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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MERCEDES ALVAREZ, et al.,
Plaintiffs,
v.
FARMERS INSURANCE EXCHANGE,
Defendant.

Case No. [14-cv-00574-WHO](#)

ORDER TO SHOW CAUSE WHY NON-RESPONSIVE OPT-IN PLAINTIFFS SHOULD NOT BE DISMISSED PER FRCP 37

Re: Dkt. No. 107

The parties have submitted a joint statement of a discovery dispute regarding five FLSA opt-in plaintiffs’ failure to respond to discovery. Dkt. No. 107. In March 2015, I allowed defendant to propound discovery on 29 opt-in plaintiffs (10% of the opt-in plaintiffs). Five of those opt-in plaintiffs have not responded and plaintiffs’ counsel admits that he has not been able to communicate with them. Defendant wants to (i) dismiss the five non-responsive plaintiffs pursuant to Federal Rule of Civil Procedure 37 for failure to participate in discovery and (ii) have leave to propound discovery on the 280 remaining opt-in plaintiffs to see whether they also refuse to participate in discovery and should be dismissed.

The opt-in plaintiffs’ failure to participate in discovery is troubling, but defendant’s effort to dismiss them and to propound additional discovery is premature. Accordingly, plaintiffs are Ordered to Show Cause why the five non-responsive opt-in plaintiffs should not be dismissed pursuant to Rule 37 for failure to participate in discovery. Plaintiffs shall file a brief, not to exceed 10 pages, responding to this Order to Show Cause by September 15, 2015. Defendant may file a 10-page response to plaintiffs’ brief. Any response shall be filed by September 25, 2015. The Order to Show Cause shall be withdrawn if the five non-responsive plaintiffs provide discovery before September 15, 2015. In that event, the parties shall file a joint statement indicating that the

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five non-responsive plaintiffs have provided discovery. If any of the five non-responsive plaintiffs are ultimately dismissed, defendant will be allowed to propound discovery for an equal number of additional opt-in plaintiffs.

IT IS SO ORDERED.

Dated: July 17, 2015



WILLIAM H. ORRICK
United States District Judge