

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JANE HINRICHS, JEFFREY HART,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

CASE NO. 2:21-cv-00080-RAJ-BAT

**ORDER GRANTING MOTION TO
COMPEL**

Defendant Allstate Insurance Company seeks an order compelling Plaintiff Jane Hinrichs (hereinafter “Plaintiff”) to fully answer interrogatories and produce documents related to her alleged injuries and damages, need for future surgery, and alleged bad faith conduct of Allstate’s handling of her underinsured motorist (“UIM”) claim; an order compelling Plaintiff to work cooperatively with Allstate in engaging an e-discovery vendor at Allstate’s expense; and for an award of attorney fees pursuant to Fed. R. Civ. P. 37(a)(5). Plaintiff does not dispute that the discovery sought by Allstate is relevant, but argues that it is cumulative and duplicative, overly broad, harassing and annoying. Dkt. 39.

Having carefully reviewed the parties’ submissions, the Court finds that Allstate’s motion should be granted.

BACKGROUND

This case arises from a motor vehicle accident at the Kingston ferry terminal on July 22, 2018. Plaintiff, who was a passenger in a car driven by her friend, Leeanne Burwell, got out of the car near the ticket booth just as Ms. Burwell, as instructed by the ticket attendant, pulled

1 forward. The car's tire rolled over Plaintiff's right foot/ankle and fractured her right ankle.
2 Plaintiff claims \$950,000 in general damages and for pain and suffering and \$25,000 in future
3 treatment related to her injury. Plaintiff asserts the injury continually and adversely impacts all
4 aspects of her life, work and relationships with her husband, family, and friends, and with
5 hobbies and activities Plaintiff engaged in prior to the accident. Dkt. 1-1, ¶ 3.5; Declaration of Al
6 Roundtree ("Roundtree Decl."), Ex. A (Rog. Nos. 3 and 5); Ex. B.

7 Plaintiff asserted a claim against Ms. Burwell, whose insurance carrier, USAA, offered
8 \$50,000 policy limits. Plaintiff has not accepted this offer. Plaintiff also made a UIM claim to
9 her insurer Geico and to her husband's insurer, Allstate for their combined policy limits of
10 \$250,000.00. Both the Geico and Allstate policies contain "anti-stacking" provisions that limit
11 Plaintiff's total UIM recovery to the maximum benefits payable by the policy with the highest
12 UIM limit, with Geico and Allstate each to bear its proportional, pro-rata share of the maximum
13 amount. Allstate's policy has the highest UIM limit (\$250,000) and thus, Plaintiff's combined
14 recovery from Geico and Allstate may not exceed this amount. As Plaintiff has already recovered
15 \$100,000 from Geico, she can recover only an additional \$150,000 from Allstate in UIM
16 benefits.

17 After evaluating her claim, Allstate applied an offset for USAA's \$50,000 policy limits
18 offer and the \$10,000 in PIP benefits that Allstate had already paid, and offered Plaintiff an
19 additional \$130,365.69 in UIM benefits, plus *Winters* fees. Plaintiff rejected the offer and
20 refused to negotiate. Dkt. 37 at 3. Plaintiff sued Allstate seeking UIM policy limits and alleged
21 bad faith and violation of the Insurance Fair Conduct Act ("IFCA") and Consumer Protection
22 Act ("CPA").
23

1 DISCUSSION

2 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
3 party’s claim or defense....” Fed. R. Civ. P. 26(b)(1). Information is relevant if it is “reasonably
4 calculated to lead to the discovery of admissible evidence.” *Survivor Media, Inc. v. Survivor*
5 *Prods.*, 406 F.3d 625, 635 (9th Cir. 2005) (quoting *Brown Bag Software v. Symantec Corp.*, 960
6 F.2d 1465, 1470 (9th Cir. 1992)). In addition to relevance, the Court must determine whether
7 discovery is proportional, “considering the importance of the issues at stake in the action, the
8 amount in controversy, the parties’ relative access to relevant information, the parties’ resources,
9 the importance of the discovery in resolving the issues, and whether the burden or expense of the
10 proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

11 The Court has broad discretion to compel disclosure of discovery. *Phillips ex rel. Estates*
12 *of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). “The party who resists
13 discovery has the burden to show that discovery should not be allowed, and has the burden of
14 clarifying, explaining, and supporting its objections.” *Cable & Computer Tech., Inc. v. Lockheed*
15 *Sanders, Inc.*, 175 F.R.D. 646, 650 (C.D. Cal. 1997). Pursuant to Fed. R. Civ. P. 37(a)(4), an
16 evasive answer is treated as a failure to respond.

