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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAXINE DOBRO, et al.,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY, et al.,

Defendants.

Case No.: 16cv1197-AJB (BLM)

**ORDER DENYING PLAINTIFFS’
MOTION TO COMPEL DEFENDANT’S
DISCOVERY RESPONSES**

[ECF No. 12]

Currently before the Court is Plaintiffs’ July 26, 2016 “Motion to Compel Defendant’s Responses to *Colonial Life*¹ Discovery” [ECF No. 12-1 (“Mot.”)], Defendant’s August 3, 2016

¹ In *Colonial Life & Accident Ins. Co. v. Superior Court*, 31 Cal.3d 785, 788-92 (1982), the Supreme Court of California upheld the trial court’s order allowing disclosure by a defendant insurer to plaintiff insured in a bad faith insurance action of the names and addresses of third-party insureds who filed similar claims against the insurer and whose claims were handled by the same adjuster, if those third-party insureds authorized the disclosure.

1 opposition to the motion [ECF No. 14 (“Oppo.”)], and Plaintiffs’ August 9, 2016 reply [ECF No. 15
2 (“Reply”)]. Having considered the briefing submitted by the parties and having reviewed all of
3 the supporting exhibits, the Court **DENIES** Plaintiffs’ motion for the reasons set forth below.

4 **FACTUAL AND PROCEDURAL BACKGROUND**

5 On March 18, 2016, Plaintiffs filed a complaint in the San Diego Superior Court for breach
6 of contract and breach of the implied covenant of good faith and fair dealing (“insurance bad
7 faith”).² ECF No. 1-2. Plaintiffs allege that Defendant Allstate Insurance Company issued a
8 “Deluxe Plus Homeowner’s Policy” (“the Policy”) effective for the period of November 18, 2014
9 through November 18, 2015, insuring Plaintiffs’ home. Id. at 3. Plaintiffs’ roof was undergoing
10 reconstruction, when on November 3, 2015, a rain storm caused water damage to the Plaintiffs’
11 property. Id. Plaintiffs allege that the “roofer failed to cover the incomplete portions of the
12 construction with a tarp or other means of protection,” thereby causing the water damage to
13 their property. Id. Plaintiffs further claim that the Policy provided coverage for damage to their
14 property caused by the roofer’s failure to protect the property from rain while replacing the roof.
15 See id. at 3-4.

16 On November 3, 2015, Plaintiffs tendered their claim for coverage under the Policy to
17 Defendant, and Defendant assigned an insurance adjuster, Brett Allen, to handle the claim. Id.

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20 ² Plaintiffs assert in the instant motion to compel that they “believe they have a claim for Unfair
21 Competition under *California Business and Profession Code section 17200, et seq.*, and will
22 shortly be seeking leave to amend their Complaint to add that claim.” MTC at 6. The Court
notes that Plaintiffs have not yet filed a motion to amend, and the Court therefore disregards
their “hypothetical” claim in adjudicating their motion to compel. See Docket.

1 at 3-4; see also Oppo., Declaration of Brett Allen (“Allen Decl.”) at 2. On November 21, 2015,
2 Defendant denied Plaintiffs’ claim citing the exclusionary language of the Policy, namely the
3 “Planning, Construction or Maintenance” provision.³ Id.

4 On April 4, 2016, Plaintiffs served Form Interrogatories, Special Interrogatories, Requests
5 for Admission, and Requests for Production of Documents on Defendant. MTC, Declaration of
6 Kenneth N. Greenfield (“Greenfield Decl.”) at 2. On May 18, 2016, Defendant removed the case
7 to this Court. ECF No. 1. On June 13, 2016, Defendant responded to Plaintiffs’ discovery

10
11 ³ The provision excludes from coverage losses caused by:

- 12 22. Planning, Construction or Maintenance, meaning faulty, inadequate or
defective:
13 a) planning, zoning, development, surveying, siting;
14 b) design, specifications, workmanship, repair, construction, renovation,
remodeling, grading, compaction;
15 c) materials used in repair, construction, renovation or remodeling; or
d) maintenance of property whether on or off the residence premises by any
person or organization.

16 ECF No. 1-2, Exh. 1 at 23. Defendant stated the following in the relevant portion of its denial
17 letter:

18 We were unable to provide coverage for the claim due to the cause of the rain
intrusion to be from improper installation of the roofing system leading to rain
19 intrusion into the dwelling. . . . Based on the inspection conducted . . . it was found
that the cause of the rain intrusion was based on the incomplete and faulty
20 installation of the bitumen roofing system. . . . The policy specifically excludes the
faulty or inadequate installation or construction of the property whether on or off
21 the residence premises by any person or organization.

