PARTIES/ATTORNEYS

Plaintiff	Sharon Canchola, Jesus Noah Ibarra, Eliana Christie and Ezra Canchola	Ryan Buchanan Garrett May Robert May The May Firm Injury Lawyers, Inc
Defendant	Smanytime, Inc. and Jason Jesse Castillo	Sharon C. Collier Dustin W. Cameron Freeman Mathis & Gary, LLP

TENTATIVE RULING

For all the reasons discussed below, the motion to compel further response is granted pursuant to the terms outlined in this order. Further response must be submitted within 30 days. The request for sanctions is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

The complaint alleges that plaintiffs, Sharon Canchola, Jesus Noah Ibarra, Eliana Christie and Ezra Canchola and defendant Jason Jesse Castillo, who was operating a vehicle as an agent for defendant SMAnytime Inc., were involved in a motor vehicle collision on August 1, 2023. The collision caused serious injuries to plaintiffs. They filed their complaint for negligent entrustment and negligence per se on March 19, 2025.

Plaintiffs move to compel further responses to form interrogatories 13.1 and 13.2 from defendants. Opposition and reply have been filed. All papers have been considered.

If a propounding party is not satisfied with the response timely served by a responding party, the propounding party may move the court to compel *further* responses. (Code Civ. Proc. §§2030.300 [interrogatories].) To be successful on this motion the propounding party must demonstrate that the responses were incomplete, inadequate or evasive, or that the responding party asserted objections that are either without merit or too general. (§§ 2030.300, subd. (a)(1)-(3).)

Here, the discovery at issue are responses to two separate form interrogatories. Form Interrogatory 13.1 asks whether defendant or anyone acting on defendant's behalf conducted surveillance of any individual involved in the incident or any party to this action, and if so, for identifying information about the individual and location of the photos, film or videotape. Form Interrogatory 13.2 asks if a written report had been prepared on the surveillance and, if so, who prepared the report and who has a copy.

Defendants objected to the interrogatories, asserting both attorney-client privilege and work product protection. Plaintiffs move to compel further response, arguing the objections are without merit. The court notes that although defendants assert objections based on the attorney-client privilege, they do not claim in opposition that the surveillance activity reports are protected as privileged communications under Evidence Code section 954. Thus, the court's analysis will focus on work product protection. Plaintiff argues the information is per se discoverable. Defendant argues that the information is per se protected, or, alternatively, that plaintiff has failed to satisfy her burden in making her request.

The attorney work-product doctrine provides two levels of protection for attorney work product—absolute protection and qualified protection. The attorney work product doctrine absolutely protects from discovery writings that contain an "attorney's impressions, conclusions, opinions, or legal research or theories." (Code Civ. Proc., § 2018.030, subd. (a).) On the other hand, general work product is entitled to conditional or qualified protection, meaning the court may order disclosure if it determines that "denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (Code Civ. Proc. § 2018.030, subd. (b); *Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810, 815.)

Whether specific material is protected work product must be resolved on a case-by-case basis. (*Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 135, 86 Cal.Rptr.2d 180.) "In camera inspection is the proper procedure to evaluate the applicability of the [attorney] work product doctrine to specific documents, and categorize whether each document should be given qualified or absolute protection." (*Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 121.)

Surprisingly, there is no recent authority dealing with claims of work product protection for photos, videos, etc. prepared under an attorney's direction."" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2025) ¶ 8:243.) Plaintiffs nevertheless argue that "California has long held that surveillance footage and photos are subject to discovery and, further, that such evidence is not protected by the attorney-client or work-product privilege" citing *Suezaki v. Superior Court* (1962) 58 Cal.2d 166.

In *Suezaki*,[1] defendants' attorney hired an investigator to take motion pictures of plaintiff without the latter's knowledge. Defendants discovered the existence of the film in compelled response to interrogatories. Plaintiff then moved to compel production of the film. The trial court found that although plaintiff made a sufficient showing of good cause for production (which remains a prerequisite to a motion to compel), the film was privileged communication and therefore it had no discretion to order it produced. The appellate court agreed that good cause existed "both in order to protect against surprise, and in order to prepare examination of the person who took the picture" but held that the film was not protected by attorney-client privilege because it was not a communication made by the client to the attorney. The court then considered whether the film was the result of work product of the attorney and thus protected. (*Suezaki, supra*, 58 Cal.2d at 177— "They urged that undoubtedly the films were the result of the work product of the attorney, which is correct, and contend that for that reason along they are privileged as a matter of law, which is incorrect.") It held that "simply because the material involved is the "work product" of the attorney [does not mean the court] can or should deny discovery. *Something more must exist*. The trial court must consider all the relevant factors involved and then determine whether, under all the circumstances, discovery would or would not be fair and equitable." (*Id.* at p. 178.) The appellate court remanded the case back to the trial court to permit it to exercise its discretion and decide whether on the showing that has or may be made it should deny, grant, or conditionally grant the order. (*Id.* at 179.)

Based on the above summary, the court disagrees with plaintiff's assertion that *Suezaki* "established the fundamental principle that surveillance evidence is discoverable because the opposing party's ability to prepare for cross-examination and impeachment outweighs any claimed privilege." (Reply, p. 2, ll. 5-7.) *Suezaki* does not stand for the proposition that surveillance videos are per se discoverable, nor does it supersede the current statutory requirements regarding burdens of proof. It is, in fact, consistent with the current framework to the extent it requires a careful balancing of the circumstances.

[1] *Suezaki* was decided before the attorney-client privilege and work product protection were codified. In 1963, the Legislature recognized the need to protect the privacy and work efforts of attorneys and adopted the predecessor to section 2018. (*Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 133.)

