

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Friday, September 11, 2020

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

17-CVC-10162 PRASAD, DEVI VS. CALIFORNIA DEPARTMENT OF
TRANSPORTATION A GOVERNME

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

The following tentative ruling is issued by Judge James LaPorte, assigned for all purposes:

Prasad, et al v. Department of Transportation Case No. 18 CV 10752

York Law Corporation's Motion for Protective Order and Motion to Quash California

Department of Transportation's Notice of Deposition and Subpoena is granted without prejudice to Defendant being able to show (by Plaintiffs' delays and recalcitrance) that no other discovery mechanism really exists.

The deposition is not crucial under the three (3) prong test of Carehouse Convalescent Hospital v. Superior Court 143 Cal.App.4th 1558, 1563, citing Spectra Physics vs. Superior Court 198 Cal.App.3rd 1487, 1496. The requirements for a deposition of opposing counsel are: 1. Does the proponent have practical means to obtain the information? 2. Is the information crucial to preparation of the case? 3. Is the information subject to privilege?

The York Reply notes that Defendant failed to establish that no other means exists to obtain the information sought. Specifically, that Defendant did not depose Plaintiffs themselves on these issues, and did not ask in the interrogatories nor serve any demands for admissions on these claims issues.

The court agrees that there were no demands for admissions but there were production requests not yet resolved. (See the courts tentative on production Requests 25 and 26 in the Bernice Prasad and production Request 16 and 18 to Richard Prasad)

The Reply notes that Defendant's Opposition states that it does not matter if York received the rejection letter or not, which tends to show that the evidence sought from York is not crucial to the preparation of the case.

Him v. City and County of San Francisco (2005) 133 Cal.App.4th 437, resolved the 6-month complaint issue by what is contained within Defendants sole possession regarding the statute of limitations for a government claim under Government Code §945.6. This includes what Defendant's claims adjuster testified to regarding sealing the rejection notice in an postage prepaid envelope's address to the Plaintiff and depositing in the United states mail (with Defendant's claim rejection Proofs of Service establishing the testimony). Also, the date of the file-stamped copy on the Complaint showing conclusively the date the complaint was filed. Both Plaintiff and Defendant essentially agree that is the law and proof required for the Complaint being filed within 6 months.

The court finds persuasive York's argument that the information requested may be privileged as it may include conversations between Plaintiff's and their attorney and Defendants have not yet demonstrated a compelling interest in obtaining the information by deposing plaintiff's Counsel nor Law Firm nor demonstrated that York Law Corporation has any unprivileged information which is crucial to this case.

The court reserves on the issue of sanctions, as the discovery availability, practically, have not yet been resolved.

17-CVC-10162 PRASAD, DEVI VS. CALIFORNIA DEPARTMENT OF
TRANSPORTATION A GOVERNME

CIVIL MISCELLANEOUS MOTION - DEFENDANTS

TENTATIVE RULING:

The following tentative ruling is issued by Judge James LaPorte, assigned for all purposes:

