UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-04791-GAF (VBKx)	Date	September 21, 2010
Title	Celia Alvarez, et al. v. The Hyatt Regency Long Beach, et al.		

Present: The Honorable	Victor B. Kenton, United States Magistrate Judge

Roxanne Horan	CourtSmart	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Radhika Sainath Randy Renick	Nick Rosenthal

Proceedings: **PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSE**

Hearing held on September 21, 2010. The Court allows argument.

The Court has received and reviewed the following documents: Plaintiffs' "Notice of Filing Re: Joint Stipulation Pursuant to Local Rule 37-1;" "Joint Stipulation Pursuant to Local Rule 37-1 ["JS"];" Plaintiffs' "Notice of Errata;" "Plaintiffs' Supplemental Memorandum Re: Joint Stipulation; and "Defendants' Supplemental Memorandum per Local Rule 37-2.2 in Opposition to Plaintiffs' Motion to Compel"

INTRODUCTION

Plaintiffs seek discovery concerning their Interrogatory No. 1, served on July 1, 2010, which asks that Defendants produce the name and contact information for the putative class members, who are defined as all non-exempt employees for the period commencing May 7, 2005. Plaintiffs have filed this putative class action lawsuit for unpaid commission wages. They seek the names and contact information (full name, last known addresses and telephone numbers) for the putative class members. The filing deadline for the F.R.Civ.P. 23 class certification motion is October 18, 2010. (JS at 1.)

The named Plaintiffs, all assertedly employed by Defendants as non-exempt workers, were employed on an hourly basis as a housekeeper, houseman, and lead cook. (JS at 2.) Plaintiffs allege that Defendants forced them and other non-exempt employees to work "off the clock." (Id.) Plaintiffs seek compensation from Defendants for missed meal and rest breaks, failure to pay timely wages, the minimum wage, overtime wages, accurate itemized wage statements, and for engaging in unfair business practices, under Labor Code §§203, 226, 226.7, 1157, 1198, Business and Professions Code §17200, and IWC Wage Orders. (Id.)

Defendants contend the information is not relevant for class certification, and invades the privacy rights of the putative class. (Id.)

Earlier, in the meet and confer process, Plaintiffs offered to enter into a protective order; and, that the

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-04791-GAF (VBKx)	Date	September 21, 2010
Title	Celia Alvarez, et al. v. The Hyatt Regency Long Beach, et al.		

information be given to a third party who would sent the members of the putative class an "opt-out" letter. Defendants rejected these proposals. (Id.)

CLASS CERTIFICATION

Information obtained in discovery would be utilized in a F.R.Civ.P. 23 class certification motion. In summary fashion, under such a motion, the Court must determine that the following four requirements of F.R.Civ.P. 23(a) have been satisfied: (1) numerosity; (2) common questions of law and fact; (3) typicality; and (4) fair and adequate representation. Further, F.R.Civ.P. 23(b) requires that Plaintiffs establish that one of three factors will be met: (1) there is a risk of inconsistent adjudication, or adjudication of individual class member's claims would substantially impair non-party members' ability to protect their interests; (2) the defendant acted on grounds generally applicable to the class; or (3) common questions of law or fact predominate and class resolution is superior to other available methods.

In addition to the oft-stated and well-known relevance concepts articulated in F.R.Civ.P. 26, a requirement for pre-certification class discovery is that "the plaintiff bears the burden of advancing a prima facie showing that the class action requirements of F.R.Civ.P. 23 are satisfied or that discovery is likely to produce substantiation of the class allegations. Absent such a showing, a trial court's refusal to allow class discovery is not an abuse of discretion." Mantolete v. Bolger, 767 F.2d 1416, 1424 (9th Cir. 1985), citing Doninger v. Pacific Northwest Bell, Inc., 564 F.2d 1304, 1313 (9th Cir. 1977).

PRIVACY OF PUTATIVE CLASS MEMBERS

An individual has a reasonable expectation of privacy against a serious invasion. See Hill v. National Collegiate Athletic Assn., 7 Cal.4th 1, 36-37 (1994). But the protection which is afforded to privacy claims is a qualified protection, rather than an absolute one. Crab Addison, Inc. v. Superior Court, 169 Cal.App.4th 958, 966 (2008). The right of privacy in enshrined in this State in Article I, section 1, of the California Constitution which "protects an individual's reasonable expectation of privacy against a serious invasion." Thus, the Court must balance that right of privacy against the need for discovery. Pioneer Electronics (USA), Inc. v. Superior Court, 40 Cal.4th 360, 372 (2007).

ANALYSIS

The putative class identified by Plaintiff appears to be well-defined and ascertainable, e.g., all non-exempt employees of the Defendants' hotel. As such, this is not a prohibited "fail safe" putative class. (See Genenbacher v. CenturyTel Fiberco II, 299 F.R.D. 485, 488 (C. D. Ill. 2007).)

The Court must balance privacy rights against discovery of relevant information. In performing this balancing test, the Court finds that the particular information which Plaintiffs seek (names, addresses and telephone numbers) is not sensitive and personal information, such as might be contained in medical records, or similar documents.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-04791-GAF (VBKx)	Date	September 21, 2010
Title	Celia Alvarez, et al. v. The Hyatt Regency Long Beach, et al.		

In the class action context, disclosure of names, addresses and telephone numbers is common practice. (See, e.g., Pioneer Electronics v. Superior Court, 40 Cal.4th 360, 372 (2007).) Moreover, federal courts faced with these types of discovery issues routinely overcome objections as to privacy interests when balanced against reasonable discovery needs. (See Sanbrook v. Office Depot, 2009 WL 840019 (N.D. Cal. 2009); York v. Starbucks Corporation, 2009 WL 3177605 (C.D. Cal. 2009).)

Moreover, the Court is not persuaded that an opt-out system is necessary, both for pragmatic and legal reasons. As to the first, such a procedure would be extremely time-consuming, given the short pre-certification discovery period. Further, in Pioneer Electronics, supra, the California Supreme Court supported the proposition that an opt-in style of notice would not be required, but did not impose an opt-out style of notice. See also Tierno v. Rite Aid Corp., 2008 WL 3287035 (N.D. Cal. 2008). Although Plaintiffs initially offered, as a compromise, to utilize a third party and an opt-out system, that is no longer feasible, given the looming deadline for the class certification motion.

While the Court thus concludes that the privacy interests at hand exist, but are outweighed by the need for the discovery, still, privacy interests do not entirely slip away. Reasonable limitations can and will be imposed, as follows. Each counsel (or other individual initiating the contact, in whatever form), will inform each contacted potential putative class member that he or she has a right not to talk to counsel and that if he or she elects not to talk to counsel, counsel will then terminate the contact and not re-contact the individual. Each counsel will keep a list of all individuals contacted and preserve that list so that it may be filed with the Court, if required, along with Plaintiffs' certification motion and any other pertinent documents. The parties will not use any of this contact information for any purpose outside of this litigation, and will not disseminate this information to anyone who is not necessary to the prosecution or defense of this action.

With the foregoing modifications, Plaintiffs' Motion will be **GRANTED**.

Defendants will deliver to Plaintiffs' counsel all discovery pursuant to this Order by 5:00 p.m. on Thursday, September 23, 2010.

IT IS SO ORDERED.

: 30mins

Initials of Preparer RH