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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIA DEL CARMEN PENA, et al.,

Plaintiffs,

v.

TAYLOR FARMS PACIFIC, INC.,

Defendant.

No. 2:13-CV-1282 KJM AC

ORDER

Plaintiffs' motion to compel discovery responses (ECF No. 82) and defendant's motion to compel discovery responses (ECF No. 66) came on for hearing before the undersigned on November 13, 2013. Phillip A. Downey and Stuart R. Chandler appeared for plaintiffs. Sarah Zenewicz appeared for defendant. On review of the motions, the documents filed in support, upon hearing the arguments of counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Defendant, a California corporation, owns and operates food processing facilities in Tracy, California. Plaintiffs are former and current non-exempt hourly employees who worked or continue to work at these facilities. Plaintiffs allege that defendant violated state wage and hour laws by failing to provide legally compliant meal and rest period, failing to pay for all time plaintiffs actually worked, failing to pay all wages due at time of termination, and failing to

1 provide proper pay stubs. Plaintiffs seek unpaid wages, expenses and penalties on behalf of their  
2 class. Their motion for class certification is set for hearing before the Honorable Kimberly J.  
3 Mueller on November 22, 2013.

4 This case was filed in San Joaquin County Superior Court on February 17, 2012 and  
5 removed to this court on June 26, 2013. At a status conference on September 5, 2013, Judge  
6 Mueller addressed the scheduling of plaintiff's motion for class certification<sup>1</sup> and asked why no  
7 motions to compel had been filed in federal court if there were outstanding discovery disputes:

8 THE COURT: One of my questions is why haven't the motions to  
9 compel been brought here if there are disputes that need resolving?

10 [PLAINTIFF'S COUNSEL] MS. OLIVER: Well, I anticipate that  
11 that would be exactly what happens. . . . [¶]

12 THE COURT: There's been a little bit of time to have jumped on  
13 this; right? [¶]

14 MS. OLIVER: Yes, your Honor. . . .

15 THE COURT: That's what I'm looking at, is a class certification  
16 hearing that the plaintiffs have previously proposed. And at this  
17 point, the Court is not inclined to change that. The Court's  
18 impression has been that that's a deadline that should be kept to  
19 focus the minds and to try to bring some focus to this case. And it  
20 has not been clear to me that motions to compel couldn't have been  
21 brought earlier, even if it's on a fairly tight time frame, to resolve  
22 issues in time for briefing on that motion for class certification. . . .  
23 [¶]

24 MS. OLIVER: And certainly we've served as much discovery as  
25 we think we need to conclude before the class certification briefing  
26 is due. If they comply and we don't have any discovery disputes  
27 about those pending questions, then we're going to be pushing full  
28 speed ahead, your Honor. The only concern I would have is if they  
don't comply or we can't get a certified copy of a deposition  
transcript, that might make the clerks a little grumbly with me. But  
we'll do the best we can, your Honor.

THE COURT: You might need to get motions to compel on file  
now.

MS. OLIVER: Okay.

THE COURT: If appears you might need to be filing those now  
given a schedule that I had approved, an extended schedule, that

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<sup>1</sup> Prior to removal, the deadline for plaintiff's class certification motion had been extended three times.

1 both parties had requested.

2 MS. OLIVER: Okay.

3 ECF No. 48 at 8-11.

4 Pursuant to the scheduling order that issued following the status conference, plaintiff's  
5 motion for class certification was filed on October 4, 2013, and defendant filed its opposition on  
6 November 4, 2013. Plaintiff's reply is due on November 18 and the matter is set for hearing on  
7 November 22, 2013. See ECF No. 46 (scheduling order).

8 STANDARDS GOVERNING DISCOVERY

9 Federal Rule of Civil Procedure 26(b)(1) provides that parties may obtain discovery  
10 regarding any nonprivileged matter that is relevant to any party's claim or defense, including the  
11 existence, description, nature, custody, condition, and location of any documents or other tangible  
12 things and the identity and location of persons who know any discoverable matter. For good  
13 cause, the court may order discovery of any matter relevant to the subject matter involved in the  
14 action. Relevant information need not be admissible at trial if the discovery appears reasonably  
15 calculated to lead to the discovery of admissible evidence. The purpose of discovery is to make  
16 trial "less a game of blind man's bluff and more a fair contest with the basic issues and facts  
17 disclosed to the fullest extent possible," United States v. Procter & Gamble Co., 356 U.S. 677,  
18 683 (1958), and to narrow and clarify the issues in dispute, Hickman v. Taylor, 329 U.S. 495, 501  
19 (1947).