22 MTC, Exh. A.

1 requests. MTC, Exh. B. Plaintiffs bring this motion to compel Defendant's further responses to
2 Plaintiffs' Special Interrogatories 3-8. See MTC.

3 **LEGAL STANDARDS**

4 "In diversity actions, where state law controls the substance of the lawsuit, procedural
5 law is provided by federal authority, including for discovery purposes." Collins v. JC Penney Life
6 Ins. Co., 2003 WL 25945842, at *1 (S.D. Cal. May 6, 2003) (citing Aceves v. Allstate Ins. Co.,
7 68 F.3d 1160, 1167 (9th Cir. 1995) and Hanna v. Plumer, 380 U.S. 460, 472-74 (1965)). The
8 scope of discovery under the Federal Rules of Civil Procedure is defined as follows:

9 Parties may obtain discovery regarding any nonprivileged matter that is relevant
10 to any party's claim or defense and proportional to the needs of the case,
11 considering the importance of the issues at stake in the action, the amount in
12 controversy, the parties' relative access to relevant information, the parties'
13 resources, the importance of the discovery in resolving the issues, and whether
14 the burden or expense of the proposed discovery outweighs its likely benefit.
15 Information within this scope of discovery need not be admissible in evidence to
16 be discoverable.

17 Fed. R. Civ. P. 26(b)(1).

18 District courts have broad discretion to determine relevancy for discovery purposes. See
19 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad discretion
20 to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing that courts must
21 limit discovery where the party seeking the discovery "has had ample opportunity to obtain the
22 information by discovery in the action" or where the proposed discovery is "unreasonably
cumulative or duplicative," "obtain[able] from some other source that is more convenient, less
burdensome, or less expensive," or where it "is outside the scope permitted by Rule 26(b)(1)").

1 A party may request the production of any document within the scope of Rule 26(b).
2 Fed. R. Civ. P. 34(a). "For each item or category, the response must either state that inspection
3 and related activities will be permitted as requested or state with specificity the grounds for
4 objecting to the request, including the reasons." Id. at 34(b)(2)(B). The responding party is
5 responsible for all items in "the responding party's possession, custody, or control." Id. at
6 34(a)(1). Actual possession, custody or control is not required. Rather, "[a] party may be
7 ordered to produce a document in the possession of a non-party entity if that party has a legal
8 right to obtain the document or has control over the entity who is in possession of the
9 document." Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D. Cal. 1995).

10 Pursuant to Federal Rule of Civil Procedure 37, "a party may move for an order compelling
11 disclosure or discovery." Fed. R. Civ. P. 37(a)(1). The party seeking to compel discovery has
12 the burden of establishing that its request satisfies the relevance requirement of Rule 26. Soto,
13 162 F.R.D. at 610. Thereafter, the party opposing discovery has the burden of showing that the
14 discovery should be prohibited, and the burden of "clarifying, explaining, and supporting its
15 objections." DIRECTV, Inc. v. Trone, 209 F.R.D. 455, 458 (C.D. Cal. 2002) (citing Blankenship
16 v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)).

17 **DISCUSSION**

18 Plaintiffs ask the Court to compel Defendant's responses to Interrogatories 3-8. MTC at
19 8-14, 24. In the alternative, Plaintiffs seek to compel the production of the list of 10,082⁴ third-

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22 ⁴ Defendant initially identified 8,900 claims in Southern California during the parties' meet and confer process, but subsequently realized that the original calculation did not include all relevant zip codes in Southern California. Oppo., Declaration of Nathan S. Arrington ("Arrington Decl.")

1 party insureds' names and addresses, so long as "that list encompasses rain claims" that were
2 denied under the "faulty workmanship" or "Planning, Construction or Maintenance" exclusion in
3 the insurance policy. Id. at 24. Plaintiffs also ask the Court to approve their proposed letter to
4 be sent to the third-party insureds. Id.; id., Exh. D. Plaintiffs explain that if the Court approves
5 the letter, they will mail the letter to the identified third-party insureds, and if any of those
6 insureds return the signed letter authorizing Plaintiffs to access and review their claim files,
7 Plaintiffs will then obtain the consenting third-party insureds' claim files from Defendant and
8 review them. See id. at 21. In support, Plaintiffs assert that Colonial Life allows discovery of
9 names and contact information of other insureds who had similar claims with the insurer because
10 similar claims discovery is relevant to show a pattern and practice of the insurance company's
11 bad faith and to substantiate punitive damages claims, and the contact information is required
12 to obtain permission for the release of the consenting third-party insured's claim file. MTC at 4,
13 19-20. Plaintiffs also argue that Defendant's objections to the interrogatories on the grounds
14 that they are overbroad, burdensome, harassing and oppressive, vague and ambiguous, violate
15 non-party insureds' privacy rights, and exceed the number of permissible interrogatories, lack
16 merit. Id. at 20-24.

