Priority ✓
Send ✓
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

ROYALWOOD CARE CENTER, LLC, et al.,

Defendants.

No. CV 05-6795-ABC (PLAx)

ORDER RE PLAINTIFF'S MOTION TO COMPEL

Plaintiff brought this action against multiple defendants alleging, on behalf of Jose Zazueta and similarly situated employees of defendants who are monolingual Spanish speakers or limited English speakers, that defendants' workplace rules prohibiting the use of languages other than English violates Title VII of the Civil Rights Act of 1964. Zazueta was fired from his job at defendant Summit Care-California, Inc. d/b/a Royalwood Care Center allegedly for his use of Spanish. Plaintiff asserts that defendant Summit Care-California also did business through eleven care centers in addition to Royalwood Care Center (Declaration of Sue J. Noh ("Noh Dec."), ¶ 3, Ex. 2), and that Summit Care's parent corporation, Fountain View, Inc., owned at least 20 other subsidiaries operating in the health care sector. Id. Plaintiff further asserts, among other things, that through and following a series of bankruptcy filings and reorganizations, defendant Skilled

46

Healthcare, LLC contracted with defendant Royalwood Care Center, LLC and other entities to provide administrative functions, "including drafting of policies such as the language policy at issue here." Joint Stipulation at 4.

In response to plaintiff's request for production of documents, defendants produced some responsive documents, indicated they would produce or had produced other documents, and raised objections to the production of others. Following the parties' "meet and confer," additional documents were produced. Plaintiff now brings this Motion to compel further production of documents in four categories: (1) contact, payroll, demographic and personnel information of the workforce; (2) documents relating to the issue of joint employer or integrated enterprise; (3) documents relating to defendants' language policies, the training of staff on those policies, and the entities to which those policies have been proposed or adopted; and (4) documents pertaining to profits and losses.

Defendants contend that plaintiff has not tailored its requests to lead to admissible evidence, has served requests on entities that in some cases no longer exist, and have not limited the requests in time or in relation to the alleged class of employees. Further, defendants assert that plaintiff has served only 9 of the 16 defendants named in the complaint, but are seeking documents as to all defendants. Defendants provided plaintiff with a sworn statement from a paralegal employed by Skilled Healthcare, LLC, asserting, among other things, that: 1. Zazueta was employed by defendant Summit Care-California, Inc. d/b/a Royalwood Care Center, its successor entity is Royalwood Care Center, LLC, and Summit Care-California, Inc. was a wholly owned subsidiary of Fountain View, Inc. ("FVI"); 2. the bankruptcy of FVI resulted in the Maple Avenue nursing facility operated by Summit Care-California to be transferred to Royalwood Care Center, LLC; and 3. Skilled Healthcare, LLC was created in 2003 as a separate corporation that provides administrative services, but has no authority to adopt or implement policies for any company with which it provides services. Declaration of Cindy VanDran, Ex. A to Declaration of Nikki Wilson. Defendants claim that of the nine served entities, three are no longer in business, three are holding companies without employees, and only two are currently operating facilities. Joint Stipulation at 8.

The Court has concluded that oral argument will not be of material assistance in determining plaintiff's Motion. Accordingly, the hearing scheduled for March 20, 2007, is **ordered off calendar** (see Local Rule 7-15).

As an initial matter, defendants objected to many of the subject requests as being vague, ambiguous and overly broad; defendants also claim that they were served in a manner to cause annoyance, burden and expense. The Court finds nothing vague or ambiguous about the wording or content of the requests. The Court overrules defendants' objections that the requests are overbroad, as those objections lack substantiation or explanation. It is well-established that the burden is on the objecting party to show grounds for failing to provide the requested discovery. See, e.g., Smith v. B & O Railroad Co., 473 F.Supp. 572, 585 (D. Md. 1979); Sherman Park Community Association v. Wauwatosa Realty, 486 F.Supp. 838, 845 (E.D. Wis. 1980); Laufman v. Oakley Building and Loan Co., 72 F.R.D. 116, 121 (S.D. Ohio 1976). Defendants cannot simply invoke generalized objections; rather, with respect to plaintiff's discovery requests, defendants

> must show specifically how, despite the broad and liberal construction afforded the federal discovery rules, each [request] is not relevant or how each [request] is overly broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden.

