

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**MEMORANDUM**

Case No. CV 13-11 DSF (AGR<sub>x</sub>)

Date 4/4/13

Title Noemi Garibaldi, et al. v. Compass Group USA, Inc., et al.

Present: The  
Honorable

DALE S. FISCHER, United States District Judge

Debra Plato

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:**

(In Chambers) Order to Show Cause Why the Court Should Not Strike the Class Allegations; Order to Show Cause Why the Action Should Not be Dismissed and Why Counsel Should Not be Sanctioned for Failure to Follow This Court's Orders; Order to Show Cause Why Matthew J. Matern Would be Adequate Class Counsel; Order Vacating Scheduling Conference Date

Plaintiff is ordered to show cause why the class allegations should not be stricken for failure to comply with Local Rule 23-3, which requires that a motion for class certification be filed within 90 days after service of a pleading purporting to commence a class action. Even assuming, *arguendo*, that the 90-day period begins to run on the date of removal to this Court, that time period has expired. Plaintiff's response is due no later than April 15, 2013.

On January 7, 2013, this Court issued its Order Setting Scheduling Conference. Pursuant to the Order, and to Rules 16 and 26(f) of the Federal Rules of Civil Procedure, and Local Rules 16 and 26, the scheduling conference was set for April 8, 2013, at 11:00 a.m. and counsel were to confer and to file with the Court, no later than seven days before the scheduling conference, a Joint Rule 26(f) Report. The parties have failed to comply with the Order, which specifically requires that the parties agree to dates as set forth in Exhibit A. The date previously set for the Scheduling Conference is vacated. Plaintiff is ordered to show cause in writing no later than April 15, 2013 why this action should not be dismissed, and both counsel are ordered to show cause why sanctions should not be imposed pursuant to Local Rule 83-7.

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The filing of a Joint Rule 26(f) Report by April 15, shall be deemed a sufficient response to this Order to Show Cause. If a timely Report containing a properly completed Exhibit A is filed, a scheduling conference will be held on April 22, 2013 at 11:00 a.m. in lieu of the hearing on the Order to Show Cause re Sanctions. If no response is filed, this action will be dismissed.

Although adequacy of counsel is ordinarily determined after class certification, it appears an early preliminary determination of whether Plaintiff's counsel would be adequate class counsel would serve the interests of the putative class and of judicial economy. Therefore, Plaintiff's counsel is ordered to show cause why he would be adequate counsel to represent the class if a class were certified. In appointing class counsel, the Court:

(A) must consider:

(I) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs.

Fed.R.Civ.P. 23(g)(1).

A written response must be submitted no later than April 15, 2013. The response should provide full and complete information responsive to Rule 23(g)(1)(A) and (B), and sufficient for the Court to make an informed decision. The response should also provide any agreement between Plaintiff and counsel (which may be filed in camera and under seal), any agreement relating to this action with any other person or entity, and counsel's proposal for terms for attorney's fees and nontaxable costs. See Rule 23(g)(1)(C).

A hearing on these Orders to Show Cause will be held on April 22, 2013 at 11:00 a.m.

Counsel are reminded that paper Chambers copies must be delivered pursuant to this Court's General Orders and the Local Rules. Counsel are further reminded to review

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carefully the General Orders and Local Rules for this district and all of this Court's standing orders.

IT IS SO ORDERED.