17 Defendant objects to Plaintiffs' motion to compel claiming that there is no evidence that
18 any of the 10,082 claims at issue are directly relevant to Plaintiffs' lawsuit, and asserts that
19 Colonial Life does not justify the discovery of private information concerning non-parties that is
20 not directly relevant to the underlying litigation. See Oppo. at 6, 8-9, 13-17. Defendant further

21 _____
22 at 3. After Defendant added the omitted zip codes to its search, the number of claims reached
10,082. Id.; see also id., Declaration of Jake Seaman (Seaman Decl.") at 3.

1 contends that Plaintiffs' interrogatories are unduly burdensome, overbroad, oppressive and
2 harassing, that Plaintiffs' yet-to-be-amended complaint does not provide a basis for the motion
3 to compel, and that Plaintiffs propounded more than the twenty-five interrogatories permissible
4 under Fed. R. Civ. P. 33(a)(1). Id. at 17-20.

5 Plaintiffs reply that the requested information is highly relevant to their insurance bad
6 faith and punitive damages claims because Defendant committed bad faith by engaging in a
7 pattern and practice of failing to investigate and pay covered claims, by incorrectly interpreting
8 the "Planning, Construction or Maintenance" exclusion and/or the term "faulty workmanship" in
9 the insurance policy, and by failing to follow California law as defined in Allstate Ins. Co. v.
10 Smith, 929 F.2d 447 (9th Cir. 1991). Reply at 2, 6. Plaintiffs further argue that the requested
11 discovery does not violate third-party insureds' privacy rights, does not place the burden on
12 Defendant, and is not based on an unfiled amended complaint. Id. at 5-7. Plaintiffs also claim
13 that because they served their interrogatives on Defendant while the parties were in state court
14 where the 25-interrogatory limit did not apply, Defendant's objection based on the number of
15 interrogatories is without merit. Id. at 7.

16 **I. Motion to Compel Responses to Interrogatories Nos. 4-8**

17 Interrogatories 4-8 seek the contact information for Defendant's customers who had
18 claims similar to Plaintiffs' claim and whose claims were handled by Defendant's adjuster Brett
19 Allen.⁵ MTC at 10-14, 24; Reply at 7. Defendant objected to the Interrogatories on various

21 ⁵ Specifically, Special Interrogatories Nos. 4-8 request names and addresses of all insureds
22 whose claims were handled by Brett Allen *and*: "who made claims . . . for property losses caused
by a third party's failure to protect property from rain" [No. 4]; "whose claims for property losses
were denied . . . from April 4, 2015 to April 4, 2016" [No. 5]; "whose claims for property losses

1 grounds, but during the parties' meet and confer process, agreed to conduct the requested
2 search. MTC, Exh. B at 4-12; Oppo., Declaration of Nathan Arrington ("Arrington Decl.") at 2.
3 As a result of the search, Defendant determined that Mr. Allen did not handle any other claims
4 that were similar to Plaintiffs' claim. See Arrington Decl. at 2 (stating that "Brett Allen, Allstate's
5 adjuster, did not handle any other claim that was similar to the Dobros' claim."); Allen Decl. at
6 3 (stating that "[o]ther than Ms. Dobro's claim, [Mr. Allen] ha[s] not handled any claim that
7 involved (1) a rain claim, (2) where a contractor had started but not yet completed roof repairs,
8 and (3) where the claim was denied based on contractor negligence."). Plaintiffs do not address
9 this issue—they neither assert that Defendant's facts are inaccurate nor provide any evidence
10 to refute Defendant's assertion that Mr. Allen did not handle any claims similar to their claim.
11 See Reply. Plaintiffs also do not explain what information or further response they want the
12 Court to compel. See id. Because Defendant's unrefuted evidence establishes that Mr. Allen
13 did not handle any other claims similar to Plaintiff's claim, the Court **DENIES AS MOOT**
14 Plaintiffs' motion to compel with respect to Special Interrogatories Nos. 4-8.

15 **II. Motion to Compel Responses to Interrogatory No. 3.**

16 Plaintiff's Special Interrogatory No. 3 seeks the following:

17 Please, list the CONTACT INFORMATION of all insureds who made claims
18 to YOU for property losses caused by a third party's failure to protect property

19 caused by a third party's failure to protect property from rain were denied . . . from April 4, 2015
20 to April 4, 2016" [No. 6]; "who made claims . . . for property losses from April 4, 2015 to April 4,
21 2016, whose claims were denied due to the application of the PLANNING, CONSTRUCTION OR
22 MAINTENANCE EXCLUSION" [No. 7]; "who made claims . . . for property losses caused by a
third party's failure to protect property from rain from April 4, 2015 to April 4, 2016, whose
claims were denied due to the application of the PLANNING, CONSTRUCTION OR MAINTENANCE
EXCLUSION" [No. 8]. MTC, Exh. B at 6-11.

