

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Spring Street Courthouse, Department 15

**23STCV01373**

**ROBERTO E. SOTOMAYOR, et al. vs HONEYWELL  
INTERNATIONAL, INC., et al.**

March 19, 2024

9:00 AM

Judge: Honorable Laura A. Seigle  
Judicial Assistant: K. Sandoval  
Courtroom Assistant: M. Torres

CSR: Janet Wood/ CSR #9463  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

Other Appearance Notes: Plaintiff's counsel: Henry Steinberg and Will Cross (X); Defense  
counsel: Ann Park and Kevin D. Jamison (X);

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**NATURE OF PROCEEDINGS:** Hearing on Motion to Compel Compliance with Demand for Independent Medical Examination and for Order Permitting Genetic Testing on Behalf of Defendant Kaiser Gypsum Company, Inc. (Sotomayor-23STCV01373)

Matter is called for hearing.

The Hearing on Motion to Compel Compliance with Demand for Independent Medical Examination and for Order Permitting Genetic Testing on Behalf of Defendant Kaiser Gypsum Company, Inc. (Sotomayor-23STCV01373) scheduled for 03/19/2024 is 'Held' for case 23STCV01373.

The Court orally provides a Tentative Ruling.

Counsel argue and submit.

The Court places the matter under submission and LATER rules as follows:

**ORDER RE MOTION TO COMPEL IME AND GENETIC TESTING**

Defendant Kaiser Gypsum Company Inc. filed a motion to compel Plaintiff Roberto Sotomayor pursuant to Code of Civil Procedure section 2031.030 to provide a saliva sample for genetic testing by Clinical Exome Sequencing. For the reasons stated on the record and below, the motion is granted in part.

“The state Constitution expressly grants Californians a right of privacy.” (Williams v. Superior Court (2017) 3 Cal.5th 531, 552.) In Hill v. National Collegiate Athletic Assn. (1994) 7 Cal.4th

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1, the California Supreme Court “established a framework for evaluating potential invasions of privacy. 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.” (Williams, supra, 3 Cal.5th at p. 552.) “The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss or privacy. A court must then balance these competing considerations.” (Ibid.) There is not an egregious invasion of privacy every time there is a request for private information, and courts must “place the burden on the party asserting a privacy interest to establish its extent and seriousness of the prospective invasion.” (Id. at p. 557.)

The parties do not dispute that genetic information is private. The dispute focuses on whether there are legitimate and important countervailing interests serving disclosure. Defendant Kaiser Gypsum Company presented evidence suggesting that mesothelioma can develop due to BAP 1 gene mutation and without exposure to asbestos. Causation is one of the elements of Plaintiffs’ case. If Defendant can show that Plaintiff has the BAP 1 gene mutation, Defendant plans to argue that genetics alone can cause mesothelioma and caused this particular instance of the disease. Defendant submitted testimony from Plaintiffs’ expert Joseph Testa that “there can be genetically linked spontaneous cancers” and that in “rare cases” “genetics alone can cause mesothelioma independent of environmental factors.” (Park Decl., Ex. Q at pp. 365-366.) That even Plaintiffs’ expert admits this possibility shows Defendant has a legitimate and countervailing interest in disclosure so that Defendant can try to establish a foundation for arguing an alternate causation of Plaintiff’s illness. Further, that Plaintiff’s brother and sister also developed mesothelium suggests a genetic component to Plaintiff’s illness.

In addition, Defendant cited evidence that persons with BAP 1 gene mutation can have less aggressive mesothelioma and respond better to therapy. (See evidence cited in Opposition at p. 9.) Such evidence could be relevant to damages.

No other feasible alternatives exist to obtain information about whether Plaintiff has the BAP 1 gene mutation. The collecting of the sample via a swab or spitting is not overly intrusive. And a protective order can reduce the invasion of Plaintiff’s privacy.

Having considered the evidence presented and weighing Defendant’s interests and Plaintiff’s privacy rights, the court grants the motion as follows. Plaintiff Roberto Sotomayor is to submit to a sufficient saliva sample by March 26, 2024 at a location of his choice. Plaintiffs’ counsel is to

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inform defense counsel of the location by March 22, 2024. The sample is to be collected by Phelbotomy Technician Desiree Salazar via buccal swab or by spitting into a tube. Fulgent Genetics, located at 4399 Santa Anita Avenue, El Monte California is permitted to test the sample for the germline BAP 1 mutation via Clinical Exome Sequencing. In other words, the genetic testing is limited to that particular mutation.

The court also issues a protective order that the sample and testing results are to be used only in this case and not to be disclosed to anyone other than the parties, counsel and experts in this case. No one receiving the information is to retain or use it after the resolution of this case. Experts are prohibited from using the sample or testing results for any research, analysis, or publications, except to form opinions and give testimony in this case. At the conclusion of this case, the sample and test results are to be returned to Plaintiff or destroyed.

The granting of this motion does not implicate the admissibility of the test results. Plaintiffs requested a section 402 hearing regarding the admissibility of the test results. The court sets the following:

Hearing - Other re: 402 as to the admissibility of the test results (Sotomayor-23STCV01373) is scheduled for 04/24/2024 at 10:00 AM in Department 15 at Spring Street Courthouse on case 23STCV01373.

The parties are to file a joint witness list and joint exhibit list for the hearing by April 17, 2024.

The motion is GRANTED in part.

The moving party is electronically advised to give notice.

A copy of this minute order will append to the following coordinated case under JCCP4674: 23STCV01373.