PARTIES/ATTORNEYS

Plaintiff	Serapio Munoz Venegas Olivia Venegas	Robert J. Stoll, III Robert J. Stoll, III
Defendant	Kinyon Construction Inc Brannon John Morales	Lora D. Hemphill

PROPOSED TENTATIVE

On July 16, 2024, plaintiffs Serapio Munoz Venegas (Serapio) and Olivia Venegas (Olivia) filed a complaint on standard Judicial Council forms against defendants Kinyon Construction, Inc., and Brannon John Morelos (collectively, defendants) for motor vehicle negligence. According to the complaint, on January 21, 2023, in Santa Maria, defendant Morelos was driving a 2007 Ford truck when he caused the vehicle to collide with a 2015 Toyota Sienna driven by plaintiff Serapio, in which Olivia was a passenger, causing significant personal injuries to Olivia. On August 30, 2024, the court signed a stipulated order striking all requests for punitive damages, without prejudice. Both defendants have been served, but neither has answered. The court at an April 1, 2025, CMC ordered the parties to meet and confer regarding authorization for release of protected psychological treatment records from Neuro 8 Connect. On September 9, 2025, at another CMC, the court held a discussion about attending mediation.

On September 16, 2025, plaintiffs filed a "Motion to Quash Defendants' Subpoenas" for Olivia's school records from Santa Maria High School (Santa Maria) and California Polytechnic State University at San Luis Obispo. (Cal Poly.) Exhibit A is the deposition subpoena for production of business records served on Santa Maria, while Exhibit B is the deposition subpoena of business records served on Cal Poly, indicating in both cases that on September 19, 2025, each deponent was required to provide five (5) categories of documents, with subparts, as follows:

- "All writings that pertain to the scholastic achievement or vocational training of Plaintiff(s) including grade levels completed, performance evaluations, courses requested, courses completed, test scores, grades obtained, disciplinary actions taken, leave of absence, and attendance records";
- "All writings that pertain to Plaintiffs' enrollment including deficiencies in payment of fees or tuition, scholastic performance, personal conduct, attendance or medical condition;":
- All writings that pertain to the athletic achievement of Plaintiff(s) including participation in any sporting activities, statistics videos, or other writings pertaining to Plaintiff's participation in any sporting activities" ;
- All writings that excuse Plaintiffs from engaging in any physical or sporting activities"
- All writings that pertain to any scholarships including: [¶] a. All writings that describe the scholarship awarded including all eligibility requirements and reinstatement policies"; [¶] b. With regard to athletic scholarships, all writings used to evaluate Plaintiffs' athletic performance or ability including videos, statistics, or other writings evaluating athletic performance of ability" [¶] c. All writings that monitor or evaluate Plaintiffs on-going scholarship eligibility such as academic achievement or progress, participation or

performance in sports attendance, medical condition, personal conduct, enrollment, deferment, reinstatement, and all matters pertaining to probation, suspension, termination, or revocation of the scholarship"; [¶] d. All communications sent to or received from anyone concerning any scholarship awarded to Plaintiff Plaintiff's on-going eligibility for the scholarship."

On September 10, 2025, plaintiffs served objections to both subpoenas. Olivia objected to the production of any documents discussed in the subpoenas, claiming broadly that the requests invade her right of privacy, without any compelling need, citing to *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 524-525.[1] Plaintiffs' counsel indicated that the letter should serve as an attempt to meet and confer.

Plaintiffs filed a motion to quash each subpoena pursuant to Code of Civil Procedure[2] sections 1987.1 and 1985.3, subdivision (g). Mr. Stoll, plaintiffs' counsel, has filed a declaration, although the declaration is silent about any meaningful efforts to meet and confer, other than sending the objections on September 10, 2025. Mr. Stoll contends that "due to the impending date of copying, Plaintiff" filed the motion to quash. Plaintiffs argue that Olivia has a state constitutional right of privacy to her scholastic records possessed by both institutions, and both subpoenas include requests for all school records, without any limitations, and seeking all medical records about conditions "unrelated to the injuries or conditions claimed in this case." According to plaintiffs, the subpoenas are overbroad, harassing, invasive, and do not demonstrate a compelling interest for the information.

Defendants have filed opposition. They note initially that plaintiffs, despite requests for resolution from defendant (as revealed in Exhibits 5, 6, and 7 attached to Lora Hamilton's declaration[3]), engaged in no meaningful meet and confer efforts. On the merits, defendants claim the records required from Santa Maria and Cal Poly are directly relevant to the lawsuit. They point out that the accident at issue occurred during Olivia's junior year at Santa Maria. They point to Olivia's deposition testimony from August 12, 2025 (a transcript of which is attached as Exhibit 2 to Ms. Hemphill's declaration), in which she testified that she was currently enrolled at Cal Poly as a second-year student. She also testified that her GPA in high school was 4.2, and at

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[1] Plaintiff failed to note that this case was disapproved by our high court in *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557, footnote 8.