1 from rain, whose claims were denied due to the application of the PLANNING,
2 CONSTRUCTION OR MAINTENANCE EXCLUSION, from 1991 to the present.

3 [As used herein, "**CONTACT INFORMATION**" means *name and address*.]

4 . . .

5 [As used herein, "**PLANNING, CONSTRUCTION OR MAINTENANCE**
6 **EXCLUSION**" shall refer to any of YOUR property insurance policy provisions
7 containing the following language:

8 "Planning, Construction or Maintenance, meaning faulty, inadequate or defective:
9 a) planning, zoning, development, surveying, siting;
10 b) design, specifications, workmanship, repair, construction, renovation,
11 remodeling, grading, compaction;
12 c) materials used in repair, construction, renovation or remodeling; or
13 d) maintenance of property whether on or off the residence premises by any
14 person or organization."

15 MTC, Exh. B at 5 (emphasis added). Defendant objected that the interrogatory was vague and
16 ambiguous as to the term "property losses," and sought information related to non-party
17 insureds protected from disclosure by Cal. Ins. Code § 791.13, Cal. Code of Civ. P. § 1985.3 and
18 by the right to privacy, and asserted that Plaintiff had not complied with the prerequisite notice
19 provisions of § 1985.3. Id. at 5-6. Defendant also stated that the interrogatory was overbroad,
20 unduly burdensome, oppressive and harassing, sought irrelevant information, was based on
21 insurance policies, statutes and regulations that were no longer in effect, and that the requested
22 discovery was not proportional to the needs of the case. Id. Finally, Defendant objected
claiming that the number of Plaintiffs' interrogatories exceeded the number of permissible
interrogatories under Fed. R. Civ. P. 33(a)(1). Id.

During the parties' meet and confer process, Plaintiffs agreed to limit the scope of the
Special Interrogatory No. 3 as follows:

- 1 (1) rain claims,
- 2 (2) that were reported after January 1, 2010,
- 3 (3) for properties located in Los Angeles County, Riverside County, San Bernardino
- 4 County, Orange County, Imperial County, and San Diego County ("Southern
- 5 California Counties"),
- 6 (4) where the location of the rain leak occurred in the roof as opposed to windows,
- 7 doors, basements, or other locations,
- 8 (5) where a contractor had started roof repairs but had not yet completed the
- 9 repairs at the time that the rain claim occurred, and
- 10 (6) where the claim was denied based the policy exclusion for the negligence of a
- 11 contractor.

12 Arrington Decl. at 2. Defendant searched its records for rain claims that were reported after
13 January 1, 2010 for Southern California Counties, and uncovered 10,082 claims. Seaman Decl.
14 at 2-3. Plaintiffs now seek an order from the Court compelling the production of the names and
15 addresses of the 10,082 non-party insureds, whose claims Defendant identified for Southern
16 California Counties, alleging that Colonial Life permits such discovery. See MTC; Reply.

17 **a. Colonial Life**

18 In Colonial Life, Plaintiff, the administratrix of the estate of the deceased insured sued
19 Colonial Life & Accident Ins. Co. ("Colonial Life") and its claims adjusters, Equifax Inc. and J. T.
20 Sharkey, for violation of Cal. Ins. Code § 790.03(h), breach of contract, and breach of the duty
21 of fair dealing and good faith, and sought general and punitive damages based on defendants'
22 conduct in settling a claim made by the deceased insured under an accident policy issued by
Colonial Life. Colonial Life, 31 Cal.3d at 788. Plaintiff served Equifax with a request to inspect
and copy all documents pertaining to cases handled by Sharkey while employed by Equifax, and
Equifax objected based on overbreadth and relevancy grounds, and the Insurance Information
and Privacy Protection Act (Ins. Code, § 791.01, *et seq.*). Id. Plaintiff moved to compel
discovery, and the trial court "ordered Equifax to produce the names and addresses of all

1 persons whose claims for benefits under Colonial’s policies were assigned [to] Sharkey for
2 settlement—about 35 in all—and approved a letter to be sent by plaintiff’s counsel to these
3 individuals requesting that they consent to the release of their records by Equifax.” Id. at 789.
4 Colonial Life sought a writ of mandate barring such discovery. Id. 789-90.

