



1 Specifically, Defendant requests all documents responsive to the following requests:

2 **REQUEST FOR PRODUCTION NO. 4:**

3 ALL DOCUMENTS REFERRING OR RELATING TO Mr. Menard's time  
4 spent on any of YOUR CALIFORNIA PROJECTS, including but not limited to  
5 timesheets, daily reports, meeting minutes, and pay stubs.

6 **REQUEST FOR PRODUCTION NO. 8:**

7 ALL DOCUMENTS REFERRING OR RELATING TO the roles and  
8 responsibilities of [sic] Mr. Menard on any of YOUR CALIFORNIA  
9 PROJECTS.

10 **REQUEST FOR PRODUCTION NO. 12:**

11 Mr. Menard's timesheets, diaries, or notes RELATING TO any of YOUR  
12 CALIFORNIA PROJECTS.

13 Plaintiff objected to all requests, but nevertheless produced a printout of time billed by Mr.  
14 Menard from January 30, 2012 to May 30, 2014 for various California Projects (including time  
15 billed to the CVIN Project), which did not contain any information about the projects to which  
16 Mr. Menard billed his time. Plaintiff has also offered to allow Mr. Menard to answer questions  
17 during a deposition regarding his work on non-CVIN projects.

18 Under the Federal Rule of Civil Procedure 26(b)(1):

19 Unless otherwise limited by court order, the scope of discovery is as follows:  
20 Parties may obtain discovery regarding any nonprivileged matter that is relevant  
21 to any party's claim or defense and proportional to the needs of the case,  
22 considering the importance of the issues at stake in the action, the amount in  
23 controversy, the parties' relative access to relevant information, the parties'  
24 resources, the importance of the discovery in resolving the issues, and whether  
25 the burden or expense of the proposed discovery outweighs its likely benefit.  
26 Information within this scope of discovery need not be admissible in evidence to  
27 be discoverable.

28 Accordingly, the Court first addresses the question of whether the requested discovery  
is relevant to any party's claim or defense. Defendant contends that the requested documents  
are relevant to its counterclaim challenging whether Plaintiff was duly licensed during the time  
period when Plaintiff claims that Defendant allegedly breached its contract relating to an  
underground construction project. In support of this argument, Defendant relies on California  
Business and Profession Code section 7031, which provides as follows:

1 (a) Except as provided in subdivision (e), no person engaged in the business or  
2 acting in the capacity of a contractor, may bring or maintain any action, or  
3 recover in law or equity in any action, in any court of this state for the collection  
4 of compensation for the performance of any act or contract where a license is  
5 required by this chapter without alleging that he or she was a duly licensed  
6 contractor at all times during the performance of that act or contract, regardless  
7 of the merits of the cause of action brought by the person, except that this  
8 prohibition shall not apply to contractors who are each individually licensed  
9 under this chapter but who fail to comply with Section 7029.

7 Cal. Bus. & Prof. Code § 7031. Defendant challenges the validity of Plaintiff’s license on the  
8 ground that Plaintiff’s RME failed to appropriately supervise Plaintiff’s projects—both the  
9 current project with Defendant, as well as the 11 other non-CVIN projects.

10 As an initial matter, it is undisputed that whether Plaintiff’s RME appropriately  
11 supervised the project at issue is relevant to this case. Indeed, Plaintiff has filed a motion for  
12 summary judgment claiming that according to undisputed facts, Defendant’s counterclaim for  
13 disgorgement should be denied because Plaintiff had an appropriate California contractor’s  
14 license for the relevant work based on Mr. Menard’s work on the CVIN project at issue in this  
15 case. (ECF No. 197). However, Plaintiff disputes whether the requested information is relevant  
16 to this question because the requested documents all concern non-CVIN projects. The parties  
17 agree that Plaintiff has already produced discovery regarding Mr. Menard’s work on the CVIN  
18 project at issue in the case.<sup>1</sup>

19 Thus, the question on this point is whether Defendant is entitled to learn about Mr.  
20 Menard’s role on non-CVIN projects in order to challenge Mr. Menard’s supervision on the  
21 project at issue in this case. Defendant claims that the requested information about non-CVIN  
22 projects is relevant to Mr. Menard’s work on the CVIN project because “If Menard was acting  
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25 <sup>1</sup> See Statement of Discovery Disagreement Regarding Motion to Compel Production  
26 of Documents (“Joint Statement”), ECF No. 273, at 19:22-26 (“CVIN currently has all of  
27 MPN’s documents related to the CVIN Project, including Mr. Menard’s emails, and documents  
28 generated or received by Mr. Menard. CVIN also currently has a complete record of Louis  
Menard’s billable time recorded day-by-day. CVIN also has the “key” for Mr. Menard’s day-  
by-day billable time, so they know what time was billed to the CVIN projects.”).

