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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 PIA MCADAMS, on behalf of herself and
11 those similarly situated,

12 Plaintiff,

13 v.

14 NATIONSTAR MORTGAGE LLC AND DOES 1-
15 10,

16 Defendants.

Case No.: 20CV2202-L(BLM)

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL DISCOVERY
RESPONSES**

[ECF NO. 45]

17 Currently before the Court is Plaintiff's March 14, 2022 Motion to Compel Discovery
18 Responses ("MTC") [ECF No. 45-1], Defendant's March 18, 2022 opposition to the motion
19 ("Oppo.") [ECF No. 47], and Plaintiff's March 23, 2022 reply ("Reply") [ECF No. 48]. For the
20 reasons set forth below, Plaintiff's motion is **DENIED**.

21 **FACTUAL BACKGROUND**

22 "This is a putative consumer class action where Plaintiff alleges that [Defendant] falsely
23 led Plaintiff to believe that [it] was processing Plaintiff's loan modification application instead of
24 going through with the foreclosure process on her home." MTC at 6 (citing ECF No. 17, First
25 Amended Complaint ("FAC") ¶ 63). This deceptive and illegal practice, known as "dual tracking,"
26 is the basis for all of Plaintiff's claims. *Id.* (citing FAC at ¶¶ 76–78, 128–30, 140–42, 148, 162).
27 Plaintiff seeks to represent a class consisting of "[a]ll persons whose California owner-occupied
28 property had a first-lien mortgage held by Nationstar Mortgage, LLC d/b/a Mr. Cooper

1 ('Nationstar') and were foreclosed on by Nationstar after having submitted a loan modification
2 application, on or after October 1, 2017 and until notice is disseminated to the Class[.]” Oppo.
3 at 6 (quoting FAC ¶ 105).

4 **DISCOVERY BACKGROUND**

5 On November 19, 2021, Plaintiff served her First Set of Requests for Production of
6 Documents (“RFP”) on Defendant Nationstar Mortgage, LLC. MTC at 7; see also ECF No. 45-2,
7 Declaration of Michael T. Houchin in Support of Plaintiff’s Motion to Compel (“Houchin Decl.”) at
8 ¶ 2, Exh. 1. After the parties agreed on an extension of time to respond, Defendant served
9 objections to the RFPs on January 10, 2022. Id.; see also Houchin Decl. at ¶ 3, Exh. 2.

10 The parties met and conferred on January 18, 2022 regarding Defendant’s discovery
11 responses. MTC at 7; see also Houchin Decl. at ¶ 4. Defendant agreed to supplement its
12 production for RFP No. 17, but would not agree to produce the names and contact information
13 of the putative class members. Id. at 7-8; see also Houchin Decl. at ¶ 4. On February 28, 2022,
14 Defendant supplemented its responses to Plaintiff’s First Set of RFPs, including a spreadsheet
15 with potential class members’ “(1) loan number; (2) original loan amount; (3) unpaid balance
16 of loan at time of foreclosure sale; (4) property state; (5) foreclosure sale date; (6) loan
17 modification application submitted date; and (7) loan modification application decision date.”
18 Oppo. at 7; see also ECF No. 47-1, Declaration of Mary Kate Kamka in Support of Nationstar
19 Mortgage LLC D/B/A Mr. Cooper’s Opposition to Plaintiff’s Motion to Compel Discovery Responses
20 (“Kamka Decl.”) at ¶ 3; MTC at 8; Houchin Decl. at ¶5. The parties met and conferred again on
21 March 4, 2022, but could not reach an agreement. See MTC at 8; Houchin Decl. at ¶ 7.

22 On March 4, 2022, the parties jointly contacted the Court regarding Defendant’s response
23 to RFP No. 17. ECF No. 43. In regard to the dispute, the Court set a briefing schedule. Id.
24 The parties timely filed their pleadings. See MTC, Oppo., and Reply.