5 The California Supreme Court held that “[d]iscovery aimed at determining the frequency
6 of alleged unfair settlement practices [wa]s [] likely to produce evidence directly relevant to the
7 action,” and that “[o]ther instances of alleged unfair settlement practices m[ight] also be highly
8 relevant to plaintiff’s claim for punitive damages.” Id. at 791. The court reasoned that the
9 plaintiff could establish her claim by showing either that the alleged harmful acts were knowingly
10 committed or were engaged in frequently enough to indicate a general business practice. Id.
11 The court also concluded that the letter approved by the trial court to obtain third-party insureds’
12 consent to the release of their private information satisfied the privacy provisions of Cal. Ins.
13 Code § 791.13. Id. at 790 n.10.

14 Defendant argues that because Moradi-Shalal v. Fireman’s Fund Ins. Cos, 46 Cal. 3d 287
15 (1988) eliminated a private right of action for violation of Cal. Ins. Code § 790.03, Colonial Life
16 does not justify discovery in this case. See Oppo. at 14-15. Plaintiffs disagree, arguing that
17 while an insured no longer has a private right of action for a violations of Cal. Ins. Code § 790.03,
18 the violations of the section can still be used as evidence of an insurer’s unreasonable conduct
19 in an insurance bad faith action. Reply at 3-4 (citing Rattan v. United Servs. Auto Ass’n, 101
20 Cal. Rptr. 2d 6, 12 (Ct. App. 2000); Jordan v. Allstate Ins. Co., 56 Cal. Rptr. 3d 312, 323 (Ct.
21 App. 2007)). Plaintiffs also assert that the California Supreme Court’s reasoning as to the
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1 relevancy of Colonial Life discovery in the context of a § 790.03 violation does not change when
2 it is applied to an insurance bad faith lawsuit. Reply at 4.

3 “*Colonial Life* has been followed . . . by California state courts considering not only claims
4 under § 790.03 of the Insurance Code but also common law ‘bad faith’ claims,” and thus “the
5 reasoning in Colonial Life applies whether bad faith is alleged under a statute or under a common
6 law theory.” J & M Assoc., Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA, 2008 WL 638137,
7 at *5 (S.D. Cal. Mar. 4, 2008) (citing Moore v. American United Life Ins. Co., 150 Cal. App. 3d
8 610 (1984)); see also Pioneer Elecs. (USA), Inc. v. Superior Court, 150 P.3d 198, 200, 203 (Cal.
9 2007). In this case, Plaintiffs allege bad faith by Defendant for wrongful denial of a homeowners’
10 insurance water loss. See ECF No. 1-2. As such, the Court will examine Plaintiffs’ discovery
11 request in light of the principles and procedures articulated in Colonial Life.

12 b. **Relevance**

13 Plaintiffs assert that they are seeking evidence to establish a pattern and practice of bad
14 faith denials of coverage and misinterpretation of the “Planning, Construction or Maintenance”
15 exclusion or the term “faulty workmanship” in Defendant’s insurance policies. Reply at 4.
16 Plaintiffs argue that the requested discovery is relevant to show that Defendant consistently
17 misinterpreted its insurance policies, failed to pay covered claims, and did not follow California
18 law regarding the term “faulty workmanship,”⁶ and that the discovery is thus relevant to

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20 ⁶ Plaintiffs explain that in Allstate v. Smith, 929 F.2d at 450-51, the Ninth Circuit held that
21 under California law, the ambiguous term “faulty workmanship” used as an exclusion clause in
22 an all risk policy meant “flawed quality of product worked upon,” not faulty method of
construction, and that therefore a roofing contractor’s failure to cover the exposed premises did
not exclude coverage for the resulting rain damage. Plaintiffs assert that Smith interpreted the
same exclusionary language at issue in this case and involved facts similar to the facts in this

1 Plaintiffs' insurance bad faith claim and the issue of punitive damages. MTC at 19-20; Reply at
2 2, 4, 6.

3 Defendant argues that Interrogatory 3, as drafted, is extremely overbroad and seeks
4 irrelevant documents. Oppo. at 8. The Court agrees. Defendant acknowledges that Plaintiffs
5 agreed to limit the scope of the interrogatory to insurance claims containing six factors. Id.;
6 see Arrington Decl. at 2; see also supra p. 10. Defendant explains, however, that it is unable
7 to conduct a system-wide search that includes factors 4, 5 and 6. Oppo. at 9; Seaman Decl. at
8 4. As part of the meet and confer process, Defendant searched its computer system for files
9 that satisfied factors 1, 2 and 3, and this search resulted in 10,082 claims. Seaman Decl. at 2-
10 3. Defendant argues that "the vast majority if not all" of the 10,082 claims are not directly
11 relevant to the facts of this case because they include claims that involved a leak at a location
12 other than a roof, were not limited to situations in which a contractor had started but not
13 completed roof repairs, and were not limited to claims that were denied based on the policy
14 exclusion for the negligence of the contractor. Oppo. at 9. Defendant also emphasizes that it
15 searched for any responsive files handled by the adjuster in this case and determined that there
16 are no such files. See id. at 8; Arrington Decl. at 2; Allen Decl. at 3.