17 At issue are Plaintiff’s responses to Interrogatories (“Rogs”) 3, 6, 7, 11, 13-14, and 16;
18 and Requests for Production (“RFP”) 2-6, 14-20, 22-24, 26-27, 41-42, 46-48. *See* Dkt. 38,
19 Declaration of Al Roundtree, Ex. A; Ex. B. It is undisputed that the areas of inquiry included in
20 these discovery requests are relevant to Plaintiff’s claims and Allstate’s defenses.

21 A. Rogs 3, 11 and RFPs 46-48 – Plaintiff’s Alleged Injuries

22 In her Complaint and UIM demand, Plaintiff asserted a claim for \$25,000 in future
23 treatment, for an ankle fusion surgery, which she claims is required on a more probable than not

1 basis. See Dkt. 1-1, ¶ 3.5; Dkt. 38, Roundtree Decl., Ex. A (Rogs 3 and 5); Ex. B. In Rogs 3 and
2 11, Allstate asks Plaintiff to provide information regarding the status of her injuries including,
3 the type and cost of future care or treatment, and the identity of any doctor or medical provider
4 that recommended, opined, or directed that Plaintiff will need or require future ankle surgery. In
5 RFPs 46-48, Allstate seeks documents relating to Plaintiff's claim that she needs future ankle
6 surgery.

7 In response to these discovery requests, Plaintiff stated that she has not yet been
8 evaluated for future care or treatment (Dkt. 39, p. 3), and that she has no responsive documents.
9 Dkt. 38, Roundtree Decl., Ex. A, pp. 52-53. Plaintiff's responses to the requests for production
10 were not provided under oath.

11 Given Plaintiff's asserted claim that she suffered permanent and debilitating injuries to
12 her ankle requiring future treatment and surgery, Allstate's motion to compel a more definitive
13 response is not unreasonable. Certainly, Plaintiff is not expected to produce documents that do
14 not exist. However, Plaintiff must respond to these requests to the best of her ability and, "when
15 a response to a production of documents is not a production or an objection, but an answer, the
16 party must answer under oath." 7 James Wm. Moore et al., Moore's Federal Practice, §
17 34.13[2][a], at 34-57 (footnote omitted); *see also Schwartz v. Mktg. Publ'g Co.*, 153 F.R.D. 16,
18 21 (D.Conn.1994) (citing cases establishing that the absence of possession, custody, or control of
19 documents that have been requested must be sworn to by the responding party).

20 Accordingly, the Court **GRANTS** Allstate's motion to compel further answer to these
21 interrogatories; Plaintiff is **ORDERED** to provide an answer that either: (a) identifies the doctor
22 and the substance of the recommendation or opinion (including the cost and timeframe of such
23 treatment); or (b) states that no doctor has recommended or opined Plaintiff needs future surgery

1 or treatment. Plaintiff is further **ORDERED** to produce the responsive documents or, in a
2 properly executed response, attest that the documents do not exist. If Plaintiff is later evaluated
3 for future ankle surgery, she may supplement her responses pursuant to Fed. R. Civ. P.
4 26(e)(1)(A).

5 B. Rogs 13, 14 and RFPs 2-6, 14-16, 19, 22-24, 26-27, 41-42 – Accident Related Damages

6 Plaintiff asserts that she experiences ongoing pain and disability that adversely affects
7 and limits her daily activities:

8 Additionally, prior to the accident, I was generally a happy, friendly, helpful and
9 outgoing person. I was physically active in sailing, biking, hiking, gardening,
10 walking the dog, running 5ks, motorcycling as a passenger, crabbing, cross-
11 country skiing, thrift store shopping with friends, and entertaining at our home.
12 After the accident, everything changed. I could not do all the same activities that I
13 did before. I was bed-ridden, in pain, and could not walk, drive, stand, and needed
14 assistance with everything – things such as cleaning the house, cooking meals,
15 laundry, bathing, dressing, and I was unable to work at my job. For the first two
16 years after the accident, I was depressed, frustrated, moody, anxious, and irritable.
17 Today, I have recovered a lot of my function. I still suffer from shooting pain to
18 dull aches any time I participate in a physical activity. I am unable to use my right
19 foot to its fullest extent, as each time I try, I experience pain.