25 **LEGAL STANDARD**

26 The scope of discovery under the Federal Rules of Civil Procedure is defined as follows:

27 Parties may obtain discovery regarding any nonprivileged matter that is relevant
28 to any party’s claim or defense and proportional to the needs of the case,

1 considering the importance of the issues at stake in the action, the amount in
2 controversy, the parties' relative access to relevant information, the parties'
3 resources, the importance of the discovery in resolving the issues, and whether
4 the burden or expense of the proposed discovery outweighs its likely benefit.
5 Information within this scope of discovery need not be admissible in evidence to
6 be discoverable.

6 Fed. R. Civ. P. 26(b)(1).

7 District courts have broad discretion to determine relevancy for discovery purposes. See
8 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad discretion
9 to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing that courts must
10 limit discovery where the party seeking the discovery "has had ample opportunity to obtain the
11 information by discovery in the action" or where the proposed discovery is "unreasonably
12 cumulative or duplicative," "obtain[able] from some other source that is more convenient, less
13 burdensome, or less expensive," or where it "is outside the scope permitted by Rule 26(b)(1)").

14 **PLAINTIFF'S MOTION**

15 Plaintiff seeks an order from the Court compelling Defendant to supplement its responses
16 to RFP No. 17 and produce the names and contact information of the putative class members.
17 Id. at 6-7. RFP No. 17 requests

18 DOCUMENTS sufficient to IDENTIFY all PERSONS in California who
19 submitted a loss mitigation application to YOU from October 1, 2017 until
20 the present and then subsequently had their home foreclosed.

21 Id. at 7; see also Houchin Decl. at Exh. 1. Defendant objected to RFP No. 17 as follows:

22 Nationstar objects to this request on the grounds that it is premature, overly broad,
23 and irrelevant to the claims and defenses as they currently exist. Plaintiff's
24 purported class has not been certified and, thus, the requested information is
25 overbroad and irrelevant. Moreover, Plaintiff's alleged class definition is overbroad
26 in that it purports to include all California borrowers whose property was foreclosed
27 on by Nationstar after having submitted a loan modification application, many of
28 whom have no claim for violation of the California Homeowner Bill of Rights or
fraud against Nationstar. Furthermore, determining whether any other individual
has similar claims against Nationstar as those alleged by Plaintiff would require a
burdensome file-by-file review of the individuals' loan modification application and

1 foreclosure history, thus illustrating why Plaintiff's claims cannot be certified.

2 Nationstar further objects to this request as it seeks disclosure of private
3 information of third parties who are not parties to this action, and may not even
4 be members of a class, should a class be certified.

5 Nationstar further objects to this request to the extent that it seeks information
6 protected by the attorney-client privilege, the attorney work-product doctrine, or
7 any other applicable privilege.

8 Based on these objections, Nationstar is willing to meet and confer with Plaintiff's
9 counsel to determine a narrower request for information relating to the alleged
10 class members.

11 Id. Plaintiff argues that (1) the names and contact information of the putative class members
12 are relevant "to aid Plaintiff's theories of liability, further develop evidence in support of class
13 certification, and to respond to Nationstar's anticipated opposition to class certification," (2) the
14 request is not overbroad as it tracks the proposed class definition in Plaintiff's FAC, and (3) any
15 privacy concerns are alleviated by the protective order in this case. Id. at 9-12.

16 **DEFENDANT'S OPPOSITION**

17 Defendant contends that the Court should deny Plaintiff's motion because

18 (1) Plaintiff has failed to make the requisite showing to permit this type of discovery; (2)
19 Plaintiff's request seeks information that is not relevant to the parties' claims and defenses
20 at this juncture in the case given that no class has been certified and Nationstar's
21 dispositive Motion for Judgment on the Pleadings ("MJOP"; ECF No. 36) is currently
22 pending; and (3) the phone numbers of the 1,280 loan account holders listed in
23 Nationstar's list should not be compelled based on the right of privacy.

24 Oppo. at 5.

25 **PLAINTIFF'S REPLY**

26 Plaintiff replies that the Court should exercise its discretion and not require Plaintiff to
27 make a *prima facie* showing at this stage, but notes that regardless, she has done so. Reply at
28 5. Plaintiff also notes that while her FAC "adequately alleges that the requirements for class
certification are satisfied[,] " the desired information would aid her in demonstrating the
requirements of Fed. R. Civ. P. 23 Id. at 6. Plaintiff argues that the class member contact
information is relevant now because the information will give her the opportunity to substantiate

1 her class allegations and rebut Defendant's opposition to class certification. Id. at 8. Finally,
2 Plaintiff argues that any privacy concerns are alleviated by the protective order that has been
3 entered in this case. Id. at 9.