Roesberg v. Johns-Manville Corp., 85 F.R.D. 292, 296 (E.D. Pa. 1980) (citations omitted); Wirtz v. Capitol Air Service, Inc., 42 F.R.D. 641, 643 (D. Kan. 1967). Defendants' general assertion that the subject facilities employ "a number of individuals," and it would "substantially overburden" defendants to search for relevant employee information since 1999, is simply insufficient to show burden. See Declaration of Nikki Wilson, ¶ 9. Defendants have not made a showing that plaintiff's requests are overly broad and, except as the Requests are limited below, their objections in this regard fail.

Defendants further contend that the information is protected by the attorney/client privilege and the work product doctrine. The party who withholds discovery materials based on a privilege must provide sufficient information (i.e., a privilege log) to enable the other party to evaluate the applicability of the privilege or other protection. Fed.R.Civ.P. 26(b)(5); see Clarke v. American Commerce Nat'l Bank, 974 F.2d 127, 129 (9th Cir. 1992). Failure to provide sufficient information

may constitute a waiver of the privilege. See Eureka Financial Corp. v. Hartford Acc. & Indem. Co., 136 F.R.D. 179, 182-83 (E.D. Cal. 1991) (a "blanket objection" to each document on the ground of attorney-client privilege with no further description is clearly insufficient); Peat, Marwick, Mitchell & Co. v. West, 748 F.2d 540, 542 (10th Cir. 1984) (attorney-client privilege waived when defendant did not make a timely and sufficient showing that the documents were protected by privilege). Asserting a "blanket objection" to document requests will be found to be insufficient and improper. Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981) (blanket privilege objection is improper); see Clarke, 974 F.2d at 129 (blanket assertions of privilege are "extremely disfavored"). The attorney-client privilege applies only when "(1) legal advice is sought (2) from a professional legal advisor in his capacity as such, and (3) the communications relating to that purpose (4) are made in confidence (5) by the client." Griffith v. Davis, 161 F.R.D. 687, 694 (C.D. Cal. 1995). Defendants have set forth no evidence establishing that counsel was contacted for the purpose of providing legal advice about the matters to which they are objecting. Thus, the purpose of the privilege -- to protect disclosures necessary to obtain informed legal advice and to encourage "full and frank disclosure by the client to his or her attorney" -- has not been shown to be implicated here. Clarke, 974 F.2d at 129. The Court will not sustain an objection by defendants on this ground unless it is abundantly clear that the privilege attaches to any of the requested documents. As no privilege log was produced, of which the Court is aware, that indicated the withholding of documents based on the asserted privilege, the Court must overrule this objection.

Neither can the Court conclude at this time that the work product doctrine protects any of the requested documents or information. Rule 26(b)(3) of the Federal Rules of Civil Procedure may "protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney . . . concerning the litigation." The work product doctrine "is intended to preserve a zone of privacy in which a lawyer can prepare and develop legal theories and strategy 'with an eye toward litigation,' free from unnecessary intrusion by his adversaries." United States v. Adlman, 134 F.3d 1194, 1196 (2nd Cir. 1998) (quoting Hickman v. Taylor, 329 U.S. 495, 511, 67 S.Ct. 385, 91 L.Ed. 451 (1947)). Furthermore, "[t]o be entitled to the protection of the work product rule, the material must have been generated in preparation for litigation. The prospect of

future litigation is insufficient." Whitman v. United States, 108 F.R.D. 5, 9 (D.N.H. 1985). No showing that documents were generated in preparation of litigation has been made by defendants here; accordingly, this doctrine does not shield the requested documents.