Prasad, et al v. Department of Transportation Case No. 18 CV 10752

Tentative ruling regarding Defendant's Motion to Compel further responses of Richard Prasad to Defendants Special Interrogatories (set one); and to Defendants Request for Production of documents (set three) Special interrogatory number 6; Request for production number 11 "List of names and addresses of any provider of a collateral source payments affected by Government Code Section 985; and the amount provided to Richard Prasad from each collateral source" Plaintiff is ordered to provide complete and non-evasive responses to include any additional provider who provided treatment to Richard Prasad from July 17, 2018 to present. In addition, Plaintiff is to produce all responsive records to respond to request for production number 11. The statute clearly states that the information may be requested by an interrogatory. Plaintiff's original response only contained an invoice from Kaiser for the period from 6/10/16 through 7/16/18. Subsequent providers, to present, if any, are to be disclosed and missing invoices are to be produced. The court finds this motion to Compel is not moot by Plaintiff's supplemental answer. Special interrogatories numbers 19, 20; Request for production number 15 Interrogatory 19: "Identify all social media websites and applications utilized from January 1, 2016 to present" Interrogatory 20: "Identify all handles and/or usernames utilized on social media websites for the period of January 1, 2016 to present" Production Request 15: "All responsive records from any response to Interrogatories 19 and 20" The Court assumes that these interrogatories are linked. First, no preceding interrogatory inquires whether Plaintiff even uses social media websites. The text of the question also does not appear to limit the interrogatories to the topics of what emotional distress or physical injury, Plaintiff suffered, which he then discussed on any social media website, during the time specified as to such related issues as the cause of the accident or the type of injuries he suffered. Defendant seemingly modified in their Motion to Compel the interrogatory to the effect that it only requested Plaintiff's posting on social media regarding the effect of the accident on his life and whether Plaintiff had been compensated by third parties e.g. "Go Fund Me". Plaintiff's objections to these interrogatories included that the interrogatory violates privacy rights, is overbroad, and seeks information which is neither relevant to the subject matter of the action nor was reasonably calculated to lead to discovery of admissible evidence. Further Plaintiff cited a case, EEOC vs. Simply Storage management (infra), for persuasive purposes only in that an interrogatory can't ask for "everything you have ever written". This case is not a California precedent and is useful in noting that open ended interrogatories are overbroad, which these interrogatories as written are. In response, Defendants explain in their Separate Statement and their Reply pleadings that the open ended questions as to incident were relevant because they only meant to obtain information about "day in the life" and statements about emotional and physical suffering stemming from the accident. Plaintiff cited the case of EEOC vs Simply Storage Management, LLC (S.D.Ind 2010) 270 F.R.D. 430 in their Opposition. However, contrary to the Plaintiff's assertion, the court in Simply Storage Management did approve of discovery of a parties' social networking regarding severe emotional mental injury and how it would be manifesting itself in some social networking sites' content used by the individuals in that case. However, neither party here cited to the court to any precedential California authority. Here, the Defendant did not set forth in the interrogatories text, guidelines limiting the type of the Plaintiff's social media contacts to be produced. The interrogatory and production request did not limit the kinds of categories noted in EEOC vs Simply Storage Management as guidelines on discovery on third party communications, verbal communications, and photos and videos. Defendants Motion to Compel Interrogatory 19 and 20 and request for Production are denied without prejudice. A proper interrogatory which is not overbroad and is carefully tailored to protect the Plaintiff's privacy in other areas of his life could be drafted but was not. Further the court needs citation to California governing authority before allowing discovery in this area. Request for production number six/ special interrogatory Number 18 Production number 6: "Produce all documents you identified in response to special interrogatory number 18" Special interrogatory Number 18: "Identify all documents which support Plaintiff's contention that 'there is no question that' Defendant is liable for the injuries and general damages and special damages suffered by You" The Court assumes that Plaintiff contends that documents identified by Plaintiff's in their interrogatory answers are specifically "documents which Plaintiff relies upon to prove there's no question Defendant is liable for his injuries". The court orders the parties to meet and confer and jointly agree on which documents are already in the custody of the Defendants. The court is hopeful that the parties will be able to agree that documents already in the possession of the Defendant need not be mailed by the Plaintiff back to defendant. The parties should reduce to writing a stipulation regarding chain of custody or issues regarding admissibility. Any listed documents not already in the custody of the Defendant should be produced by the Plaintiff. Request for production number 7/ special interrogatory 26 No.7: "Produce all documents identified in response to special interrogatory" No 26: "Identify all documents supporting plaintiff's allegations that the state had actual notice of dangerous conditions" The court assumes that Plaintiff contends he specifically identified all documents supporting Plaintiff's allegation that the state had actual notice of the dangerous conditions. The court orders the parties to meet and confer and jointly agree on which documents are already in the custody of the Defendants. The court is hopeful that the parties will be able to agree that documents already in the possession of the Defendant need not be mailed by the Plaintiff back to defendant. The parties should reduce to writing a stipulation regarding chain of custody or issues regarding admissibility. Any listed documents not already in the custody of the Defendant should be produced by the Plaintiff. Request for production number 10 No. 10: "All documents that support your contention that Defendant Garcia is liable for the incident. Plaintiff provided a supplemental response answer to this production request on pages 22 through 25 in the Plaintiff's Separate Statement. As Defendant did not raise the issue of this production number 10 in the Defendants Reply, the court assumes that there was an agreement that this production request Number 10 is moot. Request for production number 16; number 18 No. 16: Produce all documents by and between you and Defendant California Department of Transportation for the period of June 10, 2016 to present No. 18: Request for production number 18 (Produce all documents by and between you and the California Department of Gen. services for the period of June 10, 2016 to present) As to Number 16 : Defendant contends that these production requests requested all documents including that document dated January 4, 2017 referenced in Plaintiff's Complaint in paragraph 8. Plaintiff contends that responsive documents are all contained within the documents they produced in Bates stamped PLA 00006 to PLA 0000020 which were produced in their separate statement.