[2] All further statutory references are to this Code unless otherwise indicated.

[3] For the record, Exhibit 6 contains a September 18, 2025 letter, authored by Robert Stoll, in which he contends that "given the short deadline within which we had to file a motion to quash or modify the subpoenas, the motion has been filed. We remain willing to 'meet and confer' with you about the possibility of obtaining more information that is more targeted and narrowly tailored. Please feel free to call . . . ." Exhibit 7 contains a string of emails between Lora Hemphill and Robert Stoll, starting on September 25, 2025 (after the September 18, 2025 letter by Mr. Stoll in Exhibit 6). On September 25, 2025, Ms. Hemphill sent an email to Mr. Stoll asking for time to discuss the subpoenas, and on September 26, 2025, Mr. Stoll replied, inviting Ms. Hemphill to "call anytime." In an email dated October 17, 2025, Ms. Hemphill indicated to Mr. Stoll that she "just tried to reach you on your cell," and asking for a time to talk. The same was repeated on November 6, 2025, and on November 26, 2025, apparently without reply from Mr. Stoll.

Cal Poly was 3.2: that she has taken "MRIs. . . for injuries that [she] attributes to the January 2023 car accident"; that she played sports in high school, namely tennis, on the varsity team; that in high school she had to stop playing tennis in her senior year because of the pain suffered from the car accident, she was afraid of getting further injured, "and I had too many appointments to attend, so I couldn't practice and then the games"; that as a result of the accident she had to go to Cal Poly, rather than UCLA, even though she received scholarships from UCLA; that she chose Cal Poly despite being accepted to UCLA because she had to stay close to home and family, given the nature of injuries she suffered in the accident; that she had a hard time concentrating in classes at Cal Poly; and that she "noticed a lot of grade dipping from the accident and I just didn't think, like, it should have been something I would have still carried this far, but I noticed a little bit of that following me besides being, like, almost" for some time. Plaintiff testified that her high school grades fell after the accident particularly in chemistry and precalculus, claiming she had an A in chemistry before the accident, which fell to an F after the accident; and with a pre-accident grade in precalculus of either an A- or B+, falling to a "C or a D" post-accident. Plaintiff testified that she received "special accommodations" while in high school based on the impact of the accident, under a "504 plan," which helped her. She also testified that she has received "special accommodations" at Cal Poly, based on the impact the accident.

In addition to plaintiff's testimony, Ms. Hemphill, defendant's attorney, declares that plaintiff's records from "Neuro 8 [which apparently defendants have received] indicate a psychological evaluation was performed by Educational Psychologist Marisa Roman Perry, PPS, MA, LEP." In that evaluation report, it was indicated that plaintiff was referred "for social and emotional assessment and treatment planning due to concerns about mood instability and anxiety following the accident at issue in this lawsuit. In Dr. Perry's Psychological Evaluation Report she indicates 'Olivia's attention and executive functioning have declined to the incapacitating range of function post-accident.'" Defendant has included a redacted copy of the Neuro 8 report authored by Dr. Perry, and indicates they will provide a full, unredacted copy to the court upon request.

Defendant makes the following ripostes: 1) Olivia's academic records at both Santa Maria and Cal Poly are "relevant and not privileged"; and 2) any right to privacy must give way to disclosure. Defendant argues that Olivia's mental state, her physical and mental functioning, are directly relevant to this lawsuit, based on both her testimony during deposition and as revealed in Dr. Perry's report, meaning all the requests for documentation in both subpoenas should be produced.

Section 1987.1, subdivisions (a) and (b)(1) provide that if a subpoena requires the production of documents, a party may file a motion quashing the subpoena entirely, modifying it, or directly complying with those terms or conditions as the court shall direct, including protective orders. Section 1985.3, subdivision (a)(1), governs subpoenas for, inter alia, "personal records" maintained by a "private or public preschool, elementary school, secondary school, or

postsecondary school as described in Section 76244 of the Education Code."[4] Section 1985.3, subdivision (g) contemplates that any consumer whose personal records are sought and who is a party to the civil action may bring a motion under section 1987.1 "to quash or modify the subpoena," and notice of the motion shall be given at least five days prior to the date of the production. Courts have interpreted the terms "upon motion reasonably made" to mean notice and hearing requirements generally application to motions. (*St Paul Fire & Marine Ins. Co. v. Superior Court* (1984) 156 Cal.App.3d 82, 86.) This means the rules detailed in section 1005 (a hearing at least 16 court days after servicing and filing, 9 court days for opposition, and 5 calendar days for opposition). (*Titmas v. Superior Court* (2001) 87 Cal.App.4th 738, 743.) Defendant does not contend that plaintiffs' motion is procedurally improper, and the court will therefore assume no procedural improprieties exist.