Turning to defendants' relevance arguments, under Fed.R.Civ.P. 26(b)(1), discovery is permitted of "any matter, not privileged, that is relevant to the claim or defense of any party." As a general matter, Federal Rule of Civil Procedure 26(b) is to be "liberally interpreted to permit wide-ranging discovery of information," even if that information is not ultimately admitted at trial. See Comcast of Los Angeles, Inc. v. Top End International, Inc., 2003 WL 22251149, at *2 (C.D. Cal. July 2, 2003); see also Fed.R.Civ.P. 26(b)(1) ("[r]elevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."). The burden is on defendants to show that discovery should not be allowed (Comcast, at *2, citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)); it is not up to defendants to decide what plaintiff needs to pursue this action. Here, the Court finds that defendants have not shown that the bulk of the requested documents are appropriately withheld. Plaintiff has made a showing of the inter-related nature of the defendant entities such that further inquiry is warranted to determine the existence of evidence relevant to plaintiff's claims. Zazueta was employed by defendant Summit Care-California at a care center. He was fired, allegedly for using a foreign language in the work place. Summit Care-California operates or operated other care centers. Employee information from those care centers is relevant to determine the existence of the language policy, the extent of the policy, witnesses to the issues at hand, and potential class participants. Likewise, information about those facilities' policies is relevant. Further, as Summit Care-California fell under the umbrella of FVI, information from the other FVI affiliated entities is reasonably calculated to lead to admissible evidence.

Defendants' privacy concerns also do not warrant their refusal to produce the requested information. Plaintiff seeks personnel information in order to "locate potential claimants and/or witnesses" and establish "the most likely claimants and comparators." Joint Stipulation at 14. Plaintiff further seeks the requested information to determine the existence of an integrated enterprise or joint employer, the scope of the class, and damages. Joint Stipulation at 5. While

defendants are correct that individuals have a privacy interest in not having their names, addresses and personal information disclosed to third parties (see, e.g., Joint Stipulation at 12, 21-22), the Court has balanced defendants' asserted right to privacy against the relevance and necessity of the information being sought by plaintiff. See, e.g., Johnson v. Thompson, 971 F.2d 1487, 1497 (10th Cir. 1992); Ragge v. MCA/Universal Studios, 165 F.R.D. 601, 604-05 (C.D. Cal. 1995) (the right to privacy is not absolute, but is "subject to invasion depending upon the circumstances."). In doing so, special attention has been paid both to defendants' legitimate concerns over its duty to protect its employees and to the concerns of non-parties, as well as plaintiff's need to communicate with witnesses and other potential plaintiffs. The Court finds that plaintiff's needs here outweigh the concerns of defendants. Plaintiff has shown a legitimate need for the requested information, to determine among other things the scope of a potential class and to enable contact with those individuals. The need is especially compelling here where the information to be disclosed relates to, and the individuals to be communicated with are not disinterested third parties but rather may be, potential plaintiffs or witnesses themselves. This information must be disclosed to enable plaintiff to proceed; a protective order can strike the appropriate balance between the need for the information and the privacy concerns.[1] See, e.g., Knoll v. American Tel. & Tel. Co., 176 F.3d 359, 365 (6th Cir. 1999) (approving of protective orders to protect non-parties from "the harm and embarrassment potentially caused by nonconfidential disclosure of their personnel files"). Neither does the Court find based on the present record that plaintiff is likely to abuse the requested information. While a potential for abuse exists in every case, there is no evidence that such abuse will occur here.

Finally, the fact that plaintiff is seeking information about employees from certain entities that are not parties to this lawsuit, or that are named defendants but not served, does not prohibit discovery. Courts will order production of personnel files of non-parties when necessary to assist in proving a party's allegations. See, e.g., Equal Employment Opportunity Commission v.

---

[1] Similarly, defendants' objections that the requested information is confidential and proprietary fails, as defendants have not established a basis to withhold documents on these grounds. In any event, any concerns in this regard can be alleviated by a protective order.

