

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 08/05/2015

EVENT TIME: 08:20:00 AM

DEPT.: 43

JUDICIAL OFFICER: Kevin DeNoce

CASE NUM: 56-2014-00454766-CU-OE-VTA

CASE TITLE: JEANETTE MUNDEN VS LOS ROBLES REGIONAL

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other employment

EVENT TYPE: Motion to Compel Production - set One

CAUSAL DOCUMENT/DATE FILED: Motion to Compel, 07/07/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Grant Plaintiff's request for an order compelling Defendant's further responses to special interrogatory (set no. 1) nos. 4, 5, and 6. Defendant is ordered to serve Plaintiff's counsel with further responses as requested regarding the putative class, by no later than August 20, 2015.

Grant in part, and deny in part, Defendant's request for an order compelling Plaintiff's further response to request for production (set no. 1), as follows:

RFP 4. D to provide a randomized representative sampling of the redacted personnel files of between 5-10% of the putative class (125-250 employees). Parties to meet and confer regarding the precise method of sampling and to complete the *Belaire-West* stipulation. All identifiable information of the individual putative class members (including contact information and social security numbers) to be redacted.

RFP 5-8, 18-19, 29. D to respond as Plaintiff requested regarding the putative class.

RFP 13-17, 20-23, 25-27, 30. D to respond as Plaintiff requested, but limited to only those employees included in RFP no. 4's randomized representative sampling.

Defendant is ordered to serve Plaintiff's counsel with further responses, by no later than September 5, 2015, or as otherwise stipulated between the parties.

Deny sanctions.

Discussion:

Timeliness – The discovery at issue, both the Special Interrogatories and Requests for Production, was propounded on 11/11/14. D responded on 1/15/15. After a meet and confer letter was sent by P on 2/3/15, the parties apparently agreed on an extension of time to file these Motions to 7/9/15 (there is no email/letter showing the parties agreement to the extension). The Motions were filed on 7/7/15 and are therefore timely.

"Meet and Confer"- Per §2030.310(b)(2), a motion to compel further responses must be accompanied by a declaration showing good faith efforts at "meeting and conferring" regarding the discovery dispute. The level of effort that constitutes a reasonable and good faith "meet and confer" on a discovery dispute depends on the circumstances of the

dispute, including the complexity of the discovery, the history of litigation, and the nature of the interaction between counsel. *Obregon v. Sup. Ct.* (1998) 67 Cal.App.4th 424, 431-433.

Here, Plaintiff submits evidence that the parties exchanged meet and confer letters. P sent a lengthy letter on 2/3/15 (9 pages not including attachments). D sent a 4-page response on 3/12/15. D complains that it did not receive any subsequent meet and confer letter from P until 5/19/15 when the parties were discussing the Belaire-West procedure, and that the 7/9/15 extension was offered to allow the completion of the Belair-West agreement after the hearing on D's demurrer in the Cheema matter. D complains that P jumped the gun by filing the Motions on 6/27/15. But D is incorrect. The Motions were not filed until 7/7/15.

General Propositions re: Class Action discovery

Discovery on the merits of the class members' collective claims can be complex, costly, and time-consuming. Such discovery should generally be postponed until after a class is actually certified. However, "Each party [...] must have an opportunity to conduct discovery on class action issues before filing documents to support or oppose a class action certification motion (*Carabini v. Superior Court*, *supra*, 26 Cal.App.4th at p. 244; *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 836 [97 Cal.Rptr.2d 226]) so the trial court can realistically determine if common questions are sufficiently pervasive to permit adjudication in a class action. (*Atari, Inc. v. Superior Court* (1985) 166 Cal.App.3d 867, 870 [212 Cal.Rptr. 773].)" *Stern v. Superior Court* (2003) 105 Cal.App.4th 223, 232-33

Special Interrogatories

The Special Rogs at issue state as follows:

- IDENTIFY the method for recording the hours worked by PLAINTIFF and members of the PROPOSED PLAINTIFF CLASS during the CLASS PERIOD. This specifically includes, but is not limited to, a description, by manufacturer, model number all time clocks, or other equipment used to record hours worked, and the dates each such equipment was in use.

