

1 damages which the plaintiff would otherwise collect from the
2 tortfeasor." Hernandez v. Cal. Hosp. Med. Ctr., 78 Cal. App. 4th
3 498, 504-05 (2d Dist. 2000). However, California's Medical
4 Injury Compensation Reform Act of 1975, commonly known as
5 "MICRA," modifies the collateral source rule with regard to
6 medical malpractice cases. This section provides:

7 (a) In the event the defendant so elects, in an action
8 for personal injury against a health care provider
9 based upon professional negligence, he may introduce
10 evidence of any amount payable as a benefit to the
11 plaintiff as a result of the personal injury pursuant
12 to the United States Social Security Act, any state or
13 federal income disability or worker's compensation
14 act, any health, sickness or income-disability
15 insurance, accident insurance that provides health
16 benefits or income-disability coverage, and any
contract or agreement of any group, organization,
partnership, or corporation to provide, pay for, or
reimburse the cost of medical, hospital, dental, or
other health care services. Where the defendant elects
to introduce such evidence, the plaintiff may
introduce evidence of any amount which the plaintiff
has paid or contributed to secure his right to any
insurance benefits concerning which the defendant has
introduced evidence.

17 (b) No source of collateral benefits introduced
18 pursuant to subdivision (a) shall recover any amount
19 against the plaintiff nor shall it be subrogated to
the rights of the plaintiff against a defendant.

20 Cal. Gov't Code § 3333.1.

21 As explained by the California Court of Appeal in
22 Hernandez, section 3333.1 was intended to reduce the cost of
23 medical malpractice insurance by allowing evidence of collateral
24 sources including health insurance, under the assumption that the
25 jury would take in account such benefits and reduce any damages
26 award. 78 Cal. App. 4th at 505-06 (quoting Barme v. Wood, 37
27 Cal. 3d 174, 179 (1984)). "[S]ection 3333.1 does not preclude
28 recovery of such damages; rather, it allows the jury to decide

1 how to apply the evidence in calculation of damages." Id. at
2 506.

3 However, payments made through the California Medical
4 Assistance Program ("Medi-Cal") "fall outside the scope of Civil
5 Code section 3333.1." Id. Thus, while private insurers are
6 barred from recovering any amount against the plaintiff under
7 section 3333.1(b), the Medi-Cal program may seek recovery of
8 Medi-Cal payments "against either the successful plaintiff
9 through the Medi-Cal lien procedure or in a direct action against
10 the third party tortfeasor." Id.; see also Brown v. Stewart, 129
11 Cal. App. 3d 331, 341 (3d Dist. 1982).

12 If section 3333.1 does not apply to payments made
13 through Medi-Cal, then MICRA's exception to the collateral source
14 rule for medical malpractice cases is inapplicable and does not
15 allow evidence of future Medi-Cal payments made on behalf of the
16 plaintiff. Such interpretation prevents a "double deduction"
17 from a plaintiff's damages award, first by the jury due to
18 evidence of future Medi-Cal payments, and then by the Medi-Cal
19 program as it seeks to recover payments made on behalf of the
20 plaintiff in the future.

21 Accordingly, plaintiff's motion in limine will be
22 granted with respect to evidence regarding future Medi-Cal
23 benefits.

24 However, defendants are not categorically barred from
25 introducing future benefits receivable under the Affordable Care
26 Act, by which plaintiff may receive benefits from private
27 insurance, although such insurance in some cases may be
28 subsidized by the federal government. See Brewington v. United

1 States, Case No. CV 13-07672-DMG(CWx), 2015 WL 4511296, at *5-6
2 (C.D. Cal. July 24, 2015) (admitting evidence of Affordable Care
3 Act coverage as a collateral source of future medical care
4 expenses). Notwithstanding plaintiff's objection, section 3333.1
5 allows evidence both of past payments and future payments.
6 Indeed, section 3333.1(a)'s allowance of evidence of any amount
7 "payable as a benefit" encompasses both past and future medical
8 costs. See Barme v. Wood, 37 Cal. 3d 174, 177-78 (1984); Fein v.
9 Permanente Med. Grp., 38 Cal. 3d 137, 164-65 (1985). Accordingly,
10 plaintiff's motion in limine will be denied with respect to
11 evidence of future benefits under the Affordable Care Act.

12 IT IS THEREFORE ORDERED that plaintiff's motion in
13 limine is GRANTED IN PART. Any evidence regarding E.R.'s future
14 benefits under Medi-Cal is hereby excluded.

15 Dated: March 28, 2017

16 
17 **WILLIAM B. SHUBB**
18 **UNITED STATES DISTRICT JUDGE**