20 Dkt. 38, Roundtree Decl., Ex. A (Rog No. 3).

21 In Rog 13, Allstate asked Plaintiff to identify and describe in detail every vacation or trip
22 she has taken since January 1, 2016, including details of the location, fellow travelers, mode of
23 transportation, accommodations, length of trip and a description of what she did on each trip. In
her answer, Plaintiff listed several cruises, camping trips, and road trips she participated in
between September 2018 and March 2021. However, Plaintiff did not identify or describe in
detail what she did, or the activities she engaged in, on the various trips she listed. Plaintiff also
did not include any vacations and trips prior to the accident. Dkt. 38, Roundtree Decl., p. 18.

In Rog 14, Allstate Plaintiff to identify and describe in detail her social, hobby, and
recreational activities since January 1, 2016, including the frequency, location, fellow

1 participants, and length of activities. *Id.*, p. 19. In her answer, Plaintiff generally described the
2 activities she enjoyed with her husband and states that they were always doing something
3 together every day. However, Plaintiff did not describe the frequency, date, location, fellow
4 participants, or length of the activities.

5 In RFPs 2-6, 14-16, 19, 22-24, 26-27, and 41-42, Allstate requested documents (including
6 all emails, texts, photos, videos, and social media) relating to the accident, Plaintiff's UIM claim,
7 Allstate, and this lawsuit; Plaintiff's physical, mental, and emotional injuries, and any other
8 general damages caused by the accident; Plaintiff's trips, hobbies, social and leisure activities,
9 and quality of life; and Plaintiff's communications to disclosed witnesses and other third parties
10 regarding the accident, Allstate, her UIM claim and the lawsuit, her damages, her activities,
11 lifestyle, and damages. There is no dispute that these areas of inquiry are relevant to Plaintiff's
12 claims and Allstate's defenses. As to Plaintiff's trips, hobbies, and activities, Allstate seeks
13 information from January 1, 2016 to the present. *See, e.g.*, Rog 13 and RFP 22.¹

14 Plaintiff responded that she had conducted a thorough search of her email, mobile phone,
15 and Facebook account and that she has no further responsive documents. *See, e.g.*, Dkt. 38,
16 Roundtree Decl., Ex. A, pp. 22-23. However, Plaintiff did not provide a sworn statement
17 explaining what search, if any, she made to arrive at the conclusion that she has no responsive
18 records. Therefore, the Court is unable to determine whether she has in fact, conducted a
19 thorough search and whether she could locate and produce the responsive materials.

22 ¹ RFPs 26 and 27 indicate a timeframe of January 1, 2015 to the present. It is not known if this is
23 a typographical error. In any event, the Court concludes that any Rog and RFP which seek
information prior to the accident should consistently cover the timeframe of January 1, 2016 to
the present.

1 Moreover, although Plaintiff described several trips, including a 9-day cruise, a 30-day
2 truck and camper trip, and a 22-day road trip during the last year (*see id.* at Rogs 13 and 14), she
3 produced no responsive emails and texts and only a few selected photos (19 photographs of her
4 in the hospital, wearing a boot or cast, and x-rays of her ankle). Based on a cursory review of
5 Plaintiff's and others' public Facebook profiles, Allstate reports that there are many more
6 relevant, responsive photos Plaintiff did not produce. Dkt. 37, p. 5. Allstate's counsel
7 recommended using an e-discovery vendor to search for, collect, and produce Plaintiff's emails,
8 text messages, photos, videos, and social media content responsive to Allstate's requests for
9 production from her computer, tablet, cell phone, email, electronic/cloud storage, and social
10 media accounts, but Plaintiffs' counsel refused. *Id.*

11 Plaintiff claims she is permanently disabled, her pain continues to severely affect and
12 limit her regular life activities, and she cannot participate in the same activities she enjoyed
13 before the accident. Dkt. 38, Roundtree Decl., Ex. A (Rog Nos. 3 and 5). Thus, the relevant time
14 period here includes the time "prior to the accident" and Allstate is allowed this discovery to test
15 her claims of permanent disability, loss of enjoyment of life, and pain and suffering.²

16 Plaintiff also contends that Allstate's discovery requests are cumulative and duplicative.
17 However, upon review of the language of the requests, the Court concludes that the requests seek
18 different information, communications, and documents about different topics, *albeit* some of
19 Plaintiff's documents and communications may be responsive to multiple requests. Plaintiff
20 further contends that Allstate's discovery requests are overly broad and burdensome. The Court
21

22 ² Thus, Plaintiff's reliance on *Soderstrom v. Skagit Valley Food Co-op*, No. C18-1707 MJP, 2019
23 WL 3944327, at *2 (W.D. Wash. Aug. 21, 2019), is misplaced. In that case, the District Court
compelled discovery of the plaintiff's social media for the relevant time periods. Here, as
described in Plaintiff's claims, the relevant time periods include the time *before* the accident.