University of New Mexico, 504 F.2d 1296 (10th Cir. 1974) (allowing disclosure of personnel files of all faculty members employed by the engineering college of the University at the time of plaintiff's discharge); Weahkee v. Norton, 621 F.2d 1080 (10th Cir. 1980) (abuse of discretion to deny discovery of personnel files of Equal Employment Opportunity Commission employees when needed to compare and show hiring and promotions preference over plaintiff). Neither does the corporate structure of these entities limit discovery. If, because of joint control or ownership, one or more of the nine served defendants is in possession, custody or control[2] of responsive documents from any of the unnamed defendants or the other entities that are not parties to this action, the documents must be provided. A party cannot unreasonably limit answers to information within its own knowledge and ignore information immediately available to it or under its control. See Ferrara v. Balistreri & DiMaio, Inc., 105 F.R.D. 147, 150-51 (D. Mass. 1985) (fact that expert retained by responding party had not given party requested information does not limit duty to obtain information to respond to interrogatory); N.L.R.B. v. Rockwell-Standard Corp., 410 F.2d 953, 958 (6th Cir. 1969) ("[I]f a party cannot furnish some of the requested information, it should supply that which it can and state under oath that it cannot furnish the rest."). The same applies to any Request concerning an entity that for some period during the requested time frame was not "viable": if documents exist as to which a responding defendant is in possession, custody or control, they must be provided. If the responding defendants are not in possession, custody, or control of responsive documents, however, they must say so, under oath, **through a corporate officer**, and disclose the information they do have and set forth in detail the efforts they made to obtain the rest of the information. Hansel v. Shell Oil Corp., 169 F.R.D. 303, 305-06 (E.D. Pa. 1996); Miller v. Doctor's General Hospital, 76 F.R.D. 136, 140 (W.D. Okla. 1977).

Accordingly, plaintiff's Motion is **granted in part**, as set forth below.

---

[2] A party is in possession, custody or control when it can obtain documents through a simple request. Property is within a party's possession, custody or control whether the party has actual possession thereof, or the right to obtain the property on demand. In re Bankers Trust Co., 61 F.3d 465, 469 (6th Cir. 1995). A party is not in control of documents when the requesting party has an equal ability to obtain them from public sources. See Estate of Young v. Holmes, 134 F.R.D. 291, 294 (D. Nev. 1991).

1. Contact Information

Request No. 23 - Granted in part.

Plaintiff seeks personnel and/or payroll documents showing specific information about defendants' employees and employees from 22 subsidiaries of FVI for the period 1999 to the present (or longer, if a language policy was implemented prior to 1999). The Court will restrict the Requests to the time frame 2001 to the present, and will exclude the rates of pay and social security numbers, as the Court does not find this information relevant or necessary at this stage of the litigation.[3] All other requested information must be produced.

2. Integrated Enterprise and Joint Employer

Requests Nos. 2, 5, 6, 9, 10, 12, 14, 16, 18, 19, 22, 27, 28, and 29 - Granted in part.

Plaintiff is entitled to determine the relationship of the requested entities to each other and to the facility where Zazueta was employed. Information and documents concerning business structure, board members, executives, property, personnel, labor relations personnel, and interaction and relationship between defendants is relevant to this action, as it could, in part, establish if defendants are an integrated enterprise or joint employer. While defendants already indicated that they would produce relevant non-privileged documents responsive to Requests Nos. 2, 5, 9, 10, 12, 22 in their possession, custody or control, the Court **orders** that they produce all responsive documents in their possession, custody or control, as to these six Requests as well as to the remaining Requests in this category. The Court will restrict the Requests to the time frame 2001 to the present.

/

/

---

[3] Plaintiff argues that it needs the rates of pay to determine the size of the employer as relevant to damages. The Court believes that this information, in these circumstances, is more appropriately obtained through requests or interrogatories directed at the employers themselves, not the individual employees. Further, unless plaintiff can later show the Court that the excluded social security numbers are the only means to contact potential plaintiffs, comparators, or witnesses, they will not be ordered produced.

3. Scope of Challenged Policy

Requests Nos. 17, 24, 25, 26 - Granted in part.

Documents relating to policy statements, policies concerning use of any language, the English Only Policy, and training in this regard go to the very heart of this action. Plaintiff has presented evidence that the subject entities are affiliated in some capacity with defendant Summit Care-California and/or with defendant Fountain View, Inc. Adoption and implementation of the language policy at any of these entities is relevant to plaintiff's claims, and is discoverable. The Court will limit the response to Request No. 17, however, to those policy statements concerning the use of any languages and/or the English Only Policy. As to Requests Nos. 24, 25 and 26, defendants indicate that they have produced responsive documents. The Court **orders** that defendants produce all responsive documents in their possession, custody or control not already produced as to those Requests. Defendants' responses are not to be limited only to responding defendants with employees or actual facilities, or to those entities still in business. The Court will restrict the Requests to the time frame 2001 to the present.