- IDENTIFY all third parties used by DEFENDANT to generate WAGE STATEMENTS for members of the PROPOSED PLAINTIFF CLASS during the CLASS PERIOD (for purposes of these interrogatories, the term "WAGE STATEMENT" is synonymous with the term "paycheck statement" and means the detachable part of the check, draft, or voucher reflecting payment of wages.

- IDENTIFY all PERSONS who were authorized to modify or edit the time records of the members of the PROPOSED PLAINTIFF CLASS during the CLASS PERIOD.

D responded to each request with the following objections: "vague, ambiguous, overbroad, burdensome, oppressive, and harassing; it is premature, particularly as no class has been certified; and, to the extent it seeks information neither relevant to the subject matter of the instant litigation, nor reasonably calculated to lead to the discovery of admissible evidence." The objection to #6 also included an objection "to the extent it seeks to violate third party privacy rights to an extent incommensurate with Plaintiff's legitimate discovery needs." D then responded to each request as follows:

4. "Pursuant to company policy, Plaintiff was instructed to accurately record all hours worked by swiping her badge at a KRONOS time clock."

5. "The Dallas Payroll Service Center."

6. "Janeen Gallegos and Karina Javier has access to Plaintiff's KRONOS time records. Employees of Defendant may only be contact through counsel."

Per 2030.220(a), on "receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply: (1) An answer to a particular interrogatory is evasive or incomplete. [...] (3) An objection to an interrogatory is without merit or too general." *Columbia Broadcasting System, Inc. v. Superior Court for Los Angeles County* (1968) 263 Cal.App.2d 12, 18, "In short, the burden is on defendants to show that their objections are valid."

As to the relevance objection, the information seems calculated to provide Plaintiff with information calculated to lead to admissible evidence; i.e., witnesses to Defendant's policies regarding wage statements, rounding policies, break compensation, and general time keeping. P's discovery requests clear the low bar required for relevance.

As to the vague and ambiguous objections, the requests are not either. The nature of the information sought is apparent and was sufficient to allow Defendant to respond as to Plaintiff.

As to the claim that the request is overbroad, burdensome, oppressive or harassing, the objecting party has the burden of providing evidence showing the quantum of work requires; time, money, procedure. There is no evidence that the information requested in the Special Rogs is difficult to obtain or that to respond would require any undue burden. Unlike the RFP, there is no supporting declaration from D's HR VP. Given that the responses for each of the requests 4-6 (in connection with the P only) were quite short and succinct, it appears that D's responses for each of the other potential class members will be likewise short and succinct.

As to the objection that the discovery is premature, a plaintiff is entitled to discovery before a class is certified, and does not need to wait until after the class is certified. "[B]efore class certification has taken place; all parties are entitled to 'equal access to persons who potentially have an interest in or relevant knowledge of the subject of the action, but who are not yet parties.' (citation)" *Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 736. See also CCP 2017.010.

As to the privacy objection regarding Special Interrogatory no. 6, the request seeks only the names of those authorized to modify or edit the time records. This request does not seem to call for the revelation any sensitive information. See *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 373 ("Contact information regarding the identity of potential class members is generally discoverable, so that the lead plaintiff may learn the names of other persons who might assist in prosecuting the case.") As in *Pioneer*, here P has agreed to contact the third party employees through Defendant's counsel.

Because D has not justified its objections the Motion is granted as to each request; nos. 4-6.

Requests for Production

Per CCP 2031.310(b) a motion to compel further responses to a RFP, "shall set forth specific facts showing good cause justifying the discovery sought by the demand" in addition to the meet and confer declaration. Absent a claim of privilege or attorney work product, the party who seeks to compel production (here, Plaintiff) has met his burden of showing good cause simply by a fact-specific showing of relevance. *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98. Once good cause was shown, the burden shifts to the objecting party (here, Defendant) to justify his objection. See *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221.

D responded to each of the RFPs with the following objections: vague, ambiguous, compound, overbroad, burdensome, oppressive, and harassing; duplicative of other requests; fails to identify the documents with reasonable particularity; premature, particularly as no class has been certified; seeks privileged and/or confidential documents; to the extent it seeks information neither relevant to the subject matter of the instant litigation, nor reasonably calculated to lead to the discovery of admissible evidence; and violating third party privacy rights to an extent incommensurate with Plaintiff's legitimate discovery needs.