1 finds that the requests are not overly broad. As previously noted, Plaintiff placed her lifestyle and
2 activities prior to the accident directly at issue by claiming that her physical activities prior to the
3 accident far exceeded what she is can do now. There is also no burden to Plaintiff as Allstate has
4 offered to hire an independent third-party e-discovery vendor to access Plaintiff's electronic
5 devices and online accounts to retrieve, download, and produce Plaintiff's social media, texts,
6 emails, photos, and videos relevant and responsive to Allstate's requests for production.
7 Moreover, any privacy issues asserted with respect to Plaintiff's answers and/or documents may
8 be appropriately addressed and/or added to the Court's model stipulated protective order. The
9 Court expects the parties to confer and present a stipulated protective order for the Court's
10 signature if one is deemed necessary.

11 Therefore, the Court **GRANTS** Allstate's motion to compel further responses to these
12 requests and authorizes Allstate to hire a third-party e-discovery service, at no cost or burden to
13 Plaintiff, to access her devices and accounts and locate and produce emails and texts, photos,
14 videos, and social media content that relate to, support or refute: (1) the accident, her UIM claim,
15 Allstate, and the instant lawsuit (RFPs 2-6); (2) Plaintiff's physical, mental, and emotional
16 injuries, and any other general damages caused by the accident (RFPs 14-16, 19, and 22); (3)
17 Plaintiff's trips, hobbies, social and leisure activities, and quality of life, and the events from the
18 day of the accident (RFPs 22-24, and 41-42); and (4) Plaintiff's communications to disclosed
19 witnesses and other third parties regarding the accident, Allstate, her UIM claim and the lawsuit,
20 her damages, her activities, lifestyle, and damages (RFPs 22, 26-27). The vendor search of the
21 foregoing shall be limited to emails, text messages, and other communications between Plaintiff
22 and the *people she listed as having relevant information Plaintiff* since January 2016. Plaintiff is
23 **ORDERED** to make her devices and account login information available to the vendor.

1 C. Rog 6 and RFPs 18-19 – Wage Loss

2 Plaintiff claims wage loss caused by the accident as part of claim for UIM benefits. Dkt.
3 38, Roundtree Decl., Ex. A (Rog No. 6); Ex. B. In Rog 6 and RFPs 18-19, Allstate requested
4 basic information about Plaintiff’s alleged wage loss, loss of earning capacity, and other
5 economic damages caused by the accident. In response, Plaintiff stated that [she] “will claim lost
6 wages in an amount to be determined and supplemented.” *Id.*, p. 10. Plaintiff Hinrichs also stated
7 that she was willing to sign an authorization to allow collection of her employment records “for
8 7/22/2018 – present from Swedish Hospital and Jeff Hart, M.D.” *Id.*

9 The Court finds that Plaintiffs’ answer is evasive and improper. Allstate is entitled to a
10 current, dollar figure calculation of Plaintiffs’ purported economic damages including lost wages
11 and the other relevant details requested in the interrogatory. *See Rivers v. Washington State*
12 *Conference of Mason Contractors*, 145 Wn.2d 674, 691, n. 66 (2002) (deeming answers to
13 damages interrogatories—similar to Plaintiffs’ responses in this lawsuit— as “evasive and
14 incomplete”); *see also Brantigan v. Depuy Spine, Inc.*, 2008 WL 4279405, at *2, *5 (W.D.
15 Wash. Sept 12, 2008) (ordering plaintiff to provide a computation of damages and related
16 documents); *see also* Fed. R. Civ. P. 26(a)(1)(A)(iii).

17 Accordingly, the Court **GRANTS** Allstate’s motion to compel and **ORDERS** Plaintiff to
18 fully quantify and substantiate her alleged wage loss and to fully answer Rog 6 and produce
19 documents responsive to RFPs 18 and 19.

20 D. Rogs 7, 16 and RFPs 20, 49 –Bad Faith Claim and Alleged Damages

21 Plaintiff’s core allegation is that Allstate improperly handled and undervalued her UIM
22 claim and such conduct damaged her. Specifically, she alleges Allstate acted in bad faith when it
23 “failed to investigate or review jury verdicts involving the same or similar injuries as those

1 suffered by plaintiff”; and failed to respond to her attorney’s March 11, 2020 request “that
2 Allstate re-evaluate the claim and perform jury verdict research.” Dkt. 1-1 at ¶¶ 2.18-2.20.