Turning, then, to the current framework, a party asserting the attorney work product privilege has the burden of proving preliminary facts demonstrating the doctrine applies to the information or material in question. (*League of California Cities v. Superior Court* (2015) 241 Cal.App.4th 976, 993; see also *Mize v. Atchison, T. & S. F. Ry. Co.* (1975) 46 Cal.App.3d 436, 447–448 [also noting that "Evidence Code section 400 defines preliminary fact as a fact upon which depends the admissibility or inadmissibility of evidence and includes therein such facts as show the existence of a privilege"]; *Coito, supra*, 54 Cal.4th at pp. 495-496 [upon adequate foundational showing that disclosure would reveal attorney work product, the trial court "should then determine, by making an in camera inspection if necessary, whether absolute work product protection applies to some or all of the material"].) An opposing party seeking to overcome a claim of qualified privilege has the burden of establishing prejudice. (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 499; *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 912.)

Defendants argue that surveillance videos are entitled to absolute protection, citing *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214 and *Zurich American Insurance Co. v. Superior Court* (2007) 155 Cal.App.4th 1485.[2] The court disagrees.

In *Zurich,* the court characterized the dispute as follows: "Zurich []contends the trial court and the discovery referee whose reports it adopted used the wrong standard in overruling its claim of attorney-client privilege in this discovery dispute with Watts Industries, Inc. (Watts). We agree that the challenged orders employed an overly restrictive definition of the attorney-client privilege, and grant relief on that basis." (*Zurich, supra,* 155 Cal.App.4th at 1490.) It did not make any findings about work product protection.

In *Nacht,* the court determined that production of a list of potential witnesses interviewed by opposing counsel in response to Form Interrogatory 12.3 would necessarily reflect counsel's evaluation of the case by revealing which witnesses or persons who claimed knowledge of the incident counsel deemed important enough to interview. For this reason, the information was deemed absolutely protected. (*Nacht, supra,* 47 Cal.App.4th at 217.) But *Nacht* was significantly limited by the California Supreme Court in *Coito, supra.* "Because it is not evident that form interrogatory No. 12.3 implicates the policies underlying the work product privilege in all or even most cases, we hold that information responsive to form interrogatory 12.3 is not automatically entitled as a matter of law to absolute or qualified work product privilege. Instead, the interrogatory usually must be answered. However, an objecting party may be entitled to protection if it can make a preliminary or foundational showing that answering the interrogatory would reveal the attorney's tactics, impressions, or evaluation of the case, or would result in opposing counsel

[2] Although these cases consider whether witness statements are protected, the court determines that the law nevertheless closely analogous.

taking undue advantage of the attorney's industry or efforts. Upon such a showing, the trial court should then determine, by making an in camera inspection if necessary, whether absolute or qualified work product protection applies to the material in dispute." (*Coito*, *supra,* 54 Cal.4th at p. 502—"we cannot say that it will always or even often be the case that a witness list responsive to form interrogatory No. 12.3 reflects counsel's premeditated and carefully considered selectivity"; *McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 474.) Here, defendants have made no such preliminary or foundational showing that answering the interrogatory would reveal the attorney's tactics, impressions, or evaluation of the case.

In summary, a surveillance investigation is not, in and of itself, privileged, nor do defendants cite any binding authority holding that such investigations are privileged absent preliminary facts establishing the claim of privilege. In response to Nos. 13.1 and 13.2, defendants have not set forth any preliminary facts supporting a claim that all of the information sought in each interrogatory and their subparts, is protected by the attorney work product privilege. Therefore, neither the court nor plaintiff can determine whether the asserted privilege applies, or whether there exists facts or information that are properly discoverable. (*Coito, supra*, 54 Cal.4th at p. 495 [discussing essential facts necessary to inform the court's analysis of whether absolute or qualified work product privileges apply].)

Accordingly, defendants are ordered to provide verified further responses to Nos. 13.1 and 13.2, and each of their subparts. Defendants' verified further responses to Nos. 13.1 and 13.2 shall set forth preliminary facts necessary to support a claim that the information sought in these interrogatories, and each of their subparts, is protected by either an absolute or qualified attorney work product protection, and, to the extent defendants are withholding information based on the attorney-client privilege, facts necessary to support a claim based on that privilege. The preliminary facts must be sufficient to enable plaintiff and, if necessary, the court, to determine whether the asserted privilege applies, or whether there exists information or materials, or underlying facts referenced within a qualifying communication, that are properly discoverable.

Defendants ask this court to consider recent trial court decisions concluding that surveillance materials, such as those at issue, are protected under a qualified attorney work product privilege. (Opp. at p. 4, fn. 1.) Even if these unrelated cases involve the same issue as this case, "a written trial court ruling has no precedential value. [Citation.]" (*Santa Ana Hospital Medical Center v. Belshe* (1997) 56 Cal.App.4th 819, 831.) In addition, "[a] trial court judgment cannot properly be cited in support of a legal argument, absent exceptions not applicable here." (*San Diego County Employees Retirement Assn. v. County of San Diego* (2007) 151 Cal.App.4th 1163, 1184.) As the isolated rulings cited by defendants have no precedential value

and are not citable authority, the court will not consider these trial court decisions in its analysis.

Defendants assert that any responses to the interrogatories must be limited to "yes" or "no" responses that verify only the existence of such material, with any further detail deferred until after plaintiffs' deposition and subject to protective conditions barring dissemination and limiting use. Without a preliminary or foundational showing that answering the interrogatory would reveal the attorney's tactics, impressions, or evaluation of the case, or would result in opposing counsel taking undue advantage of the attorney's industry or efforts, the court is without any basis for making decisions deferring responses or limiting use of the responsive information.

The motion to compel is granted pursuant to the terms outlined in this order. The request for sanctions is denied.