

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAULA DONALD,
Plaintiff,
v.
XANITOS, INC., et al.,
Defendants.

Case No. [14-cv-05416-WHO](#)

**ORDER VACATING ORDER TO SHOW
CAUSE AND REQUIRING GOOD
FAITH COMPLIANCE WITH
DISCOVERY OBLIGATIONS**

Re: Dkt. Nos. 47, 48, 49

I am baffled when lawyers seem unable to communicate. More than six months have passed since the disputed discovery was propounded. In light of the discovery letter and response to the Order to Show Cause, I ORDER that trial counsel for each side conduct a meaningful face-to-face, in person discussion, lasting a minimum of three hours, within the next seven days.

There is no bright line dividing the discovery that is permissible for litigating a class certification motion and that which is allowed after certification. I do not strictly phase discovery prior to class certification precisely to avoid fights over this issue. I expect plaintiffs only to seek information they need to litigate their motion because of the cost and burden associated with merits-based discovery, and defendants to be reasonable in accommodating requests that appear merits-based but may also have relevance in a certification motion. In most cases, the parties can figure out how to cooperate and resolve these disputes.

In the meet and confer session that I have required, plaintiff's counsel shall, among other things, explain to defendant's counsel why each discovery request is necessary to litigate plaintiff's motion for class certification (or counsel shall agree to modify or defer the request). Defendant's counsel shall figure out how to accommodate reasonable requests. Counsel shall explore whether obtaining a statistically relevant sample, redacting private information, and utilizing other methods of reducing the cost and burden of responding to discovery might obviate

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the need for bringing further disputes before this Court.

If the parties are unable to agree on every issue, they shall file a joint letter of no more than five pages within seven days of the meet and confer session that describes why the discovery request is necessary or objectionable.

I will vacate the Order to Show Cause.

IT IS SO ORDERED.

Dated: September 29, 2015



WILLIAM H. ORRICK
United States District Judge