4 **DISCUSSION**

5 The scope of pre-class certification discovery lies within the sound discretion of the trial
6 court. Coleman v. Jenny Craig, Inc., 2013 WL 2896884, at *4 (S.D. Cal. June 12, 2013) (citing
7 Kamm v. Cal. City Dev. Co., 509 F.2d 205 (9th Cir.1975)). In seeking discovery before class
8 certification, Plaintiffs bear the burden of making a *prima facie* showing that the Fed. R. Civ. P.
9 23 requirements are satisfied or that discovery is likely to substantiate the class allegations
10 (Mantolete Burden). Salgado v. O'Lakes, 2014 WL 7272784, at *4 (E.D. Cal. Dec. 18, 2014);
11 see also Coleman, 2013 WL 2896884, at *4 (citing Mantolete v. Bolger, 767 F.2d 1416, 1424
12 (9th Cir.1985) ("Although in some cases a district court should allow discovery to aid the
13 determination of whether a class action is maintainable, the plaintiff bears the burden of
14 advancing a prima facie showing that the class action requirements of Fed. R. Civ. P. 23 are
15 satisfied or that discovery is likely to produce substantiation of the class allegations. Absent
16 such a showing, a trial court's refusal to allow class discovery is not an abuse of discretion.")).

17 Fed. R. Civ. P 23(a) permits a class action to proceed where

18 (1) the class is so numerous that joinder of all members is impracticable; (2) there
19 are questions of law or fact common to the class; (3) the claims or defenses of the
20 representative parties are typical of the claims or defenses of the class; and (4)
21 the representative parties will fairly and adequately protect the interests of the
22 class.

23 Additionally, a class action only will be certified if

24 (1) there is a risk of substantial prejudice from separate actions; or (2) declaratory
25 or injunctive relief benefitting the class as a whole would be appropriate; or (3)
26 "the questions of law and fact common to class members predominate over any
27 questions affecting only individual members and ... a class action is superior to
28 other available methods for fairly and efficiently adjudicating the controversy.

1 Coleman, 2013 WL 2896884, at *4. “In determining whether to grant discovery the court must
2 consider its need, the time required, and the probability of discovery resolving any factual issue
3 necessary for the determination” of whether a class action is maintainable. Id. (citing Kamm,
4 509 F.2d at 210) (stating that “[t]he propriety of a class action cannot be determined in some
5 cases without discovery, as, for example, where discovery is necessary to determine the
6 existence of a class or set of subclasses. To deny discovery in a case of that nature would be an
7 abuse of discretion. Where the necessary factual issues may be resolved without discovery, it
8 is not required.”).

9 As an initial matter, the Court finds that Plaintiff’s discovery request is overbroad and
10 likely includes information with little if any relevance. Plaintiff seeks personal contact information
11 for every person who submitted a loss mitigation application to Defendant and who were
12 foreclosed upon from October 2017 to present day regardless of whether the person has a claim
13 for violation of the Homeowner Bill of Rights (“HBOR”) or fraud. MTC at 7. Defendant represents
14 that determining which, if any of these potential class members has a dual tracking claim would
15 require an “individualized file-by-file analysis of the individualized issues[,]” including the
16 individuals’ bankruptcy proceedings. Oppo. at 11. Plaintiff makes no effort to narrow the scope
17 of her request by including terms or facts that would indicate possible HBOR or fraud claims. In
18 addition, Plaintiff provides no evidence or explanation in support of her position that some, let
19 alone a significant number of the 1,282 people “identified” in Defendant’s spreadsheet, have
20 viable fraud or HBOR claims. See MTC. At this stage of the litigation, producing the personal
21 contact information for the 1,282 people is not proportional to the needs of the case.

