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UNITED STATES DISTRICT COURT
Northern District of California

GABE BEAUPERTHUY,

Plaintiff(s),

No. C 06-00715 SC (MEJ)

v.

DISCOVERY ORDER

24 HOUR FITNESS USA INC,

Defendant(s).

On August 10, 2009, the parties in this matter submitted a joint letter detailing a discovery dispute. (Dkt. #292.) Specifically, Plaintiffs seek an order compelling Defendants to produce electronic payroll information. According to Plaintiffs, the information is needed because damages in this FLSA action are computed by a determination of their “regular rate” of pay. Thus, they contend that the class members’ payroll records are necessary to obtain that information. Further, Plaintiffs argue that Defendants “should be ordered to produce the payroll records in an electronic format usable in a common database (i.e. Microsoft Excel),” rather than in PDF format or in hardcopy form. (*Id.* at 2.)

Defendants do not oppose Plaintiffs’ request. However, Defendants explain that, because the payroll data Plaintiffs requested does not exist in the electronic form Plaintiffs want it in, Defendants had to make arrangements for their third-party payroll provider to come up with a custom solution that would allow the data to be exported to Excel. (*Id.* at 2.) Defendants further explain that it will take about six weeks for the third-party to produce the data.

As the foregoing summary illustrates, there does not appear to be any dispute about the Defendants’ production of the payroll data. However, there is some disagreement about the date the third-party provider will have the data ready for Defendants to turn it over to Plaintiffs. While

1 Plaintiffs request that the Court order Defendants to provide it by September 21, 2009, Defendants
2 maintain that, because they have no control over how long it will take for the third-party provider to
3 complete project, they cannot guarantee what date it will be available.

4 The Court has carefully considered the parties' arguments and now **ORDERS** as follows.
5 Consistent with the parties' agreement, Defendant shall produce the payroll data to Plaintiffs in the
6 requested electronic format. Plaintiff shall pay half of the cost associated with the
7 preparation/conversion of the data.¹ While Defendants cannot predict the exact date the third-party
8 vendor will have the project completed, if Defendants have not provided the requested payroll data
9 to Plaintiffs by September 21, 2009, Defendants shall file a letter with undersigned explaining how
10 much longer the process is expected to take and when Defendants will be able to turn the
11 information over to Plaintiffs.

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13 **IT IS SO ORDERED.**

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15 Dated: August 20, 2009

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18 Maria-Elena James
19 Chief United States Magistrate Judge
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27 _____
28 ¹The Court assumes that the parties have worked out the terms of this aspect of their
agreement.