17 The Court agrees with Plaintiffs that pursuant to Colonial Life, discovery regarding other
18 claims, when properly limited to the facts, insurance policy, and claims at issue in this case, is
19 relevant to the Plaintiffs' claims in this case. See J & M Assoc., Inc., 2008 WL 638137, at *5

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21
22 case. MTC at 8. Plaintiffs therefore argue that the requested discovery is relevant to show *how*
Defendant interpreted the "Planning, Construction or Maintenance" exclusion and the term
"faulty workmanship" in other claims since the Smith decision. Id. at 19-20.

1 (“pursuant to *Colonial Life*, [] discovery regarding other claims handled by [defendant] is
2 relevant to [Plaintiff’s] claims in this action, insofar as the requests seek information pertaining
3 to the same type of policy at issue in this case”). On the other hand, the Court agrees with
4 Defendant that the identified 10,082 claims do not constitute discovery that is properly limited
5 to the facts, insurance policy, and claims at issue in this case as they likely include a significant
6 number of claims that are irrelevant to the facts underlying this dispute. The Court therefore
7 finds that the scope of the interrogatory as originally drafted, and as limited by factors 1, 2, and
8 3 only, is overbroad and encompasses a significant amount of irrelevant information and is not
9 proportional to the needs of this case. The Court finds the scope of the interrogatory when
10 limited by all six factors may appropriately seek relevant information and may be proportional
11 to the needs of the case.

12 **c. Burden**

13 Defendant argues that it would be unduly burdensome, oppressive and harassing to
14 respond to Special Interrogatory 3 as limited by all six elements of Plaintiffs’ proposal because
15 it is not able to electronically search for all six elements. *Oppo*. at 8, 17-18. In support,
16 Defendant provided a declaration by Jake Seaman, a staff claims manager at Allstate Insurance
17 Company, who states that he is familiar with the “search capabilities and limitations of Allstate’s
18 electronic records,” and that his responsibilities include performing searches of such electronic
19 records for property claims reported by Defendant’s customers. *Seaman Decl.* at 1-2. Mr.
20 Seaman declares that he searched Defendant’s electronic records for claims reported after
21 January 1, 2010, caused by rain and related to properties located in Los Angeles, Riverside, San
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1 Bernardino, Orange, Imperial, and San Diego Counties, and identified 10,082 claims. Id. at 2-

2 3. Mr. Seaman further declares that

3
4 Allstate's electronic records do not have a system-wide search capability to identify
5 claims where (1) a contractor had started but not yet completed roof repairs at
6 the time that the rain claim occurred, (2) the claim was denied based on contractor
7 negligence, and (3) the location of the rain claim leak occurred in the roof as
8 opposed to windows, doors, basements, or other locations.

9 Id. at 4. Mr. Seaman explains that as a result, "Allstate would need to perform a claim by claim
10 review" to identify specific claims that involved a fact pattern described in categories (1)-(3),
11 and asserts that such review would take at least three minutes per claim. Id. at 4-5.

12 Plaintiffs do not submit any information contradicting Defendant's evidence. See Reply.
13 Rather, Plaintiffs assert that Defendant will not incur a burden because Plaintiffs will conduct
14 the manual search, not Defendant. See MTC at 21; Reply at 6. Plaintiffs explain that they will
15 send the consent letter to the 10,082 third-party insureds identified by Defendant via factors 1-
16 3, and if a third-party insured consents, they will review the file to determine relevance. See id.
17 at 5. Plaintiffs argue that Mead Reinsurance Co. authorizes this procedure because it "relieves
18 the oppression inherent in forcing the insurance company to do all this work by instead placing
19 the burden to review the claim files on the asking party." Id. at 6 (citing Mead Reinsurance Co.,
20 188 Cal. App. 3d at 322-23).

