely, this Court is now of the opinion that defendants should be allowed access to the DMV records for plaintiff and the motorcycle from 01/01/17 forward.

Regarding the **Special Interrogatories**, this Court ADOPTS in part and REJECTS in part the referee's recommendations, ruling as follows:

- No. 57: Motion to compel further response is DENIED. This is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein. Plaintiff was never required to utilize a collateral source for payment of his medical bills, and since Medi-Cal is generally entitled to reimbursement, it is not truly "collateral" in any event.

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- No. 58: Motion to compel further response is GRANTED. Although it seems plaintiff has since provided this information, it is not clear to this Court whether it was provided in a verified in a manner which can be considered as evidence;

- Nos. 59-64: Motion to compel GRANTED in part. Although Progressive has provided information establishing plaintiff's payment to bind the subject policy by credit card, the same information should be verified by plaintiff (to the extent he can). To avoid the potential for misuse, plaintiff can fully respond to this by referencing a document with account numbers redacted confirming payment (credit card receipt, account statement, cancelled check, bank statement, etc.). Plaintiff is not required to provide any account numbers to defendants. Plaintiff may also respond "See RPD Nos. 56, 57, 59."

- No. 65-69: Motion to compel further response is DENIED. This is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein. A false statement on an application does not give defendants a right to cause the policy to be rescinded, and as noted (*supra*) it is not clear to this Court that plaintiff's driving privileges were properly suspended at the time anyway. Defendant's legal understanding of his driving status is not germane to the issues in this case. Separately, 67 is impermissibly compound, which infects 68 as well.

- No. 70-71: Motion to compel further response is GRANTED in part. Although an account number is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein (impairment of driving ability), defendants are entitled to explore whether plaintiff was impaired, which could be established by proof that he purchased alcohol at the concert. To the extent defendants wish to subpoena records from plaintiff's credit card company for the day in question, this is acceptable. Alternatively, plaintiff can provide a copy of his credit card statement(s) for the date of the accident.

Plaintiff shall have 30 days with which to provide a verified supplemental response. Since defendants did not prevail on much of the motion, and plaintiff was substantially justified in taking the position it did otherwise, sanctions are DENIED.

Regarding the Request for Production of Documents, this Court ADOPTS in part and REJECTS in part the referee's recommendations, ruling as follows:
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- No. 46: Motion to compel further response is GRANTED. Although the application itself is inadmissible, the conditions set forth therein are relevant to establish preexisting conditions and injuries attributable to the subject accident.

- No. 47: Motion to compel further response is DENIED. This is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein. No good cause is shown for the documents sought. Plaintiff had no obligation to seek out insurance coverage after the accident.

- No. "49" (50): Motion to compel further response is GRANTED in part. Since Govt. Code §985(f)(1) might include AHCCCS as a "nonfederal publicly funded source," billings covered by AHCCCS *and subject to reimbursement* can be discovered (but nothing else).

- No. "50" (51): Motion to compel further response is GRANTED in part. As observed with regard to the subpoena to this entity, defendants re entitled to discover pre-existing health conditions now in issue. Plaintiff need only address care provided in the seven (7) years preceding the subject accident.

- No. "52" (53): Motion to compel further response is DENIED. This is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein. No good cause is shown for the documents sought.

- No. "53" (54): Motion to compel further response is DENIED. This is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein. No good cause is shown for the documents sought. Moreover, this category is not described with reasonable particularity, limited to time or content, or phrased in any fashion that would permit this Court to refine without entirely rewriting.

- Nos. "55, 56, 59" (55, 56, 58): motion to compel GRANTED in part. Although Progressive has provided information establishing plaintiff's payment to bind the subject policy by credit card, the same information should be verified by plaintiff (to the extent he can). As noted with regard to the special interrogatories, proof of having paid for the insurance must be provided, but account numbers need not be disclosed since it is of no consequence who made the payment so long as it was a payment credited to policy no. 930080890.

If you wish to appear for oral argument, you must so notify the Court and all other parties by 4:00 p.m. one court day before the hearing, pursuant to California Rules of Court, rule 3.1308. The phone number for Department 1 is (209) 588-2383. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

- No. "57" (58): motion to compel further response is DENIED. This is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein. No good cause is shown for the documents sought.

- No. "59" (60): motion to compel further response is DENIED. This is not reasonably calculated to lead to the discovery of any information arguably relevant to the issues herein. No good cause is shown for the documents sought.

Plaintiff shall have 30 days with which to provide a verified supplemental response. Since defendants did not prevail on much of the motion, and plaintiff was substantially justified in taking the position it did otherwise, sanctions are DENIED.