There can be little doubt that the school records in the possession of either Santa Maria or Cal Poly are protected by Olivia's right of privacy under the state and federal Constitutions, and most notably article 1, section 1 of the California Constitution, and defendant does not contend otherwise. It is settled that a party is afforded protections from discovery if disclosure would impair a person's inalienable "right of privacy" as provided by California Constitution, article 1, section 1 and the federal Constitution. But the privilege is qualified, not absolute. The court must carefully balance the right of privacy against the need for discovery. The showing required to overcome the protection depends on the nature of the privacy right; in some cases, a simple balancing test is sufficient, while in others, a compelling interest must be shown. "Only obvious invasions of interests fundamental to personal autonomy must be supported by a compelling interest." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 557.) In this regard, our high court has crafted a three-part test for purposes of disclosure, meaning the party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. (*Id*. at p. 552.) The party seeking information may raise in response whatever legitimate and important countervailing interests that disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing interests. (*Ibid.*) The more sensitive the information (e.g., personal financial information, etc.), the greater the need for discovery must be shown (i.e., the more compelling the reason must be to warrant disclosure).[5] (See, e.g.,

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[4] Education Code section 76244 provides as follows: "Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The community college district shall make a reasonable effort to notify the student in advance of compliance with a lawfully issued subpoena, and in compliance with a court order, if lawfully possible within the requirements of the order."

[5] As noted in *Williams*, a threatened invasion of privacy can be extremely grave, and to the extent it is, disclosure may be appropriate only when there is a compelling countervailing interest and the absence of alternatives. (*Williams, supra,* 3 Cal.5th at p. 557.) But it is error to conclude that an egregious invasion is involved in every request for discovery of private information. Courts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion, and against that showing must

Grafilo v. Soorani (2019) 41 Cal.App.5th 497, 508; see also *Mathews v. Becerra* (2019) 8 Cal.5th 756, 781 [only obvious invasions of interests fundamental to personal autonomy must be supported by a compelling interest].) Thus, where several types of personal information are sought, the court must consider the possibility of requiring partial disclosure rather than denying discovery outright ***with regard to each category of protected information***. (*Alch v. Superior Court* (2008) 165 Cal.App.4th 1412, 1437.)

Factored into this calculus are the concerns identified in *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, which addressed the interplay between the right of privacy and the initiation of a lawsuit by a plaintiff (and what is waived and not waived when plaintiff does this). "In determining whether one has waived the right of privacy by bringing suit, our Supreme Court has noted that although there may be an implicit partial waiver, the scope of such waiver must be narrowly, rather than expansively construed, so that plaintiff will not be unduly deterred from instituting lawsuits by fear of exposure of private activities. An implicit waiver of a party's constitutional rights encompasses only discovery directly relevant to plaintiff's claims and essential to the fair resolution of the lawsuit. (*Id*. at p. 1014.) Accordingly, the burden is on the party seeking constitutionally protected information to establish direct relevance. (*Id.* at p. 1017.)

The court is troubled by plaintiff's meet and confer efforts, despite numerous outreach attempts by defense counsel after the motion was filed. Although plaintiff's counsel indicated in a September 18, 2025 letter sent to defense counsel that he was willing to meet and confer, on at least three occasions defense counsel called and attempted to schedule a meeting, and it appears plaintiff's counsel did not respond.

On the merits, the court rejects the extreme positions taken by both sides. It is just not true, as plaintiff contends, that all of the information requested in all five requests (including its subparts) is protected by the constitutional right of privacy, necessitating a compelling showing by defendant for disclosure. At the same time, defendant is wrong to suggest in its briefing that all of the academic records from both institutions seems governed by the traditional relevance test under section 2017.010 [discovery appropriate for matter that is relevant on the subject matter involved in the pending action if the matter is admissible or would lead to admissible evidence].)[6] Most of the academic materials sought seem akin or related to "fundamental"

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weigh the countervailing interests the opposing party identifies. (*Ibid.*) "Only obvious invasions of interests fundamental to personal autonomy must be supported by a compelling interest. . . ." (*Ibid.*)