22 Additionally, Plaintiff relies on Amaraut v. Sprint/United Mgt. Co., 2020 WL 8024170 (S.D.
23 Cal. Jan. 14, 2020) to support her argument that the contact information is relevant and
24 necessary “to aid Plaintiff’s theories of liability, further develop evidence in support of class
25 certification, and to respond to Nationstar’s anticipated opposition to class certification” and “to
26 have basic informational access to potential witnesses.” MTC at 10; Reply at 7. Amaraut is
27 distinguishable from the instant case in two important ways. First, there was no dispute in
28 Amaraut about the putative class itself. 2020 WL 8024170. Prior to the discovery dispute

1 discussed in Amaraut, the parties filed a Joint Motion to Conditionally Certify the Collective and
2 Facilitate Notice Pursuant to 29 U.S.C. § 216(B), which the court granted. Id. at *2. Here, there
3 is a significant dispute as to both the scope and viability of the class. Second, the Amaraut court
4 focused on the fact that plaintiffs were seeking contact information for putative class members
5 who were, or were likely to be, percipient witnesses to the claims alleged in the FLSA case. Id.
6 at *6. Here, Plaintiffs have not established that the 1,281 people who are not parties to the
7 case at this time have an interest in, or have relevant information regarding, the dual tracking
8 class claims. While class member employees are likely to be percipient witnesses to each other's
9 wage and hour claims in a FLSA case, the same cannot be said of the 1,281 individual
10 homeowners and borrowers in this dual tracking case.¹ Defendant's spreadsheet included each
11 potential putative class members' "(1) loan number; (2) original loan amount; (3) unpaid balance
12 of loan at time of foreclosure sale; (4) property state; (5) foreclosure sale date; (6) loan
13 modification application submitted date; and (7) loan modification application decision date."
14 Oppo. at 7; see also Kamka Decl. at ¶ 3; MTC at 8; Houchin Decl. at ¶ 5. Plaintiff has not
15 established why this information is insufficient for Plaintiff to bring her class certification motion.

16 Plaintiff's discovery request is overbroad, seeks likely irrelevant information, and
17 potentially infringes on the privacy rights of uninvolved individuals as it seeks personal contact
18 information for a large number of people who may not have any interest in or relevant
19 information regarding the dual tracking claims at issue in the litigation. The Court finds that
20 Plaintiff's need for the personal contact information at this stage and "the probability of that
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23 ¹ Plaintiff also cites to Wiegele v. Fedex Ground Package System, 2007 WL 628041, at *2 (S.D.
24 Cal., Feb. 8, 2007) for the idea that "as a general rule, before class certification has taken place,
25 all parties are entitled to 'equal access to persons who potentially have an interest in or relevant
26 knowledge of the subject of the action'" but that case also arose in the employment law context
27 and in full states "[w]age and hour disputes (and others in the same general class) routinely
28 proceed as class actions." "[A]s a general rule, before 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.'" Wiegele, 2007 WL 628041,
at *2 (internal citations omitted) (emphasis added).

1 information resolving any factual issue necessary for the determination” of class certification are
2 low. Coleman, 2013 WL 2896884, at *4 (citing Kamm, 509 F.2d at 210).

3 Finally, Plaintiff has not provided evidence making a *prima facie* showing that the Rule
4 23 class requirements are satisfied. While Plaintiff establishes numerosity, by noting there are
5 potentially 1,281 class members at issue here [see MTC at 12], Plaintiff provides no evidence of
6 commonality. Plaintiff merely states that the FAC alleges “that there are several questions of
7 law and fact common to the class including whether Nationstar has complied with HBOR.” Reply
8 at 6 (citing FAC at ¶ 107). Plaintiff does not address the concern that dual tracking claims likely
9 require particularized reviews of each individual’s loan interactions with Defendant to understand
10 if there are fraud or HBOR claims. For similar reasons, Plaintiff fails to make a *prima facie* case
11 for typicality. Because Plaintiff has not made a *prima facie* showing of commonality or typicality,
12 the Court declines to evaluate whether Plaintiff has made a *prima facie* showing of the adequacy
13 prong.

14 **CONCLUSION**

15 For the reasons set forth above, Plaintiff’s motion is **DENIED**.

16 **IT IS SO ORDERED.**

17 Dated: 4/1/2022

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19 Hon. Barbara L. Major
20 United States Magistrate Judge
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