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UNITED STATES DISTRICT COURT
Northern District of California

SERVICE EMPLOYEES INTERNATIONAL
UNION, *et al.*,

No. C 09-00404 WHA (MEJ)

Plaintiffs,

v.

DISCOVERY ORDER

SAL ROSSELLI, *et al.*,

Defendants.

On June 1, 2009, the parties in this matter filed a joint letter detailing a discovery dispute concerning Defendants' contention that Plaintiff must produce certain documents. (Dkt. #257.) Subsequently, on June 3 and 4, 2009, Plaintiffs filed two additional letters concerning defense counsel's alleged non-compliance with this Court's May 22, 2009 Discover Order regarding production of compact discs containing correspondence between UHW's former counsel, Arthur Fox, and Defendants. (Dkt. ##285, 289.) The Court will address each dispute, in turn.

1. June 1, 2009 Joint Letter

The first issue the parties raise is "whether SEIU must produce all documents and things related to the issues underlying Judge Alsup's Order pursuant to document request to David Regan, Eliseo Medina, Deb Schneider, Bob Hauptman, and James O'Brien." (Dkt. #257 at 1.)

Defendants contend that SEIU must produce "all documents and things" related to the trusteeship and Declarations that SEIU submitted in support of its Motion for TRO. They argue that "[t]he documentation will insure that declarations filed on June 1 are supported by a document trail and not just hearsay or baseless allegations." (*Id.* at 2.) Specifically, Defendants seek an order compelling David Regan "to produce all documents supporting the allegations made in support of

1 the TRO and relied upon by Judge Alsup that defendants: 1) took UHW property, (2) destroyed
2 UHW property, 3) scrambled or deleted UHW computer information, 4) hid, took, or destroyed
3 UHW grievance and collective bargaining files, 5) aided and abetted in 1-4, 6) planned to disrupt
4 union operations, and 7) filched or sabotaged UHW property.” (*Id.* at 3.)

5 Plaintiffs oppose Defendants’ request to compel production of these documents on several
6 grounds. First, Plaintiffs argue that Defendants’ April 16, 2009 deposition notice named Mr. Regan
7 *personally* as a deponent; it did not name him as “Trustee” and it was not a Rule 30(b)(6) notice.
8 They assert that Mr. Regan has already produced the responsive, non-privileged documents within
9 his *possession* that he was able to locate through a reasonable search and that, contrary to
10 Defendants’ position, Mr. Regan was not required to search for and produce documents that UHW
11 possessions in any of its offices.

12 Second, Plaintiffs state that the deposition notice included a set of 14 document requests,
13 which Defendants purportedly served pursuant to Rule 34. Plaintiffs argue that Rule 34 requires a
14 minimum of 30 days notice for document requests or for noticing a deposition that includes a
15 document request, which Defendants failed to comply with when serving their notice. Plaintiffs
16 indicate that, despite Defendants failure to comply with these rules, they produced Mr. Regan and
17 the other noticed deponents for their depositions, and also produced more than 850 pages of
18 documents and a DVD containing photos and video in response to the document request.

19 Third, Plaintiffs argue that they served Defendants with a set of objections to the document
20 request the day after Defendants served their deposition notice. Plaintiffs argue that Defendants
21 have failed to address those objections, but have instead opted to expand the scope of the initial 14
22 document requests to include “all documents and things related to the trusteeship and declaration.”

23 Fourth, Plaintiffs contend that Judge Alsup permitted only narrow, limited discovery for the
24 preliminary injunction, and particularly warned the parties not to propound “big firm” document
25 requests. Rather, they argue that Judge Alsup indicated that “short and sheet” document requests
26 “maybe . . . would be allowed.” Plaintiffs also assert that, while the TRO stated that “[n]arrowly
27 tailored subpoenas duces tecum may be served on non-parties,” it does not mention or grant leave to
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1 serve document requests.

2 The Court has carefully considered the parties' arguments and finds that Defendants have
3 failed to demonstrate that Plaintiffs are required to produce the documents. As Plaintiffs correctly
4 point out, in allowing the parties to engage in limited discovery to prepare for the preliminary
5 injunction hearing, Judge Alsup warned against "big firm" document requests. Here, Defendants are
6 requesting that Plaintiffs produce every document in their possession relating to the trusteeship and
7 the Declarations submitted in support of their Application for TRO. This generalized, open-ended
8 request runs against the specific, directed discovery Judge Alsup described during the TRO hearing.
9 Further, with respect to Defendants' request to compel Mr. Regan to produce additional documents -
10 particularly all those within his control as co-trustee of UHW - Defendants have failed to cite any
11 authority which supports holding Mr. Regan to this standard. As Plaintiffs indicated in their
12 position statement, Mr. Regan did not appear in response to a 30(b)(6) notice as the representative of
13 UHW. Accordingly, Mr. Regan was not required to "look at the files and records of his subordinates
14 and agents" as Defendants contend. Because Defendants have failed to show that their document
15 request comports with Judge Alsup's directive that any document requests be focused, and because
16 Defendants have failed to proffer any basis to require Mr. Regan to produce documents outside of
17 his possession, the Court **DENIES** Defendants' request to compel production of the requested
18 documents or further production by Mr. Regan at this time.

19 2. **Plaintiffs' June 3 and June 4, 2009 Letters**

20 Plaintiffs have submitted two letters dated June 3 and June 4, 2009, respectively, wherein
21 they contend that defense counsel violated this Court's May 22 Discovery Order, which required
22 Defendants to produce any materials in their possession containing communications between Arthur
23 Fox and Defendants while Defendants were at UHW. (Dkt. ##285, 289.) Specifically, Plaintiffs
24 assert that, although Defendants received a CD from Mr. Fox with the subject communications on
25 May 29, 2009, they failed to produce the CD to Plaintiffs until June 3, 2009. (Dkt. #289 at 1.)
26 Plaintiffs argue that as a result of Defendants' delay in turning over the CD, they were prevented
27 from reviewing the documents and using any potentially relevant information to support their
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1 Motion for Preliminary Injunction, which was due on June 1. (*Id.* at 2.) Plaintiffs also argue that,
2 after they advised defense counsel that the Fox documents contained materials subject to attorney-
3 client privilege, defense counsel nevertheless reviewed the reviewed the documents, thereby
4 breaching their ethical obligations. (*Id.* at 2-3.) Plaintiffs therefore request that the Court impose
5 appropriate sanctions for defense counsel's purported delay in producing the documents and ethical
6 violations.

7 The Court has considered Plaintiffs' statement and request for relief. However, before ruling
8 on Plaintiffs' request, Defendants must have an opportunity to address Plaintiffs' account and
9 arguments. The Court therefore **ORDERS** Defendants to file a letter by **June 17, 2009** responding
10 to Plaintiffs' June 3 and June 4 letters. Plaintiffs may file a letter in reply by **June 19, 2009**.

11 **IT IS SO ORDERED.**

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13 Dated: June 12, 2009



14 Maria-Elena James
15 United States Magistrate Judge
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