[6] Defendant seems to place too much reliance, as detailed in Ms. Hemphill's declaration, on the Neuro 8 Connect psychosocial evaluation report authored by Dr. Marisa Romano Perry. Although Dr. Perry apparently concluded in the report that "Olivia's attention and executive functioning have declined to the incapacitating range of function post-accident," there is no indication at all that Dr. Perry examined Olivia's academic records in making this determination (in fact, defendant fails to explain what empirical evidence Dr Perry relied on to support this conclusion). Defendant has failed to draw a sufficiently clear nexus between Dr Perry's statement and plaintiff's academic records in possession of either Santa Maria or Cal Poly to warrant the extent and nature of intrusion as requested. The court adopts an incremental approach to the release of such private information in either deponents' possession, requiring a more detailed factual foundation to support each request.

interests of personal autonomy, as contemplated by *Williams*. A middle path is appropriate, calibrating plaintiff's expectation of privacy at issue with the countervailing reasons for disclosure (and fairness to defendant). Neither wholesale preclusion nor wholesale productions is appropriate. In the end, the court will follow the directions outlined in *Alch v. Superior Court, supra,* 165 Cal.App.4th at page 1437, noted above, allowing limited disclosure to certain categories of documents, and no more. The court will focus on each institution separately despite the fact the requests made for each school is identical.

As for Santa Maria, the court finds the following information ***directly*** relevant to the lawsuit, meaning plaintiff cannot expect to have a reasonable expectation of privacy based on her lawsuit and her deposition testimony under the circumstances.

- Plaintiff's attendance records in her junior and senior year (there is no reason to provide records from sophomore and freshmen year). Plaintiff testified that she missed school as a result of the accident, and these years will provide an adequate basis for comparison.
    - Defendant has not made a compelling need showing for any other enrollment or attendance records. Nor has defendant made anything close to an adequate showing for records showing a deficiency in payment of fees or tuition, or for release of records involving plaintiff's personal conduct.
- All records associated with defendant's accommodations (associated with the 504 plan), as plaintiff testified that she received accommodations as result of the accident. This is limited to plaintiff's junior and senior years.
- Records associated with plaintiff's time on the tennis team during her junior and senior years, and records that discuss her presence or absence on the tennis team. Plaintiff testified that she stopped playing tennis as a result of the accident. This would include any medical records that exist showing any physical manifestations of the accident that prohibited plaintiff from playing. No other medical records, unless they involve similar injuries to those caused by the accident, are required to be produced.
    - Defendant has not made a compelling need showing for any other records involving any other sport. Indeed, there is no indication at all that plaintiff played any other sport. The mere possibility of this is not enough. There are other discovery vehicles that can be utilized as precursor.
- Plaintiff's academic records for the classes involving chemistry and precalculus (again, in the junior and senior year). Plaintiff testified that her grades declined substantially in these classes --but only these classes -- as a result of the accident. This would include any observations made by instructors/administrators about the precipitous grade slide, and any tutoring she received in these two classes, as plaintiff testified that she had teacher's help "in tutoring chemistry. . . ."

- It is true that during her deposition testimony, plaintiff testified that there was "a lot of grade dipping from the accident . . .." and that her high school grades" fell after the accident. But only these two classes were discussed. On this record, at this time, defendant has not made a compelling need showing for the disclosure of any other academic records for any other classes during this same time (i.e., any other scholarships or other scholastic records for any other grade levels). There are alternatives to getting this information through other discovery vehicles, and once that has been accomplished, defendant can revisit the propriety of a deposition subpoena.

As for Cal Poly, the court finds the following information is ***directly*** relevant to the lawsuit, meaning plaintiff cannot have a reasonable expectation of privacy in the materials based on the nature of her lawsuit and her deposition testimony under the circumstances:

- Any accommodations plaintiff has received at Cal Poly, as plaintiff testified that she was accommodated because of the impact of the accident; plaintiff expressly testified during her deposition that she received accommodations because of the accident at issue.
- Records of any scholarships plaintiff was awarded by Cal Poly prior to plaintiff's decision to accept a place a Cal Poly. Plaintiff testified that she declined to go to UCLA as result of the accident (despite being accepted to UCLA), and defendant has shown a compelling need for this information to the extent if shows why plaintiff may have accepted a place at Cal Poly.
- Other than these two categories, defendant has not made a compelling need for any other documents in possession of Cal Poly.

The court is taking an incremental approach to the discovery issues here, balancing the substantial privacy interests at play in plaintiff's school records with defendant's need to obtain limited categories of documents following plaintiff's testimony for a defense, as no other discovery vehicles remain available to obtain that information. The parties should come prepared at the hearing to discuss whether specific documents should or should not be released, and whether they should or should not be included in the court's order. The court reserves the right to appoint a discovery referee, potentially at the parties' expense, if the parties cannot agree on what documents should be released in light of the court's determinations.

No party asks for sanctions. No sanctions will be awarded.

The parties are directed to appear at the hearing.