In the opposition Plaintiff contends that Defendant has not specifically demanded the January 14, 2017 document they claim is responsive to this request. Plaintiff claims the January 14, 2017 document is not responsive to this request The court doesn't know whether the Plaintiff's additional response which changes the date from January 4, 2017 to January 14, 2027 is intentionally misleading or not, or was a clerical error. Or whether the January 4, (or 14) 2017 document is the rejection letter from Amador County which was specifically not requested in either interrogatory. Plaintiff is ordered to state specifically whether or not Plaintiff has either a January 4, 2017 or a January 14, 2017 document which is responsive to the production request for documents between the Plaintiff and either California Department of Transportation and the California Department of General services for the period 6/10/16 to present. Plaintiff is additionally ordered to produce the letter document as alleged in paragraph 8 of their complaint for either January 4, 2017, or January 14, 2017 if they have the document in their custody or control but only if it is not from Amador County. IF as Plaintiff claims such information as requested in these interrogatories is privileged, he must submit a privilege log. Request for production number 22 (the copy of the front and back of your Medicare beneficiary card) Plaintiff is ordered to ultimately produce his copy of his Medicare beneficiary card. However the Defendant is to explain why such card is to be produced before any judgment against it has occurred under the Medicare Secondary Payer Act. The court orders Plaintiff's counsel to prepare an appropriate protective order to limit Defendant's use of the card for any purpose other than by defense attorneys in this litigation to ensure that Plaintiff's special Medicare number is protected from any unauthorized use, publication, fraud or abuse. If Plaintiff is incurring treatment expenses paid through Medicare, the court would prefer the parties meet and confer about Plaintiff periodically submitting all documents evidencing the medical specials incurred by Plaintiff to Defendant especially prior to all mediations, arbitration or settlement discussions. Sanctions to Defendant, if any, are reserved The court asks the parties to be prepared on September 11, 2020 to discuss the appointment and compensation of a discovery referee. Reference is made to CCP Section 638 et cet.; Rules of Court 3.920 et cet.; Tagares vs. Superior Court (1998) 62 CA4th 94,105.

17-CVC-10162 PRASAD, DEVI

VS.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION A GOVERNME

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

The following tentative ruling is issued by Judge James LaPorte, assigned for all purposes:

Prasad, et al v. Department of Transportation Case No. 18 CV 10752

Tentative ruling regarding Defendant's Motion to Compel further responses of Bernice Prasad to Defendant's Special Interrogatories (set one) Special interrogatory number three "Please state your Medicare beneficiary identification number" If Plaintiff is not a Medicare beneficiary the interrogatory is denied. If, at the time of the accident, Plaintiff was a Medicare beneficiary, the Plaintiff is ordered to ultimately produce her copy of her Medicare beneficiary card. However, Defendant is to explain why such card is to be produced before any judgment against it has occurred under the Medicare Secondary Payer Act. The court orders Plaintiff's counsel to prepare an appropriate protective order to limit the Defendant's use of the card for any purpose other than by defense attorneys in this litigation, and to ensure that Plaintiffs special Medicare number is protected from any unauthorized use, publication, fraud or abuse. If Plaintiff is incurring treatment expenses paid through Medicare, the court would prefer the parties meet and confer about Plaintiff submitting Medicare reimbursement or billing documents to Defendants at fixed intervals during this litigation, especially prior to any mediations, arbitration, or settlement discussions. Special interrogatory number four "List of names and addresses of any provider of a collateral source payments affected by Government code section 985; and the amount provided to Bernice Prasad from each collateral source" Plaintiff is ordered to provide complete and non-evasive responses to include any provider who provided treatment to Bernice Prasad from July 17, 2018 to present. The statute clearly states that the information may be requested by an interrogatory.