21 In Mead, the California Court of Appeal found that an insured's request for production of
22 an insurer's claims files relating to every claim similar to the claim at issue made during a six-
and-a-half-year period was oppressive, where uncontroverted declarations established that
responding to the discovery request would require manual review of over 13,000 claims files

1 and would take at least 1,083 hours. Id. at 317-20. The court reasoned that complying with
2 the request would “impose the oppressive burden upon defendants of formulating a case against
3 themselves, a requirement which goes far beyond the bounds of our adversary system of
4 justice.” Id. at 322. The court then modified the trial court’s order compelling the insurer to
5 disclose to the insured “the names and addresses of all claimants for whom claim files, . . . were
6 opened in any of . . . California offices after January 1, 1979.” Id. Notably, in reaching this
7 decision, the court stated:

8 We observe with interest, if not incredulity, that [the defendant insurer], . . . *raised*
9 *no objection to the [trial court’s] order on grounds that there was no showing of*
10 *relevancy* by [insured plaintiff] in the trial court. Conceding to the trial court’s
11 order the presumptions of validity to which it is entitled where the record is silent,
12 *we can only assume that the issue of relevancy of whatever may be in these*
13 *hundreds or perhaps thousands of claim files to be produced, if such issue was*
14 *raised at all in the trial court, was resolved in favor of [the insured plaintiff].*

15 Id. at 319 (emphasis added).

16 Unlike the insurer in Mead who did not object on relevancy grounds, Defendant in this
17 case asserts that the vast majority of the 10,082 claims it identified for Southern California are
18 not directly relevant. Oppo. at 9. As set forth above, the Court agrees with Defendant and finds
19 that the 10,082 files identified by factors 1-3 contain significant amounts of irrelevant
20 information. As such, the Court finds Plaintiffs’ reliance on Mead unavailing. The Court is not
21 willing to allow Plaintiffs to contact more than 10,000 third-party insureds when the vast majority
22 of the claims made by those insureds are irrelevant to this case. The Court also is not willing to
allow Plaintiffs to review what could amount to thousands of Defendant’s insurance claim files,
even if the insureds authorize the review, because the vast majority of the files are irrelevant to
this case and the scope of the request is not proportional to Plaintiffs’ case. See Fed. R. Civ. P.

1 26(b)(1) (a party may “obtain discovery regarding any nonprivileged matter that is relevant to
2 any party’s claim or defense and proportional to the needs of the case”).

3 Although Plaintiffs question Defendant’s purported inability to search its databases for
4 relevant claims, the unrefuted evidence establishes that Defendant does not have the capability
5 to search for claim files containing the six factors identified by Plaintiff to limit the discovery
6 request to the facts of this case. See Seaman Decl.; Collins, 2003 WL 25945842, at *6 (relying
7 on defendant insurance company’s declaration asserting that the company did not have
8 automated means of identifying the claims files responsive to plaintiff’s discovery requests); see
9 also Farmers Ins. Exchange v. Superior Court of the State of Cal. for the County of L.A., 1999
10 WL 33745423, at 15-16 n.4 (1999) (finding that the trial court abused its discretion when it
11 erroneously disregarded insurance company’s declarations establishing undue burden, because
12 “the trial court was required to assume [that the] declarations fairly state[d] the facts in terms
13 of what would have to be done by [the party asserting burden] to comply with the court’s order”
14 where the insurance company’s declarations asserted that it would be required to manually
15 review thousands of claim files to compile interrogatory responses; also observing that “insurers
16 create their computer systems to retrieve information that will be helpful to them in the conduct
17 of their business, i.e., selling insurance and handling claims,” and that “[t]here is no business
18 reason why [the insurance company] should have built a computer system capable of
19 accommodating the needs of some unknown plaintiff who will assert an unknown claim at some
20 unknown time in the future.”). As a result, the Court finds that Plaintiffs’ request as limited by
21 the identified six factors is unduly burdensome and not proportional to the needs of this case.

22

1 **d. Third Party Privacy Rights**

2 Defendant also argues that the discovery should not be permitted because non-party
3 insureds have a fundamental and compelling privacy interest in their contact information, which
4 is not discoverable absent proof of direct relevancy, careful balancing of the need for the
5 discovery against the right of privacy, and narrow tailoring of the scope of the produced
6 information. *Oppo*. at 9-13. Plaintiffs assert that Cal. Ins. Code § 791.13 and Colonial Life have
7 established a procedure that protects third-party insureds' privacy rights and they seek
8 permission to use this procedure to obtain the requested discovery. *MTC* at 22.

9 The Insurance Information and Privacy Protection Act (Cal. Ins. Code § 791.01, *et seq.*)
10 creates a right of privacy with respect to claims files maintained by insurance companies. Cal.
11 Ins. Code § 791.13 provides in relevant part the following:

12 An insurance institution, agent, or insurance-support organization shall not
13 disclose any personal or privileged information about an individual collected or
received in connection with an insurance transaction unless the disclosure is:

14 (a) With the written authorization of the individual, and meets either of the
conditions specified in paragraph (1) or (2):

15 (1) If the authorization is submitted by another insurance institution, agent, or
16 insurance-support organization, the authorization meets the requirement of
Section 791.06.