1 as a Project Manager, or in another full-time capacity on another project, this would leave no  
2 time to fulfill the requisite duties on the CVIN Projects.” (Joint Statement, at 13:19-21).

3 The Court disagrees. Defendant already has all relevant discovery regarding Mr.  
4 Menard’s work on the project at issue in this case, as well as time entries reflecting time spent  
5 on non-CVIN projects. This information is sufficient to determine whether Mr. Menard  
6 fulfilled his obligations as to the CVIN project. What exactly Mr. Menard did on the non-  
7 CVIN projects during the amount of time already disclosed will not shed light on Mr. Menard’s  
8 ability to work on the CVIN project during the rest of his time.

9 Defendant next contends that Mr. Menard’s role on other projects is relevant because it  
10 could provide Defendant with a defense that Mr. Menard failed to adequately supervise non-  
11 CVIN projects for Plaintiff. Defendant relies on California Business and Professions Code  
12 section 7068.1:

13  
14 The person qualifying on behalf of an individual or firm under paragraph (1),  
15 (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for  
16 exercising that direct supervision and control of his or her employer's or  
principal's construction operations to secure compliance with this chapter and  
the rules and regulations of the board.

17 Cal. Bus. & Prof. Code § 7068.1. Based on this statute, Defendant claims that Plaintiff’s entire  
18 license could be rendered invalid or null if Plaintiff’s MPE failed to properly supervise any  
19 project. In support of this argument, Defendant points to the requirement that the MPE must  
20 properly supervise “construction operations” in order to obtain a valid license. Thus,  
21 Defendant argues that if any project among those construction operations were inadequately  
22 supervised, then the license as a whole is void, and any work done under that license - even if  
23 done with appropriate supervision - should be considered unlicensed, and such a company  
24 should be prohibited from collecting money for such work.

25 Both parties agree that there is no case on point. In other words, no case, in California  
26 or otherwise, has ruled either way on the question of whether a failure of an MPE to adequately  
27 supervise one project for a company renders the work done by that company in other areas  
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1 “unlicensed.” In support of its position, Plaintiff cites to two cases involving a challenge of the  
2 role of an MPE in order to invalidate a contractor’s license and notes that the relevant issue was  
3 framed as concerning the project at issue, rather than all projects done by that company. See  
4 Buzgheia v. Leasco Sierra Grove, 60 Cal. App. 4th 374, 380-81 (1997) (“Leasco took the  
5 position that Laird was not a ‘bona fide’ employee, did virtually no work on the Leasco  
6 projects and therefore Tripoli (and hence, Buzgheia) was not ‘duly licensed.’”); G. E. Hetrick  
7 & Associates, Inc. v. Summit Constr. & Maint. Co., 11 Cal. App. 4th 318, 329, (1992), reh'g  
8 denied and opinion modified (Dec. 10, 1992) (“Defendants attempt to negate this possibility  
9 through the declaration of Katz, who averred that he never saw Gary Hetrick on the jobsite, and  
10 that Grotilsch appeared to Katz to be supervising the job and to have executed the contract in  
11 question. This evidence does not establish as a matter of law that Gary Hetrick did not, in fact,  
12 supervise the job.”). But Defendants rightly point out that the issue of the MPE’s role on other  
13 projects was not presented in those cases and it is unknown whether the company in those cases  
14 even had multiple projects supervised by the same MPE.