20 Under Rule 34, a party may request the production of documents "which are in the  
21 possession, custody or control of the party upon whom the request is served." Fed. R. Civ. P.  
22 34(a); Rockwell Int'l Corp. v. H. Wolfe Iron & Metal Co., 576 F.Supp. 511, 512 (W. D. Pa.  
23 1983). The request is sufficient if the documents or things to be produced are described by item  
24 or category with "reasonable particularity" in the request. Fed. R. Civ. P. 34(b)(1)(A). Written  
25 responses and/or specific objections are due 30 days after service of the requests. Fed. R. Civ. P.  
26 34(b)(2). The propounding party may seek an order compelling production or inspection if a  
27 party "fails to respond that inspection will be permitted - or fails to permit inspection - as  
28 requested under Rule 34." Fed. R. Civ. P. 37(a)(3)(B)(iv).

1 Under Rule 30(b)(6), a party may take the deposition of an entity. The entity must  
2 produce for deposition the person most knowledgeable about the matters designated in the notice  
3 of deposition. Fed. R. Civ. P. 30(b)(6).

4 A party who resists discovery “has the burden to show that discovery should not be  
5 allowed, and has the burden of clarifying, explaining, and supporting its objections.” Oakes v.  
6 Halvorsen Marine Ltd., 179 F.R.D. 281, 283 (C.D.Cal.1998); Nestle Foods Corp. v. Aetna  
7 Casualty & Surety Co., 135 F.R.D. 101, 104 (D.N.J.1990).

#### 8 PLAINTIFFS’ MOTION TO COMPEL

9 On August 27, 2013, plaintiff served Taylor Farms with requests for production of  
10 documents and two deposition subpoenas. On September 27, 2013, plaintiffs deposed Alan  
11 Applonie, defendant Taylor Farms’ Rule 30(b)(6) deponent. Dissatisfied with the document  
12 production and the testimony of Mr. Applonie, plaintiffs filed the instant motion on October 23,  
13 2013, seeking an order compelling defendant to produce: (1) discovery regarding scheduling,  
14 timekeeping and payroll data; (2) discovery regarding joint employer correspondence and  
15 contractual relationships; (3) additional documents responsive to requests for production, and (4)  
16 a privilege log. Plaintiffs represent *inter alia* that the discovery at issue is necessary to litigation  
17 of the pending motion for class certification. Plaintiffs did not seek to have their discovery  
18 motion heard on shortened time, nor have they sought amendment of the scheduling order from  
19 Judge Mueller.

20 The undersigned does not reach the merits of plaintiffs’ motion because the timing of the  
21 motion undermines its legitimacy. The motion was filed three weeks after the class certification  
22 motion; 26 days after Mr. Applonie’s deposition; 28 days after receipt of documents responsive to  
23 plaintiffs’ production request; and 49 days after Judge Mueller expressly stated that any motions  
24 to compel should be filed “now.” The discovery motion was set for hearing less than a week  
25 prior to the deadline for plaintiff’s reply on the class certification motion, and nine days prior to  
26 hearing on that motion. Accordingly, the motion to compel could not possibly result in the  
27 production of documents material to the class certification motion in time for them to be provided  
28 to the court in support of that motion. Because plaintiff’s motion is inconsistent with the schedule

1 set by the district judge, it will be denied as dilatory.

2 To the extent that plaintiffs seek discovery related to the merits of claims and defenses,  
3 rather than facts related to class certification, the court's ruling will be without prejudice to  
4 renewal of the motion following disposition of the motion for class certification. Because a  
5 ruling on class certification will affect the appropriate scope of discovery, plaintiff's motion is  
6 premature as to matters other than the propriety of certification.

7 DEFENDANT'S MOTION TO COMPEL

8 Defendants seek compelled production of declarations by plaintiffs and witnesses, the  
9 existence of which came to light at the September 23, 2013 deposition of Yvette Music.  
10 Defendants argue that the declarations are responsive to requests for production of documents  
11 which plaintiffs have a continuing duty to supplement. Plaintiffs contend that witness  
12 declarations are protected as attorney work-product. The parties' arguments regarding the  
13 application and possible waiver of work-product protection are largely moot, as is the motion,  
14 because plaintiffs have voluntarily provided several declarations and represented to defendant and  
15 to the court that no further responsive declarations exist. Defendants stated on the record that  
16 they merely seek verification that no further declarations exist. That will be the order.

17 For the reasons stated above and explained more fully on the record at hearing, IT IS  
18 HEREBY ORDERED AS FOLLOWS:

- 19 1. Plaintiffs' motion to compel, ECF No. 82, is DENIED without prejudice to renewal  
20 following disposition of the pending motion for class certification;
- 21 2. Defendant's motion to compel, ECF No. 66, is GRANTED to the extent that  
22 plaintiffs' counsel shall verify in writing within five days that no further responsive  
23 declarations exist, and shall provide written verification from plaintiffs within five  
24 days thereafter; in all other respects, the motion is DENIED; and
- 25 3. Both parties' requests for sanctions are DENIED.

26 DATED: November 13, 2013

27   
28 ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE