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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

YURY ADAMOV,

Plaintiff,

v.

PRICEWATERHOUSE COOPERS LLP,

Defendant.

No. 2:13-cv-01222-TLN-AC

ORDER

This matter is before the court on plaintiff's motion for discovery. ECF No. 64 (renewed at ECF No. 75, joint statement filed at ECF No. 70¹). A hearing was held before the undersigned on December 20, 2017. ECF No. 79. Having considered the arguments of the parties presented in the joint statement and and at the hearing, the court GRANTS plaintiff's motion in part and DENIES it in part, as follows.

I. Relevant Background

On June 19, 2013, plaintiff Yury Adamov filed a wage-and-hour putative class action against his former employer, PricewaterhouseCoopers LLP ("PwC"). ECF No. 54 at 1 (Second Amended Complaint). Plaintiff alleged that PwC misclassified him and other California

¹ For scheduling reasons, the motion was taken off calendar with permission to renew, and the parties filed a renewed joint statement on December 13, 2017. ECF No 76. The renewed joint statement contains no substantive changes, and the court here cites to the original filing at ECF No. 70.

1 employees working as “Attest Associates” at PwC after June 19, 2009. Id. The Attest Associates
2 were not licensed as certified public accountants (“CPAs”) by the State of California. Id. at 4.
3 Plaintiff alleges that PwC misclassified these employees as “exempt” and therefore improperly
4 failed to pay them overtime wages required under California law. Id.

5 This case is in phased discovery. Plaintiff’s motion for class certification is due on March
6 9, 2018, and discovery going to class certification must be completed by January 19, 2018. ECF
7 Nos. 65, 74. A motion for summary judgment is pending before the District Judge. ECF No. 58,
8 62. According to the parties’ joint discovery statement, the factual disputes at issue in this case
9 include:

10 Whether Plaintiff worked any overtime hours as a first-year Attest
11 Associate during the relevant class period. (Plaintiff contends that
12 the relevant class period for Mr. Adamov’s individual claim runs
13 from June 19, 2009 through November 9, 2009; PwC contends that
14 the relevant class period for Mr. Adamov’s individual claim runs
15 from June 19, 2009 through August 31, 2009.)

16 Whether the claims of Mr. Adamov are typical of the claims of the
17 putative class.

18 Whether the defenses of PwC to Mr. Adamov’s claims are similar
19 to or different from its defenses to the claims of the putative class.

20 Whether accounting is a learned profession.

21 Whether the work of first-year Attest Associates requires
22 knowledge of an advanced type in a field of science or learning
23 customarily acquired by a prolonged course of specialized
24 intellectual instruction and study.

25 Whether first-year Attest Associates customarily and regularly
26 exercise discretion and independent judgment in the performance of
27 duties.

28 Whether first-year Attest Associates work under only general
supervision.

Whether the duties and responsibilities of first-year Attest
Associates involve the performance of office or non-manual work
directly related to management policies or general business
operations of their employer or their employer’s customers.

ECF No. 70 at 6-7.

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1 **II. Motion**

2 Plaintiff asks the court to compel responses to multiple requests for production (“RFPs”),
3 including RFP 1, 3-9, 17, 27, 32, 36, 37, 50-51, 55, 57, 58, 62, and 74. The parties filed a joint
4 discovery statement on November 15, 2017. ECF No. 70.

5 **III. Analysis/Summary of the Evidence**

6 A. Legal Standard

7 The scope of discovery in federal cases is governed by Federal Rule of Civil Procedure
8 26(b)(1). The current Rule states:

9
10 Unless otherwise limited by court order, the scope of discovery is
11 as follows: Parties may obtain discovery regarding any
12 nonprivileged matter that is relevant to any party’s claim or defense
13 and proportional to the needs of the case, considering the
14 importance of the issues at stake in the action, the amount in
15 controversy, the parties’ relative access to relevant information, the
16 parties’ resources, the importance of the discovery in resolving the
17 issues, and whether the burden or expense of the proposed
18 discovery outweighs its likely benefit. Information within this
19 scope of discovery need not be admissible in evidence to be
20 discoverable.

21 Fed. R. Civ. P. 26(b)(1). Evidence is relevant if: (a) it has any tendency to make a fact more or
22 less probable than it would be without the evidence; and (b) the fact is of consequence in
23 determining the action.” Fed. R. Evid. 401. Relevancy to the subject matter of the litigation “has
24 been construed broadly to encompass any matter that bears on, or that reasonably could lead to
25 other matter that could bear on, any issue that is or may be in the case.” Oppenheimer Fund, Inc.
26 v. Sanders, 437 U.S. 340, 351 (1978). Relevance, however, does not establish discoverability; in
27 2015, a proportionality requirement was added to Rule 26. Under the amended Rule 26,
28 relevance alone will not justify discovery; discovery must also be proportional to the needs of the
case.

25 Discovery in the class action context can be particularly complex. To proceed with a class
26 action, the Ninth Circuit has held that a plaintiff bears the burden of either making a prima facie
27 showing that Federal Rule of Civil Procedure 23 class action requirements are satisfied or that
28 discovery is likely to produce substantiation of the class allegations. Manolete v. Bolger, 767

1 F.2d 1416, 1424 (9th Cir. 1985). To make a prima facie showing under Rule 23(a), a plaintiff
2 must meet the prerequisites of numerosity, commonality, typicality, and adequacy of
3 representation. Plaintiff must show “(1) that the class is so numerous that joinder of all members
4 is impracticable; (2) that there are questions of law or fact common to the class; (3) that the
5 claims or defenses of the representative parties are typical of the claims or defenses of the class;
6 and (4) that the representative parties will fairly and adequately protect the interests of the class.”
7 Ogden v. Bumble Bee Foods, LLC, 292 F.R.D. 620, 622 (N.D. Cal. 2013) (internal punctuation
8 and citation omitted).

9 In a putative class action, it is within a court’s discretion to set either a bifurcated
10 discovery schedule (creating separate “pre-certification discovery” and “class discovery”
11 deadlines) or non-bifurcated discovery schedule. In bifurcated discovery, pre-certification
12 discovery is generally initially limited to “certification issues such as the number of class
13 members, the existence of common questions, typicality of claims, and the representative’s ability
14 to represent the class.” Gusman v. Comcast Corp., 298 F.R.D. 592, 595 (S.D. Cal. 2014) (citing
15 Oppenheimer Fund, 437 U.S. at 359). Still, the scope of pre-certification discovery lies entirely
16 within the discretion of the court. Vinole v. Countrywide Home Loans, Inc., 571 F.3d 935, 942
17 (9th Cir. 2009). Especially when the material is in the possession of the defendant, the court
18 should allow the plaintiff enough discovery to obtain evidence as to whether a class action is
19 maintainable. See Doninger v. Pac. Nw. Bell, Inc., 564 F.2d 1304, 1313 (9th Cir. 1977). If a
20 plaintiff cannot make an initial showing that the requirements of Fed. R. Civ. P. 26(a) can be met,
21 it is not an abuse of discretion for the court to refuse to allow class discovery. Manolete v.
22 Bolger, 767 F.2d 1416, 1424 (9th Cir. 1985).

23 B. The Motion to Compel a Response to RFP 1 is Granted.

24 Plaintiff’s first request for production seeks the name and last known contact information
25 for each Attest Associate. ECF No. 70 at 7. Defendant objects to the RFP on the grounds that it
26 is not relevant to class certification. Id. at 8. In defendant’s supplemental response, it agreed to
27 supply the information for each Attest Associate who “meets class criteria” and “did not sign an
28 arbitration agreement prior to commencing employment at PwC.” Id.

1 As a preliminary matter, plaintiff is entitled to the discovery requested in RFP 1 because it
2 is directly relevant to class certification. In Gulf Oil Co. v. Bernard, 452 U.S. 89 (1981), the
3 Supreme Court held that class counsel in Rule 23 class actions must be permitted to communicate
4 with potential class members prior to class certification for the purpose of notification and
5 information gathering. Id. at 101-02. Disclosure of contact information for putative class
6 members regularly occurs in the class action context. See, e.g., Artis v. Deere & Co., 276 F.R.D.
7 348, 352 (N.D. Cal. 2011); Martin v. Sysco Corp., No. 1:16-cv-00990-DAD-SAB, 2017 WL
8 4517819, at *3 (E.D. Cal. Oct. 10, 2017). PwC’s proposed limitation to Attest Associates who
9 “did not sign an arbitration agreement” is unwarranted at this stage, as discussed in further detail
10 below. Defendant is required to make a full production in response to RFP 1.

11 C. The Motion to Compel a Response to RFPs 3-9 is Granted.

12 Plaintiff’s RFPs 3-9 seek information regarding PwC’s arbitration program, including
13 information on Attest employees who agreed and/or declined to participate in the arbitration
14 program, information on employees that are subject to the arbitration program, and
15 communications between PwC and Attest employees about the arbitration program. ECF No. 70
16 at 16-20. Plaintiff alleges that PwC solicited putative class members with participation in an
17 arbitration program while this case was stayed, in an effort to deter class participation. ECF No.
18 70 at 20-21. PwC asserts that plaintiff is not entitled to discovery about defenses that cannot be
19 asserted against Mr. Adamov himself as the named plaintiff. Id. at 29. Defendant also argues
20 that issues regarding the arbitration agreement do not have to do with class certification, and only
21 after the class is certified would PwC seek to have class members who signed the arbitration
22 agreement dismissed. Id. at 32.

23 Plaintiff is entitled to discovery at this juncture on issues surrounding the arbitration
24 agreement, and PwC must make a full production in response to RFPs 3-9. It is clear that class
25 counsel have the right to communicate with putative class members prior to class certification.
26 Gulf Oil Co., 452 U.S. at 101-02. The parties dispute whether or not the arbitration program
27 created by PwC, which may prevent individuals who might otherwise be part of the class from
28 participating, was appropriately communicated and whether it should be deemed effective. See

1 ECF No. 76 at 19-26. Whether or not PwC’s communications with putative class members
2 regarding the arbitration program were misleading, and whether or not the arbitration program is
3 proper and/or effective, are matters properly brought before the district judge in this case. The
4 court reminds the parties that this is a discovery dispute, and the ultimate issue of the arbitration
5 agreement is not before the undersigned. Because plaintiff has presented a colorable argument
6 that the validity of the agreement will be at issue at the certification stage, discovery requests with
7 respect to the arbitration program are proper.

8 Defendant also presents a standing argument, asserting that plaintiff is not entitled to
9 discovery about defenses that PwC will not, and cannot, assert against Mr. Adamov (who is
10 admittedly not part of the arbitration agreement), and that Mr. Adamov does not have standing to
11 litigate the validity of an arbitration agreement to which he is not a party. Defendant relies on
12 case law from the Eleventh Circuit, in which the appellate court decided that the “District Court
13 lacked jurisdiction to rule on the arbitration obligations of the unnamed putative class members
14 because the named plaintiffs lack standing to raise any arguments on the unnamed putative class
15 members’ behalf.” In re Checking Account Overdraft Litig., 780 F.3d 1031, 1039 (11th Cir.
16 2015). While this holding seems on point at first glance, the circumstances in In re Checking
17 Account were different than those presented here.

18 Unlike in In re Checking Account, where the district court was making a substantive
19 ruling on the obligations of unnamed putative class members, plaintiff seeks discovery into the
20 contact information of potential class members, including individuals who signed an arbitration
21 agreement that may or may not ultimately prevent them from participating in the class.
22 Defendant’s own argument best presents the conundrum: “The validity/enforceability of PwC’s
23 arbitration program cannot be adjudicated until after class certification proceedings, and only if
24 the class includes individuals who are bound by arbitration agreements.” ECF No. 70 at 30.
25 Defendant is correct that the issue of whether individuals are bound by the arbitration agreement
26 can be part of the class only arises if the class actually includes potentially bound individuals.
27 The issue here is whether plaintiff is entitled to discovery that may lead to such individuals
28 actually being included in the class. To prevent this discovery would amount to a premature

1 decision on the issue of the arbitration agreement's applicability, by limiting plaintiff's ability to
2 include potentially-bound individuals in the class.

3 The undersigned also rejects defendant's argument, made at hearing, that plaintiff's is not
4 entitled to discovery that would lead to the potential inclusion of putative class members that are
5 part of the arbitration agreement because defendant will not dispute numerosity. This argument
6 does not withstand scrutiny; it is within plaintiff's discretion to assemble his class, and he is
7 entitled to attempt to include individuals who may be impacted by the arbitration agreement
8 whether or not they are needed for numerosity purposes. Defendant must make a full production
9 in response to RFP's 3-9.

10 D. The Motion to Compel a Response to RFP 17 is Granted.

11 In RFP 17, plaintiff seeks production of any and all transcripts related to auditor
12 malpractice that were commenced or pending from June 19, 2009 to present in which issues were
13 raised regarding the supervision of unlicensed audit staff, their qualifications or competence, their
14 quality of work, their lack of CPA licensure, or the independence between PwC and an audit
15 client. ECF No. 70 at 34. Defendant objects that this RFP seeks irrelevant information generally,
16 that it is not proportional to the needs of the case, and that it seeks information not relevant to the
17 determination of class certification. Id.

18 Plaintiff has provided a sufficient nexus to the class certification process to demonstrate
19 that this RFP is relevant and proportional to the class certification stage of discovery. Plaintiff is
20 entitled, at this juncture, to discovery on "the existence of common questions, typicality of
21 claims, and the representative's ability to represent the class," Gusman, 298 F.R.D. at 595.
22 Plaintiff asserts that the transcripts sought in this RFP are likely to demonstrate that defendant's
23 representatives have previously testified that Attest Associates are tightly controlled and closely
24 supervised workers, contrary to their position in this case that Attest Associates regularly exercise
25 discretion and judgment and work under only general supervision. ECF No. 70 at 35.

26 Plaintiff points out that the common questions described above regarding Attest
27 Associates were central at the class certification stage of a related case, Campbell v.
28 PricewaterhouseCoopers LLP, No. 06-cv-02376 TLN AC (previously 06-cv-02376 LKK AC).

1 The orders of the district judge in Campbell demonstrate that the issue of Attest Associate control
2 and/or independence is central at the class certification stage. See, e.g. Campbell ECF No. 557 at
3 9 (“Plaintiffs have met their initial burden. They have made a legal and factual showing tending
4 to refute the claims that the Attest Associates, are allowed to, or in fact do, exercise discretion and
5 independent judgment.”). Defendant’s broad contention that this RFP is a “fishing expedition” is
6 not persuasive in light of the matters at issue in this case. ECF No. 70 at 37. Defendant must
7 make a full production in response to RFP 17.

8 E. The Motion to Compel a Response to RFP 27 is Denied.

9 Plaintiff’s RFP 27 requests any and all documents, including email, related to
10 communications between any PwC partner, human resources employee, and/or manager or
11 supervisor related to the development of any job descriptions for Attest Associates. ECF No. 70
12 at 39. Defendant objects that this request is overbroad, unduly burdensome, and exceeds the
13 scope of permissible discovery. Id. Defendant notes that it has already produced versions of job
14 postings available for first-year Attest Associates in the Campbell litigation, which are available
15 to plaintiff’s counsel, and will produce updates following the entry of a protective order. Id.

16 Plaintiff asserts that, because central issues to be litigated at class certification will require
17 information on expectations of first-year Attest Associates, including educational or work
18 requirements, RFP 27 seeks relevant information. In this case, however, the court agrees with
19 defendant that the request is unduly burdensome and seeks information that is available from
20 other sources. ECF No. 70 at 41, Fed. R. Civ. P. 26(b)(2)(C)(i). The final job descriptions are
21 available to plaintiff, and plaintiff does not make a persuasive case that discovery on the process
22 of developing these descriptions will lead to any non-duplicative information. Further, defendant
23 has offered to produce a Fed. R. Civ. P. 30(b)(6) witness on the topic of job duties and work
24 responsibilities. ECF No. 70 at 42. This witness, combined with production of published job
25 descriptions, is sufficient. Defendant need not make a further production in response to RFP 27.

26 F. The Motion to Compel a Response to RFP 32 is Granted.

27 Plaintiff’s RFP 32 seeks all affidavits, declarations, or witness statements, including all
28 drafts, obtained by PwC or its counsel that relate in any way to this case or the job duties and

1 work responsibilities of Attest Associates. ECF No. 70 at 42. Defendant objects to the extent the
2 request seeks privileged information, to the extent that it seeks documents protected by the
3 privacy rights of third parties, and because it is overbroad and unduly burdensome. Id. Plaintiff
4 responds that to the extent the request encompasses privileged documents, defendant is obligated
5 to make a production along with a privilege log,

6 The court agrees that defendant must make a full production in response to RFP 32, along
7 with a privilege log in accordance with the local and federal rules. Defendant's broad references
8 to privilege do not warrant a lack of production; instead, they warrant the production of a proper
9 privilege log. Fed. R. Civ. P. 26(b)(5). The request is otherwise relevant and proportional, and
10 defendant's objections with respect to the burden of production are not well supported.

11 Defendant must make a full production, with a privilege log, with respect to RFP 32.

12 G. The Motion to Compel a Response to RFP 36 is Denied.

13 Plaintiff's RFP 36 requests "any and all documents relating to plaintiff." ECF No. 70 at
14 47. Defendant objects that the request is overbroad and unduly burdensome, but agreed,
15 following entry of an appropriate protective order, to produce the Annual Summary and Periodic
16 Feedback Form for plaintiff Adamov's first year as an Attest Associate and documents related to
17 his sabbatical leave. ECF No. 70 at 47. In its supplemental response, defendant further objects
18 that the request exceeds the scope of discovery, but agreed (without any waiver of objections) to
19 produce additional documents related to Mr. Adamov that it can locate, such as his personnel file,
20 sabbatical leave-related documents, Annual Summaries, Periodic Feedback Forms, Development
21 Plans, and learning history for his full time at PwC. Id.

22 In the briefing, defendant contends that it has "responded fully and completely to Request
23 for Production No. 36." ECF No. 70 at 48. It contends that there are no further responsive
24 documents to produce. Id. Plaintiff does not identify specific documents in defendant's
25 possession that have not been produced. In the absence of evidence to the contrary, plaintiff is
26 required to accept that defendant does not possess responsive documents. See e.g. Mootry v.
27 Flores, No. 1:09-cv-01252 LJO BAM, 2014 WL 3587839, *2 (E.D.Cal.2014) ("Defendants
28 cannot be required to produce documents that do not exist. Absent evidence to the contrary,

1 which has not been presented, Plaintiff is required to accept Defendants' response no such
2 documents exist."); accord, Holt v. Nicholas, 1:09-cv-00800 AWI SAB, 2014 WL 250340, *4
3 (E.D.Cal.2014) ("Absent evidence to the contrary, which has not been presented, Plaintiff is
4 required to accept Defendant's amended response that no such documents responsive to his
5 request exist."). Because defendant contends it has made a full production and has no further
6 responsive documents, it cannot be compelled to respond further to RFP 36.

7 H. The Motion to Compel a Response to RFP 37 is Granted.

8 Plaintiff's RFP 37 requests the complete audit work papers, including complete
9 "MyClient" and "Aura" files, for each PwC audit engagement to which plaintiff was assigned
10 work during the class period. ECF No. 70 at 49. Defendant objects to the RFP on the grounds
11 that it exceeds the scope of production, and seeks irrelevant documents. Id. Defendant also
12 asserts that the RFP seeks documents that may be confidential with respect to third parties. Id.
13 Without waiving any objections, defendant agreed to produce audit work papers reflecting work
14 performed by plaintiff as a "first-year" Attest Associate from June 19, 2009 to September 1,
15 2009. Id.

16 Plaintiff will not limit its request to the timeframe proposed by defendant. ECF No. 70 at
17 50. As plaintiff accurately points out, the issue of the time period during which plaintiff qualified
18 as a "first-year" Attest Associate is currently before the district court in the pending motion for
19 summary judgment. See ECF No., ECF No. 60 at 7. Aside from the timing issue, the documents
20 sought are relevant to central questions in this case, including the work expectations and
21 management of Attest Associates. Because the issue of classification as a "first-year" Attest
22 Associate is pending before the district judge in this case, and because the RFP is otherwise
23 relevant and within the scope of discovery, defendant must make a full production in response to
24 RFP 37.

25 I. The Motion to Compel a Response to RFPs 50-51 is Denied.

26 Plaintiff's RFPs 50-51 seek documents related to educational requirements established by
27 PwC, and documents related to changes in those requirements, for the position of Attest
28 Associates of the "Assurance" Line of Service. Defendant objects that the requests are overbroad

1 and unduly burdensome. Id. at 52. Without waiving objections, defendant agreed to produce
2 versions of job postings applicable to first-year Attest Associates in the Campbell litigation,
3 which are available to plaintiff's counsel. Id. at 51-52. Following the entry of a protective order,
4 defendant agreed to produce updates to the documents not previously provided to plaintiff's
5 counsel for fiscal years 2009-2015. Id. at 52. PwC has also agreed to produce a Rule 30(b)(6)
6 witness on this topic. Id. at 55.

7 Plaintiff supports his request by arguing that it calls for production of documents "likely
8 to set forth PwC's expectations as to the educational or training requirements needed to perform
9 the work of a first-year Attest Associate," and would "also encompass email and other internal
10 communications" concerning the rationale behind any educational requirements in job postings.
11 ECF No. 70 at 52. While it is clear that the educational requirements of first-year Attest
12 Associates are relevant to questions that will be at issue at the class certification stage, plaintiff
13 does not make a persuasive case that internal e-mails and other communications are necessary or
14 would lead to unique, non-duplicative information; this is especially true in light of the
15 availability of a Rule 30(b)(6) witness on the topic. Given the volume of documents such a
16 production is likely to result in, production of such documents is unduly burdensome. Defendant
17 is not required to make any further production, beyond what it has already agreed to, in response
18 to RFP s 50-51.

19 J. The Motion to Compel a Response to RFP 55 is Denied.

20 Plaintiff's RFP 55 seeks all documents relating to or describing PwC's rationale or
21 reasons for requiring passage of the PA Exam as a prerequisite for advancement to the audit
22 senior associate level. ECF No. 70 at 55. Defendant objects that the request seeks production of
23 documents not relevant to the claims or defense in this litigation, and asserts that it does not have
24 a "policy of promoting first-year Attest Associates to Attest Senior Associate." ECF No. 40 at
25 55. Defendant asserts this RFP seeks information not relevant to class certification, and objects
26 on the grounds that the request is uncertain as to time. Id. In its supplemental response,
27 defendant agreed to produce PwC's Assurance credential requirements for Associates and Senior
28 Associates and corresponding frequently asked questions documents and CPA Exam bonus

1 policies from the relevant time period. Id. at 56.

2 Plaintiff asserts the documents in response to RFP 55 are necessary to unveil the
3 “rationale or reasons” for PwC’s requirement that individuals pass the CPA Exam before
4 promotion to the Senior Associate level. ECF No. 70 at 56. To reveal the rationale, plaintiff
5 seeks internal communications, both formal and otherwise. Id. at 57. Defendant asserts that the
6 actual credentialing policies, which it has already produced, state PwC’s “rationale or reasons”
7 for the CPA Exam requirement, and argue any production of internal communications and email
8 would be unduly burdensome and disproportionate to the needs of the case. The court agrees
9 with defendant. Plaintiff is able to obtain the needed information from documents already
10 produced, and has not made a persuasive argument that discovery into internal communications
11 on this topic would reveal novel information. Defendant is not required to make any additional
12 production in response to RFP 55.

13 K. The Motion to Compel a Response to RFP 57 is Denied.

14 Plaintiff’s RFP 57 seeks all documents relating to defendant’s policy and/or practice of
15 staffing audit engagements with associates from other divisions and/or lines of service, including
16 Systems Process Assurance (“SPA”) Associates. ECF No. 70 at 58. Defendant objects to the
17 RFP on the grounds that it exceeds the scope of permissible discovery, is overbroad and unduly
18 burdensome, and the phrase “policy and/or practice” is vague and ambiguous. Id.

19 Plaintiff justifies RFP No. 57 by asserting that staffing SPA associates, who ordinarily
20 perform work related to computer systems and processes and have little to no accounting
21 knowledge, to Attest rotations is relevant to the issue of whether advanced and specialized
22 accounting knowledge is required to perform the work of a first-year Attest Associate. Id. at 59.
23 Defendant counters that the information is irrelevant because SPA associates are not part of the
24 putative class, and the fact that they are sometimes assigned to work on audit engagements is not
25 inconsistent with the position that the work performed by the putative class members is exempt
26 work. Id. at 60. Defendant goes on to state that it does not have a formal or informal policy of
27 staffing audit engagements with associates from other practice areas and has no documents
28 memorializing the instances when a SPA Associate participates in an Attest rotation. Id. It also

1 points out that to the extent plaintiff seeks discovery into PwC's practice on assigning SPA
2 Associates to audits, a Rule 30(b)(6) deponent will be made available and can address this issue.

3 Id.

4 The court agrees that the availability of a Rule 30(b)(6) deponent on this topic should be
5 sufficient, and no further production on this RFP is required. To the extent plaintiff seeks internal
6 communications on this topic, such a production would be unduly burdensome and
7 disproportionate to the needs of the case. This is especially true in light of the fact that the less
8 burdensome option of a 30(b)(6) deponent on this topic is being made available, as plaintiff will
9 be able to gather information related to PwC's practices from the deponent. No further
10 production on RFP 57 will be compelled.

11 L. The Motion to Compel a Response to RFP 58 is Denied.

12 Plaintiff's RFP 58 seeks all documents relating to speeches or statements by former PwC
13 Chairman Bob Moritz that refer to or discuss the job duties and work responsibilities of Attest
14 Associates. ECF No. 70 at 6. Defendant objects on the grounds that the request exceeds the
15 permissible scope of discovery, the burden and expense on defendant outweigh any likely benefit
16 to the plaintiff, and it is overbroad and unduly burdensome. Id.

17 The court is not persuaded by plaintiff's reasoning in support of RFP 58. Plaintiff asserts
18 that Mr. Moritz has, in the past, made public statements about his own first few years at PwC that
19 contradict defendant's theory of this case. Id. at 63. Defendant argues this question is an
20 impermissible fishing expedition, and the court agrees. "District courts need not condone the use
21 of discovery to engage in "fishing expeditions." Rivera v. NIBCO, Inc., 364 F.3d 1057, 1072
22 (9th Cir. 2004). Beyond the minimally probative nature of this request, it also seems to be
23 seeking information that should be largely publically available; in fact, plaintiff asserts he
24 determined this category of documents was necessary based on a speech he found in the New
25 York Times. ECF No. 70 at 61. Defendant will not be compelled to make any production in
26 response to RFP 58.

