2002 WL 32854376

United States District Court,

N.D. California.

Juleus CHAPMAN, et al., Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF EDUCATION, et al., Defendants.

No. C–01–1780 CRB (EMC).Feb. 6, 2002.

Attorneys and Law Firms

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Opinion

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL (No. 128)

CHEN, Magistrate J.

This matter comes before the Court on the motion to compel by plaintiff Juleus Chapman, et al. (hereinafter “Plaintiffs”). On January 23, 2002, Plaintiffs moved to compel defendants California Department of Education, et al. (hereinafter “Defendants”) to respond to certain discovery requests including, inter alia, requests for admission and interrogatories. Following meet and confer efforts ordered by the Court and through Defendants' Opposition to the instant motion, the parties have resolved all of the discovery disputes1 with the exception of Plaintiffs' request that Defendants respond to Plaintiffs' Second Set of Interrogatories.

Defendants object to Plaintiffs' Second Set of Interrogatories, arguing that the interrogatories: [1] are numerous, in violation of Federal Rule of Civil Procedure 33(a); [2] are overbroad and unduly burdensome; and [3] have already been answered in good faith.

The Court, however, does not find these arguments persuasive.

1. NUMERICAL LIMITS UNDER FEDERAL RULE OF CIVIL PROCEDURE 33(a)

Federal Rule of Civil Procedure 33(a) provides that without leave of court or written stipulation, a party may not serve more than twenty-five interrogatories including subparts on any other party.2

Defendants argue that Plaintiffs' Second Set of Interrogatories “can and should be broken down into discrete subparts, each of which can and should be treated as a ‘stand alone’ question,” and as such, exceeds the number of interrogatories as provided in Rule 33.

Although there is no bright-line test as to whether a subpart should be counted as an interrogatory, the weight of authority interpreting Rule 33(a) requires examining whether the subparts are “ ‘... logically or factually subsumed within and necessarily related to the primary question.” ’ Safeco of America v. Rawstron, 181 F.R.D. 441, 445 (C.D.Cal.1998), quoting, Ginn v. Gemini Inc., 137 F.R.D. 320, 322 (D.Nev.1991). Stated differently, the question is whether there is a “ ‘direct relationship between the various bits of information called for” ’ by the subparts, id. at 444, quoting, Clark v. Burlington Northern Railroad, 112 F.R.D. 117, 120 (N.D.Miss.1986), or if the subparts are a “ ‘logical extension of the basic interrogatory.” ’ Id., quoting, Myers v. United States Paint Co., 116 F.R.D. 165, 165–66 (D.Mass.1987). Thus, for instance, as the court held in Ginn, supra, an interrogatory which asks the respondent to state the amount of each loss or damage for an alleged breach of an implied-in-fact contract together with the factual basis for the claim and all calculations relied upon constitutes a single interrogatory. See Ginn, 137 F.R.D. at 321–22.

Here, Plaintiffs' Second Set of Interrogatories consists of one numbered interrogatory which references several requests for admission and seeks detailed information supporting responses thereto. Specifically, the interrogatory requests that Defendants identify, for each request for admission not unqualifiedly admitted among Set One, Request Nos. 4–7 and all of Set Two: [a] the number of the request for admission; [b] all facts on which Defendants base their response (including, but not limited to, the names, addresses and telephone numbers of all person who have knowledge of those facts); and [c] “with specificity all documents and other tangible things that support your response and state the name, address, and telephone number of the person who has each document or thing.” (emphasis omitted). Arguably, seeking disclosure of facts (including the identity of those knowledgeable) and documents (including the identity of the individual in possession of the item) are directly related and should be treated as one subpart. On the other hand, at least one court determined that similar requests should be treated as separate interrogatories. See Kendall v. GES Exposition Services, Inc., 174 F.R.D. 684, 685–86 (D. Nevada 1997) (determining that a subpart asking for documents in addition to facts should be treated as two subparts). In Safeco, supra, interrogatories similar to the “subparts” herein were numbered as separate interrogatories and treated as such. See Safeco, 181 F.R.D. at 442–43.

Furthermore, Plaintiffs' Second Set of Interrogatories reference fifteen different requests for admission for which Defendants are required to respond. If the interrogatory relates to distinct and separate requests for admission, the interrogatories should be treated as the same number of subparts as there are requests for admission. See Schwarzer, Tashima & Wagstaffe, Rutter Group Prac. Guide; Fed. Civ. Pro. Before Trial § 11:621.5 (2001) (stating that an interrogatory asking for the basis for denial of any requests for admission is treated as many interrogatories as there are requests for admission); Safeco, 181 F.R.D. at 445.

Assuming that Plaintiffs' First Set of Interrogatories, which referenced two requests for admission, and Plaintiffs' First Set of Interrogatories, which referenced fifteen requests for admission, are treated as containing two separate subparts under Kendall, supra, Plaintiffs' interrogatory count numbers thirty-four.

However, the Court may grant a party leave to serve additional interrogatories under Rules 33(a) and 26(b)(2). Leave to serve additional interrogatories should not be granted where: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in contoversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. See Fed.R.Civ.P. 26(b)(2); see also Walker v. Lakewood Condominium Owners Ass'n, 186 F.R.D. 584, 588 fn. 9 (C.D.Cal.1999); Lukens v. National R.R. Passenger Corp., No Civ. A 99–4102, 2000 WL 1022988, *1 (E.D.Pa. July 6, 2000).