15         The role of this Court on this discovery motion is not to resolve this open question as a  
16 matter of law. It can only assess relevance based on the law available and evaluate the  
17 likelihood that additional discovery would help resolve the issues in this case. In light of the  
18 lack of any legal precedent for Defendant’s position, the relevance on this legal issue - i.e.,  
19 whether the MPE adequately supervised other projects than one in this lawsuit - appears low.  
20 Put another way, even if Defendant were to learn that Mr. Menard failed to adequately  
21 supervise another project, it is far from clear that Defendant would automatically avoid any  
22 liability for payment for the project here. This is especially true if it were determined that the  
23 project at issue here was appropriately supervised. While it is correct that California courts  
24 strictly construe such licensing requirements, see Buzgheia, 60 Cal.Appl.4th at 387 (1997)  
25 (“once the [RME] is not performing his function, it is as if the contractor has no license at  
26 all.”), this Court would find such a result to be unreasonably harsh and not comport with the  
27 purpose of the statute to “provide minimal assurance that all persons offering such services in  
28 California have the requisite skill and character, understand applicable local laws and codes,

1 and know the rudiments of administering a contracting business.” Hydrotech Systems, Ltd. V.  
2 Oasis Waterpark, 52 Cal.3d 988, 995 (1991).

3 Another aspect to consider in assessing potential relevance of the discovered material is  
4 the likelihood that it would in fact reveal that Mr. Menard improperly supervised the non-CVIN  
5 projects. The Court has seen no such evidence supporting a reasonable suspicion that any of  
6 the non-CVIN projects were improperly supervised. At oral argument, counsel for Defendant  
7 referred to communications indicating that Mr. Menard claimed to have a business  
8 development role generally. However, Plaintiff contested this description and pointed out that  
9 there was no evidence before this Court to support such characterization. Notably, Defendant  
10 did not point to any evidence related to any specific non-CVIN project demonstrating a lack of  
11 oversight. The Court understands Defendant’s argument that it requires the requested  
12 discovery to determine that issue. Yet, Defendant has thus far declined to take the deposition  
13 of Mr. Menard to learn more, and has apparently not seen anything in the billing records or  
14 other evidence to date giving a hint of such impropriety. Without such evidence, it appears that  
15 discovery about non-CVIN projects, even if the result could in theory be legally relevant, is  
16 akin to a “fishing expedition,” in that Defendant is searching for something improper that might  
17 give right to a potential defense, rather than following a lead indicating that such impropriety  
18 will be found.

19 All in all, the Court finds that the relevance of the requested information is minimal.  
20 There is no evidence to suggest that Defendant will uncover evidence of improper supervision.  
21 Similarly, there is no caselaw supporting Defendant’s argument that any impropriety would be  
22 a valid defense in this lawsuit.

23 Against that backdrop, the Court turns to the burden involved in producing the  
24 discovery sought. Plaintiff claims that “Responding to several of CVIN’s demands would  
25 require a blanket review of every letter and email sent to or from Louis Menard, every contract,  
26 subcontract, material purchase, work order, change order, payment request, subcontractor  
27 payment authorization, and in essence every other material document of any kind from each of  
28 these 11 projects.” (Joint Statement at 24:1-5). This issue was also discussed at oral argument

1 and both parties appeared to agree that satisfaction of the requests would require a search for  
2 every document to or from Mr. Menard. Defendant claimed such a search would be reasonable  
3 because Plaintiff could search the electronic files for the word “Menard,” and was free to  
4 provide every document with Mr. Menard without a further search. Plaintiff countered that  
5 many documents were not electronically searchable, and in any event, Plaintiff would have to  
6 review every such document prior to production.

7         The Court finds that the burden associated with the searches is high. This is not a  
8 situation where a party requests targeted billing records. There are 11 construction projects at  
9 issue. Mr. Menard’s name likely appears on many documents. And while Plaintiff could  
10 choose to produce all documents mentioning Mr. Menard, that is not consistent with Plaintiff’s  
11 obligation to produce only responsive and non-privileged materials. The burden of finding  
12 every document on 11 projects mentioning Mr. Menard and reviewing them for production is a  
13 large one.

14         The Court is also mindful of the chilling effect that could result from an order requiring  
15 such production. After all, Plaintiff possesses a license validly obtained through California  
16 licensing authorities. To side with Defendant would be to hold that any licensed construction  
17 company must produce every document concerning the role of its MPE supervising any project,  
18 in order to sue for payment on a construction project. Such a discovery burden could very well  
19 discourage companies from filing a lawsuit merely to avoid the discovery costs associated with  
20 such a production. The Federal Rules of Civil Procedure, especially as recently revised, seek to  
21 avoid such a result.

22         Based on this assessment of the relative relevance and burden associated with the  
23 requested documents, this Court finds that the discovery is not required under Federal Rule of  
24 Civil Procedure 26(b)(1).

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