Although GC 985 subsection (b) states "Any collateral source payment paid or owed to a plaintiff shall be inadmissible in any action for personal injuries or wrongful death where a public entity is a defendant. However, section C provides for disclosure duties prior to the "commencement of trial" and "states in pertinent part" the public entity shall provide written notice to each provider of a collateral source payment listed by the plaintiff or identified by the defendant of the date set for any pretrial settlement conference". Special interrogatory number 8 "Identify all facts supporting your contention in paragraph 27 of your complaint that defendant Ayden Garcia operated his motor vehicle in a dangerous and negligent manner" Defendant objects to the supplemental response by Plaintiff, which includes the following language: "... Mr. Garcia's vehicle left its lane of travel and into the path of oncoming traffic. Plaintiffs have alleged that Mr. Garcia was negligent in doing so ..." The Defendant objects that this phrase as part of a sentence where it also addresses "Caltrans negligence" and "abrupt end of the rumble strips". Defendant contends it is evasive or incomplete. If that is all the facts Plaintiffs have with reference to the negligence of Defendant Garcia, the court declines to order further answer to this interrogatory. Mr. Garcia's vehicle leaving its lane of travel and onto the path of oncoming traffic is dangerous and negligence. However, that tentative Ruling denial assumes that Plaintiff has not done any discovery regarding Ayden Garcia and has otherwise obtained no other facts other than its statement in the complaint. It would appear that at least the traffic collision report or other police reports would be discoverable facts if they have been obtained by Plaintiff. (For example any information from those police officers identified in Special Interrogatory 9) If Plaintiff has obtained other such facts it should respond to the interrogatory in a complete way. Special interrogatory number 9 (regarding interrogatory number 8 response) "Identify by name and address and contact telephone number each and every person who has knowledge of the stated facts" (about Ayden Garcia's negligence) Defendant objects to the identification of the "states current and former personnel as persons having knowledge about Aiden Garcia's negligence". The Plaintiff's response to the interrogatory includes Plaintiffs, by name, various peace officers with their badge numbers, and other persons whom the court is unable to identify – but presume some of them may be current or former state employees. The state of California tort law provides for proof of comparative negligence. The court declines to go behind the Plaintiffs response or guess how any witnesses will be utilized as fact witnesses of the negligence of Defendant Garcia. Nor does court have any Discovery responses provided by Defendant Caltrans, from Defendant Garcia to the Plaintiffs to determine whether this response is evasive and incomplete.

The court declines to compel further responses to this interrogatory based upon the moving papers by the Defendant. Special interrogatory numbers 11 and 12 No. 11: "Identify all social media websites and applications utilize for the period of January 1, 2016 to present" No.12 "Identify all handles and/or user names you utilize on social media website what a period of January 1, 2016 present" The court assumes that these interrogatories are linked. First, no preceding interrogatory inquires whether Plaintiff even uses social media websites. The text of the interrogatory in the Defendant's separate statement does not limit its scope to this incident. It is thus overbroad as to the topics contained in, and the nature of, the social media website universe that Plaintiff may have utilized at various times. Gleaning from the Reply to Plaintiff's opposition that the question is to be modified to be interpreted to be narrowly tailored to the time period following the incident and seek production of social media posts pertaining to the subject incident, it still lacks the narrowness of the categories and permissible scope of website discovery cited in the EEOC case. The court still retains the concern that there is no cited California authority in the parties' pleadings.