Here, although the thirty-four interrogatories are over the numerical limit imposed by Rule 33(a), the interrogatories are neither cumulative nor duplicative. The subject matter of the interrogatories (e.g., relating to assessment of the test validity, etc.) appear directly relevant to the issues in the case. Moreover, the request to identify documents (the second subpart of the interrogatory) could have been propounded as a request for production of documents under Rule 34 for which the Rule 33(a) numerical limit of interrogatories would not apply. To limit discovery which is clearly relevant under these circumstances would exalt form over substance. Therefore, the Court sua sponte grants Plaintiffs leave to serve the interrogatories at issue. However, Plaintiffs must seek leave of Court to file any additional interrogatories.

2. UNDUE BURDEN

Defendants also object to Plaintiffs' Second Set of Interrogatories arguing that interrogatories, such as those contained in the Second Set, requesting all facts, documents and witnesses are unduly burdensome and oppressive. While interrogatories that call for all facts, documents and witnesses may, in some circumstances, place an unreasonable burden on the responding party, see Safeco, 181 F.R.D. at 447–48, an interrogatory that requests “all facts” in support of a refusal to admit specific relevant facts is not burdensome and oppressive per se as Defendants argue. Interrogatories such as those propounded here may facilitate development of the case. See Richlin v. Sigma Design West, Ltd., 88 F.R.D. 634, 638 (E.D.Cal.1980) (stating that interrogatories may be used to “require an adverse party to disgorge all relevant facts within his knowledge”); see also In re U.S. Financial Securities Litigation, 74 F.R.D. 497, 498 (S.D.Cal.1975) (stating that interrogatories should be permitted to allow for a party's unfettered discovery of all relevant and necessary materials).

The interrogatories relative to certain requests for admission do not seek all facts, documents, and witnesses supporting any refusal to admit every allegation of the Complaint. Rather the interrogatories seek facts relative to factually discrete topics—e.g., whether Defendants have assessed whether the

skills and knowledge tested by the California High School Exit Examination (CAHSEE) in fact corresponds to the curriculum being followed by students with disabilities who took the CAHSEE in March 2001.

Nor are Defendants asked to provide all facts, witnesses and documents to prove a negative. The upshot of the interrogatories when coupled with the request for admissions is simply to ask whether Defendants have any facts demonstrating, for example, that such an assessment (described above) was in fact made. Where such an assessment was made, the interrogatory essentially asks Defendants to disclose facts relative to that assessment. This is far different from the problem of interrogatories seeking "all facts" supporting denials of wide ranging allegations pled by the plaintiff discussed in Safeco, supra.

Thus, the interrogatories here directed at specific factual questions are not unduly burdensome and oppressive. Defendants do not argue in their opposition that the information sought is irrelevant or that responding to these interrogatories would be burdensome in any specific way. Absent a finding by the Court that the interrogatories are per se oppressive, a generalized objection without a specific showing is inadequate and cannot be sustained. See Walker, 186 F.R.D. at 586–87.

3. GOOD FAITH ANSWER

The Court is also not persuaded with Defendants' final argument that they have responded to the subject interrogatories in good faith. According to Plaintiffs, Defendants responded based upon their own definition of instructional and curricular validity rather than responding to the precise interrogatory (as it related to the request for admission) propounded. The proponent of discovery is the master of its terms. So long as the information sought is within the broad bounds of relevancy as set forth in Rule 26 and is otherwise properly discoverable, the respondent may not unilaterally reshape or rephrase the discovery request. While it appears that Defendants may dispute what the proper definitions of instructional validity and curricular validity are, that substantive question or its legal significance to the outcome of this case is not before the Court. Rather, the question here is whether the information sought by Plaintiffs is sufficiently relevant to permit discovery. The information sought by the interrogatories at issue appears relevant and Defendants do not argue otherwise.

Plaintiffs' Motion to Compel (Docket No. 128) is GRANTED IN PART as to Plaintiffs' Second Set of Interrogatories, in its entirety. Defendants' responses to said interrogatories (relating to any requests for admission addressed and not unqualifiedly admitted) shall be served on Plaintiffs no later than February 22, 2002, at 12:00 noon.

All other issues addressed by Plaintiffs' motion to compel (Docket No. 128) are DENIED AS MOOT.

IT IS SO ORDERED.

Footnotes

1

On January 25, 2002, the Court received a joint letter from the parties wherein Plaintiffs agreed to redraft various contested requests for admission from the two sets of requests for admission previously served on Defendants. The Court is informed that Plaintiffs provided these redrafts and that Defendants have responded thereto.

2

Defendants also intimate that Plaintiffs' interrogatories should be limited to twenty-five total as to all defendants and that by asking the same interrogatory to both defendant the State Board of Education and defendant the State Department of Education, the interrogatory should be counted twice against the cap of twenty-five. However, by its terms Rule 33(a) applies to interrogatories served by one party upon “any other party.” Thus, where there are multiple defendants (at least where the defendants do not act in unison and are more than nominally separated), the limit imposed by Rule 33(a) applies to each defendant. Defendants have not argued or demonstrated that they are acting in unison.