17 (2) If the authorization is submitted by a person other than an insurance
institution, agent, or insurance-support organization, the authorization is:

18 (A) Dated.

 (B) Signed by the individual.

19 (C) Obtained one year or less prior to the date a disclosure is sought
20 pursuant to this section.

21 Id. Accordingly, the discovery of insurance claims files is conditioned upon obtaining the written
22 consent of the third-party insureds in response to a court-approved request form, provided that

1 such third-party insureds sign and date a written authorization form within one year prior to the
2 date of the disclosure. Id.; see also Colonial Life, 31 Cal. 3d at 792-94 n.10; Mead Reinsurance
3 Co. v. Superior Court, 188 Cal. App. 3d 313, 321-22 (Cal. Ct. App. 1986).

4 The Court acknowledges that the procedure suggested by Plaintiffs may be appropriate
5 in some cases. However, given the extremely large number of identified claims (10,082) and
6 the fact that many of them will be irrelevant to the facts of this case, the Court finds that the
7 requested procedure would inappropriately impact the privacy rights of numerous third-party
8 insureds and is not proportional to the needs of this case, and the Court declines to authorize
9 its use for the 10,082 claims.

10 e. **Conclusion**

11 Defendant has established that Brett Allen, the claims adjuster who denied Plaintiffs'
12 claim, did not handle any other similar, relevant claims. See Allen Decl. at 3; Arrington Decl. at
13 2. Defendant also has established that it is unable to conduct the electronic search requested
14 by Plaintiffs in limiting Special Interrogatory 3 to six factors and that it would be extremely
15 expensive and time consuming to conduct the manual search that would be required. See
16 Seaman Decl.; see also Arrington Decl. at 2. The search that Defendant was able to conduct
17 resulted in more than 10,000 claims, which undoubtedly include a significant number of
18 irrelevant claims. Plaintiffs' assertion that some of the 10,082 files *may* contain relevant claims
19 is insufficient to justify the extremely time- and labor-intensive search of Defendant's files. See
20 Fed. R. Civ. P. 26(b)(1); J & M Associates, Inc., 2008 WL 638137, at *6 (finding that the burden
21 and expense of the requested discovery outweighed its likely benefit, "notwithstanding [the
22 court's] finding that the requests sought relevant information," where defendant insurance

1 company provided an affidavit “demonstrate[ing] that [it] would incur enormous burden” if it
2 were required to respond to plaintiff’s discovery requests); Collins, 2003 WL 25945842, at *7
3 (finding that “the overly burdensome response requirements, the implications for third parties’
4 privacy rights, and the associated costs to [the insurance company] outweigh [plaintiff’s]
5 showing of relevance and need for the [requested] discovery” in an insurance bad faith action).

6 The Court notes however that Plaintiffs are entitled to conduct discovery to investigate
7 the statements contained in Mr. Seaman’s declaration and/or to determine the capabilities of
8 Defendant’s computer system. For example, Plaintiffs may depose Mr. Seaman or a corporate
9 employee who is most knowledgeable about how Defendant maintains its electronic records and
10 the specific search capabilities of Defendant’s electronic records, in order to identify additional
11 search terms and/or queries that may enable Plaintiffs to limit their discovery request and
12 minimize the burden on Defendant associated with searching its records for relevant claims. See
13 J & M Associates, Inc., 2008 WL 638137, at *6 (denying plaintiff’s motion to compel without
14 prejudice and noting that the plaintiff could depose defendant’s personnel “regarding the
15 organization and location of the other claim files.”); see also Advisory Committee’s Notes on
16 2015 Amendments to Fed. R. Civ. P. 26 (stating that “[f]raming intelligent requests for
17 electronically stored information . . . may require detailed information about another party’s
18 information systems and other information resources.”). Accordingly, the Court **DENIES**
19 **WITHOUT PREJUDICE** Plaintiffs’ motion to compel further responses to Special Interrogatory

20 No. 3.

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1 **SUMMARY AND CONCLUSION**

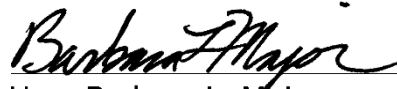
2 For the foregoing reasons, the Court:

3 (1) **DENIES AS MOOT** Plaintiffs' motion to compel further responses to Special
4 Interrogatories Nos. 4-8; and

5 (2) **DENIES WITHOUT PREJUDICE** Plaintiffs' motion to compel further responses to
6 Special Interrogatory No. 3.

7 **IT IS SO ORDERED.**

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9 Dated: 9/2/2016


10 Hon. Barbara L. Major
11 United States Magistrate Judge
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