Relevance has been shown. The information seems calculated to provide Plaintiff with information calculated to lead to admissible evidence; i.e., terms of employment, timekeeping records, payroll records, written policies/procedures/handbooks/etc. D has not argued any privilege. The question is, whether P has shown that the information requested is relevant to the class certification issue, and not the merits of the class action. Where the class certification issues (e.g., commonality, ascertainability, and numerosity) overlap with the class merits, discovery should be permitted. Plaintiff has met her burden of showing good cause, accordingly, the burden shifts to the Defendant to justify its objections.

The information requested is not necessarily premature. P is entitled to conduct discovery regarding issues relating to class certification. The discovery requested goes to issues of class certification. Regarding privacy objections, an employee's employment records may only be produced on a showing that there is a "compelling need" for the documents and that it cannot be obtained in depositions or from other non-confidential sources. *Harding Lawson Associates v. Superior Court*, (1992) 10 Cal.App. 4th 7, 10. P claims to need the documents in order to make its class certification motion. Moreover, P has offered a *Belaire-West* stipulation agreeing to the redaction of names and SSNs as long as an identification number is used. While P cites cases regarding the discovery of putative class members contact information, here the requests are much broader and include the terms of employment, recorded hours, and compensation amounts. Putative class members' privacy interests must be protected and D, as the custodian of the information is obligation to object. See *Board of Trustees* (1981) 119 Cal.App.3d 516. The deletion of information which individually identifies the employees would appear to eliminate the privacy concerns. See *Kizer v. Sulnick* (1988) 202 Cal.App.3d 431, 439. As long as the identity of the individual class members is concealed and the records are designated as "confidential", the Court does not see a privacy concern.

Parties seeking discovery of identifying information for putative class members must follow an opt-out notice procedure described in *Pioneer Electronics, Inc. v. Superior Court* (2007) 40 Cal.4th 360 and *Belaire West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554. It appears that D was amenable to its use. The identification number used by D for any particular putative class member should be consistently applied on all of the documents related to that particular putative class member. ***The parties are directed to meet and confer in order to complete the stipulation.***

While the *Belair-West* stipulation should ameliorate privacy concerns, it does not alleviate D's objection that the discovery is unduly burdensome and overbroad. P does not argue with D's statement that there are more than 2,500 putative class members at issue here, working in more than 100 departments in three facilities. The declaration of D's VP of Human Resources states that it would require time-consuming and expensive review and redaction. In total responding to the RFPs would take 2,505 man hours. A review of the declaration provides that some of the RFPs can be responded to by D with minimal burden. For example, RFPs 5-8 request the handbooks/manuals and policies/procedures for the putative class members. D estimates complying with those requests would take 10 hours. Given the nature of the claims, 10 hours and several hundred pages is not too much of a burden and as such D is ordered to respond to those requests, in addition to RFP 18-19, and 29, without limitation.

As to the remaining RFPs (4, 13, 16-17, 20-23, 25-27, and 30), they would require a massive amount of documentation; approximately 750,000 pages according to D. D claims that it would take about 1 hour per putative class member to comply with the RFPs. At this pre-certification stage of the proceedings, that amount of discovery seems out of proportion. The Court is interested in whether D can electronically scrub the paystub and timesheets of the putative class members; see RFP 16-17 which would seem to eliminate much of the work.

In order to balance P's right to conduct discovery sufficient to make its class certification motion, with D's objections to the amount of time required to comply with the requests, the Court orders D to provide discovery responses to RFPs 4, 13, 16-17, 20-23, 25-27, and 30 using a randomized representative sampling of putative class members. Such a process would substantially reduce the burden on D. Accordingly, the 2,505 hour figure should be reduced to between 125 to 250 hours, which means that the discovery could certainly be completed within several weeks. The parties are ordered to meet and confer regarding the mechanics of how that sampling should take place.

Sanctions

Per CCP 2030.300(d) for special interrogatories, and CCP 3031.310(h) for RFPs, the court "shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney" who unsuccessfully makes or opposes a motion to compel a further response to interrogatories or production demand, "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

The Court declines to award sanctions. Also, P's notice of Motion failed to request sanctions, and accordingly, there is no evidence to support any particular amount of sanctions; i.e., no hourly rate or hours worked or costs expended. Imposition of sanctions under the circumstances would be unjust.