4. Profits and Losses

Requests Nos. 20, 21 - Granted in part.

These Requests seek documents showing defendants' profits and financial losses form 1999 through the present. Plaintiff claims these documents are needed for an integrated enterprise analysis and are relevant to punitive damages.

While the Court disagrees with plaintiff that Kang v. U. Lim America, Inc., 296 F.3d 810 (9th Cir. 2002), supports its assertion that profits and losses are needed to show whether defendants are an integrated enterprise, this information is relevant, and discoverable pretrial, to address potential punitive damages. It is firmly established that a detailed inquiry into the size of a defendant's business and financial worth is relevant to the determination of punitive damages. Oakes v. Halvorsen Marine Ltd., 179 F.R.D. 281, 286 (C.D. Cal. 1998) ("The discovery of financial information relevant to a punitive damages claim is permissible under the Federal Rules of Civil Procedure, whether or not such evidence would be admissible at trial."); Mid Continent Cabinetry,

Inc. v. George Koch Sons, Inc., 130 F.R.D. 149, 151 (D. Kan. 1990); City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 270, 101 S.Ct. 2748, 2761, 69 L.Ed.2d 616 (1981); Hollins v. Powell, 773 F.2d 191, 198 (8th Cir. 1985), cert. denied, 475 U.S. 1119, 106 S.Ct. 1635 (1986) ("In assessing punitive damages, it is appropriate to consider the defendant's net worth.").[4] The Court will limit these Requests to responses concerning the nine served defendants only, and to the time frame of 2003 to the present.[5]

CONCLUSION

Based on the foregoing, it is **ordered** that plaintiff's Motion to Compel is **granted in part**, as set forth above. **No later than March 27, 2007**, the parties shall submit a stipulated proposed protective order for the Court's review setting forth, at a minimum, the terms to govern the use of the to-be-disclosed names and addresses responsive to the instant Requests, such terms to be drafted to protect the privacy interests of the third parties. The Court advises that it may only enter a protective order upon a showing of good cause made therein. Phillips v. G.M. Corp., 307 F.3d 1206, 1209 (9th Cir. 2002) (Rule 26(c) requires a showing of "good cause" for a protective order); Makar-Wellbon v. Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D.Wis. 1999) (even stipulated protective orders require good cause showing). In the stipulated protective order submitted to the Court, the parties must include a statement demonstrating good cause for entry of the protective order pertaining to the information described in this Order. The paragraph containing the statement of good cause should be preceded by a heading stating: "GOOD CAUSE

---

[4] State Farm Mutual Automobile Ins. Co. v. Campbell, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), cited by defendants, involved a review of whether a punitive damages award violated constitutional due process as being excessive. While that case discusses certain due process concerns on the size of punitive damages awards, the Court does not construe it to prohibit discovery of a party's financial information -- subject to a protective order -- as such information may still contribute to an analysis of the amount and reasonableness of a punitive damages award.

[5] Obviously, if one or more defendants is no longer a viable entity, then documents showing its profits and losses should be limited to those years from 2003 to the present when it maintained viability.

STATEMENT." In addition, a protective order must be narrowly tailored and cannot be overbroad. Therefore, the documents, information, items or materials that are subject to the protective order shall be described in a meaningful fashion (for example, "blueprints," "customer lists," or "market surveys," etc.). Finally, the Court advises that if confidential material is included in any papers to be filed in Court, such papers shall be accompanied by an application to file the papers -- or the confidential portion thereof -- under seal. Pending the ruling on the application, the papers or portions thereof subject to the sealing application shall be lodged under seal.

No later than 10 business days after entry of the protective order, defendants shall fully respond to the Requests and produce responsive documents and declarations consistent with the above.[6]

DATED: March 13, 2007

PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE

[6] If the parties fail to submit a proposed stipulated protective order, defendants shall comply with this Order **no later than April 10, 2007**.