Defendant's motion to compel is denied without prejudice. A proper and narrowly tailored interrogatory which is not overbroad and is carefully tailored regarding posts about injuries and pain and suffering caused by this accident which also protects Plaintiff's privacy in other areas of his life could be drafted but was not here. Request for production number 5 "Produce all documents that support your contention that the incident was caused because of a dangerous condition of public property" Plaintiff in her supplemental response identified some fifty-seven (57) separate documents responsive to the request. It does not appear from the Defendants Reply to Plaintiffs Opposition that this request for production number five is still at issue. The court will not order any further responses. Request for production numbers 6 through 11 Request number six is for documents that refer to a vehicle overturned on July 2, 2011 alleged in paragraph 35 of the Complaint Request number seven is for documents that refer to the three fatalities on May 17, 2008 alleged in paragraph 35 of the Complaint Request number eight refers to documents that reference a head on injury collision on September 4 2012 as alleged in paragraph 35 of the Complaint Request number nine requests all documents that reference a vehicle overturned on September 6, 2013 alleged in paragraph 35 of the Complaint Request number 10 references all documents that refer to a vehicle overturned on May 22, 2014 alleged in paragraph 35 of the Complaint Plaintiff in each of these cases produced documents that appear to have come from earlier discovery between the parties. In each of these cases the chart provided by defense counsel in the Reply to Plaintiffs Opposition is based on Defendant's contention that the supplemental responses are evasive and incomplete because the Plaintiff did not produce documents that were in Plaintiffs possession and relied upon when the Complaint was filed. Presumably Defendant is asking whether the Plaintiff has any documents about these prior-in-time accidents that she had in her possession before the Complaint was filed, or were acquired since that time which are separate from those produced by the Defendant in the discovery in this case. If so, Plaintiff is ordered to produce those documents. If Plaintiff did not have any such documents or did not subsequently, independent from Defendant, acquire any such documents, she should so state. Request for production number 12 "Produce all documents that support your contention that Ayden Garcia was not warned of the existence of a dangerous condition on State route 16 as alleged in paragraph 41 of your Complaint" In plaintiffs supplemental response she itemizes some 59 separate documents, and she intends to identify other documents after defendant has submitted to plaintiff documents regarding SR 16 in Sacramento County. An examination of the defendants Reply to the Opposition omits any further request for production Number 12. Request for production number 14 "Produce all documents pursuant to Government Code Section 985 evidencing all collateral source payments issued because of the incident" Plaintiff is ordered to produce all documents responsive to this production request. If Plaintiff contends she has a constitutional protected right of privacy regarding this Request, she must present a privilege log. Request for production number 17 "All social media posts pertaining to this incident" Court reserves on this Request for Production based on the reasons set forth in interrogatories number 11 and 12. The court needs some California precedential authority for the proper tailoring of guidelines and limitations on this request. Request for production number 20 "All documents between You and the California Department of General Services for the period of June 10, 2016 to present" As is extensively discussed in the court's tentative order regarding the request for production number 18 in the tentative ruling, regarding the motion to compel further responses of Richard Prasad for production of documents, Plaintiff is ordered to produce the documents between Plaintiff and the California Department of General Services for the period of June 20, 2016 to present. If Plaintiff claims that such information as requested here is privileged she must submit a privilege log. Request for production number 23 "Produce a copy of the front and back up your Medicare beneficiary card" Plaintiff is ordered to ultimately produce her copy of her Medicare beneficiary card. However the Defendant is to explain why such card is to be produced before any judgment against it has occurred under the Medicare Secondary Payer Act. The court orders Plaintiff's counsel to prepare an appropriate protective order to limit Defendant's use of the card for any purpose other than by defense attorneys in this litigation to ensure that Plaintiff's special Medicare number is protected from any unauthorized use, publication, fraud or abuse. If Plaintiff is incurring treatment expenses paid through Medicare, the court would prefer the parties meet and confer about Plaintiff periodically submitting all documents evidencing the medical specials incurred by Plaintiff to Defendant especially prior to all mediations, arbitration or settlement discussions. Request for production Number 25 and 26 No. 25 "Produce documents referring or relating to your Government claim for the incident" No. 26 "All documents evidencing the denial of your government claim for the incident"

The court denies all Plaintiffs' objections to these production requests The court orders production of all the documents requested in these two production requests. This production order is to include any of the Defendants, including the California Department of Transportation, California Department of General Services or Amador County's rejection letter dated on January 4, 2017 to Plaintiff's government tort claim sent via mail as alleged in paragraph 8 of the Complaint. This would specifically include the government tort claim to, and rejection from, Amador County. If the Plaintiff does not have the possession of the January 4, 2017 letter in her possession she should so state and also state whom she thinks has possession of this letter. If Plaintiff has a claim regarding any privilege to these two Production Requests a privilege log must be submitted. Sanctions payable by Plaintiff, if any, are reserved. The court asks the parties to be prepared on September 11, 2020 to discuss the appointment and compensation of a discovery referee. Reference is made to CCP Section 638 et cet.; Rules of Court 3.920 et cet.; Tagares vs. Superior Court (1998) 62 CA4th 94,105.