3 1. Rog 7 and RFP 20

4 In these discovery requests, Allstate seeks the basis/calculation of Plaintiff’s alleged
5 damages caused by Allstate and documents that relate to support, establish, refute or negate
6 Plaintiff’s alleged damages. In response, Plaintiff states she has suffered past and future general
7 damages and opportunity costs but does not describe them in detail and has not produced
8 documents to support her alleged damages. Dkt. 38, Roundtree Decl. Ex. A.

9 As previously noted, Plaintiff must provide a computation of her damages and related
10 documents. Allstate is entitled to a calculation, estimate, or anticipated jury demand of Plaintiff’s
11 purported past and future general damages and opportunity costs allegedly caused by Allstate,
12 along with the evidence supporting or refuting same. *See e.g., Warren v. Bastyr Univ.*, No. 2:11-
13 CV-01800-RSL, 2013 WL 1412419, at *8 (W.D. Wash. Apr. 8, 2013) (“While plaintiff is not
14 expected to predict how the jury will react to the evidence at trial, the Federal Rules require her
15 to provide a computation related to each category of damages claimed and supporting documents
16 at the outset of the case”); *Sharma v. City of Vancouver*, No. C06-5688-BHS, 2007 WL
17 4376177, at *2 (W.D. Wash. Dec. 13, 2007) (requiring the plaintiff to provide a computation of
18 his non-economic damages and the evidentiary material supporting that computation).

19 Accordingly, the Court **GRANTS** Allstate’s motion to compel further responses to Rog 7
20 and RFP 20 and **ORDERS** Plaintiff to provide a computation of her damages and to produce
21 related documents.

22
23 2. Rog 16 and RFP 49

1 Rog 16 asks Plaintiff to identify the jury verdicts (*e.g.* case name, court, and case
2 number) of the jury verdicts, which Allstate allegedly did not review, upon which Plaintiff
3 expressly bases her claim that Allstate acted in bad faith. *See, e.g.*, Roundtree Decl., Ex. A (Rogs
4 7, 10). RFP 49 asks Plaintiff to produce the jury verdicts.

5 Plaintiff refused to respond to these requests, claiming attorney work product. In her
6 opposition to the motion to compel, Plaintiff's counsel contends that her "research into the value
7 of the subject claim is not ripe for discovery", she "recommended that Allstate perform its own
8 research"; she did not invite Allstate "to invade [her] work product; and that she is not "on the
9 payroll of the defense and takes offense" to producing this information. Dkt. 39 at 11-12.

10 However, because Plaintiff's bad faith, CPA, and IFCA claims are expressly premised on
11 the allegation that Allstate did not review these particular verdicts, they are relevant and
12 discoverable. While those materials can be withheld as work product, facts alone cannot. *Wells v.*
13 *City of Monroe*, No. C04-1590L, 2005 WL 8172256 at *1 (W.D. Wash. July 11, 2005) (work
14 product doctrine does not protect "facts contained within the work product"). Allstate does not
15 seek counsel's research, mental impressions, or notes about the verdicts. Rather, Allstate seeks
16 the case name, number, and court of the verdicts. This information is not protected by attorney
17 work product.

18 The Court **GRANTS** Allstate's motion to compel further responses to Rog 16 and RFP
19 and **ORDERS** Plaintiff to produce the case name, number, and court of the verdicts upon which
20 she bases her bad faith claim.

21 CONCLUSION

22 For the foregoing reasons, Allstate's motion to compel (Dkt. 37) is **GRANTED**. It is
23 further **ORDERED** as follows:

1 (1) Within **ten (10) days** of the date of this Order, Plaintiff shall fully respond to
2 Rogs 3, 6, 7, 11, 13, 14, and 16 and shall produce all documents and communications responsive
3 to RFP 49;

4 (2) Within **ten (10) days** of the date of this Order, Plaintiff shall produce all
5 documents and communications responsive to RFP 2-6, 14-20, 22-24, 26-27, 41-42, 46-48,
6 including but not limited to, all non-privileged responsive emails, text messages, photographs,
7 videos, and social media content, by submitting her cell phone, computer, laptop, tablet, and
8 camera, as well as account log-in information for any email, social media (*e.g.* Facebook), and
9 electronic or cloud storage accounts (*e.g.* iCloud), to Allstate's third-party e-discovery vendor.

10 (3) Allstate's request for attorneys' fees and expenses pursuant to Fed. R. Civ. P.
11 37(a)(5) is **DENIED**.

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13 DATED this 20th day of July, 2021.

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15 _____
16 BRIAN A. TSUCHIDA
17 United States Magistrate Judge
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