27 M. The Motion to Compel a Response to RFP 62 is Denied.

28 Plaintiff's RFP 62 seeks all documents describing accounting as an apprenticeship

1 profession, and refers as an example to PwC’s 2014 Audit Quality Report at p. 11. ECF No. 70 at
2 64. Defendant objects that the request exceeds the permissible scope of discovery, that any
3 documents produced would not be relevant in the context of California wage-and-hour law, and
4 that notwithstanding its objections, it has conducted a “diligent search” for PwC-issued reports
5 similar to PwC’s Audit Quality Reports to see if they describe accounting as an “apprenticeship
6 profession” and has found no responsive documents. Id. at 64-65.

7 Plaintiff argues that the information sought in RFP 62 is highly probative, and that PwC’s
8 limited search is unsatisfactory. Id. at 65. The court agrees with defendant that this request is
9 unduly burdensome. The limited search defendant has already completed is sufficient, especially
10 in light of the fact that a Rule 30(b)(6) witness will be available for further probing on this topic.
11 A search of internal records, files, and e-mails for the term “apprenticeship,” which is a term
12 often used informally rather than technically, is likely to reveal a large volume of non-responsive
13 documents and create an unwarranted production burden on defendant. Defendant need not make
14 any further production in response to RFP 62.

15 N. The Motion to Compel a Response to RFP 74 is Denied.

16 Plaintiff’s RPF 74 seeks all documents relating to the promotion of unlicensed audit
17 personnel, who have not taken or have failed any section of the Uniform CPA Examination, to the
18 Senior Associate position. ECF No. 70 at 68. Defendant argues the request exceeds the scope of
19 permissible discovery, and asserts that PwC does not have a policy of promoting first-year Attest
20 Associates to Attest Senior Associates. Id. PwC further argues this RFP is inappropriate at the
21 class certification phase of discovery. Id. Subject to and without waiving objections, PwC
22 agreed to produce its Assurance credential requirements for Associates and Senior Associates and
23 corresponding frequently asked questions documents and CPA Exam bonus policies from the
24 relevant time period. Id. at 69.

25 Plaintiff asserts the partial production agreed to by defendant is inadequate, and contends
26 he needs documents including internal communications, reports (formal and otherwise), and
27 publications. Id. Plaintiff argues that understanding how, why, and when first-year Attest
28 Associates are promoted (or not promoted) is relevant to several class certification issues because

1 if failure to pass one or more sections of the CPA Exam prevents Attest Associates from being
2 promoted, than documents concerning this policy or practice are relevant to class certification.
3 Id. Defendant argues that it has agreed to production of its actual credentialing policies, which
4 state on their face the requirements to be promoted, and any internal communications will not
5 shed additional light on the subject. ECF No. 70 at 70. Defendant also noted their Rule 30(b)(6)
6 deponent would be available to testify on this topic. Id.

7 The court agrees with defendant. Plaintiff has not made a persuasive argument that
8 unspecified internal communications are likely to lead to any unique information in light of the
9 availability of defendant's 30(b)(6) deponent and the production of its official policies. Thus, the
10 burden to defendant would outweigh the potential benefit to plaintiff if production were
11 compelled. Defendant need not make any additional production with respect to RFP 74.

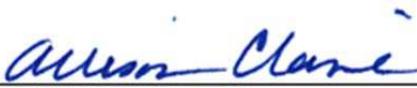
12 CONCLUSION

13 For the reasons explained above, plaintiff's motion to compel, ECF No. 75, is GRANTED
14 in part and DENIED in part as follows:

- 15 1. The motion is GRANTED with respect to RFP Nos. 1, 3-9, 17, 32, AND 37;
- 16 2. The motion is DENIED with respect to RFP Nos. 27, 36, 50-51, 55, 57, 58, 62 and 74.

17 IT IS SO ORDERED.

18 DATED: December 21, 2017

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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