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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JULIA BERNSTEIN, et al.,  
Plaintiffs,  
v.  
VIRGIN AMERICA, INC.,  
Defendant.

Case No. [15-cv-02277-JST](#) (JSC)

**ORDER DENYING DEFENDANT'S  
DISCOVERY REQUEST**

Re: Dkt. No. 186

Now pending before the Court is Defendant’s discovery letter brief seeking written discovery and depositions of 10% of the absent class members, or 180 individuals. (Dkt. No. 186.) Defendant also seeks a continuance of the current September 22, 2017 discovery cut-off to allow Defendant the opportunity to conduct this additional discovery. Plaintiff opposes the request. (Dkt. No. 188.) Defendant’s request is denied.

This is not Defendant’s first attempt to pursue discovery of absent class members. It previously sought documents, interrogatory responses, and depositions from each absent class member, or 1800 individuals. (Dkt. Nos. 165, 172.) That request was denied. (Dkt. No. 175.) The Court explained that the broad discovery Defendant seeks--depositions, document requests, and interrogatories--is not appropriate for a certified class, and that if Defendant believes liability involves significant individual questions, it should move to decertify the class. (*Id.*) Until then, the Court would treat the lawsuit as a class action. (*Id.*) Defendant did not move to decertify the class. Instead, Defendant appealed this Court’s July 28, 2017 order to Judge Tigar, who affirmed this Court’s decision and denied Defendant’s motion for relief. (Dkt. Nos. 179, 185.) Defendant subsequently filed the discovery request pending before the Court.

Defendant maintains its same position – that discovery of the class is appropriate. It raises

1 no new arguments regarding the necessity of the requested discovery. Moreover, Defendant's  
2 argument that its due process rights entitle it to discovery of all available defenses has been  
3 rejected by the Ninth Circuit. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1132 (9th Cir.  
4 2017). Finally, the request comes too late as discovery closes this Friday and Defendant has not  
5 shown good cause for extending the discovery deadline.

6 Accordingly, Defendant's request is denied. This Order disposes of Docket No. 186.

7 **IT IS SO ORDERED.**

8 Dated: September 19, 2017

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11 JACQUELINE SCOTT CORLEY  
12 United States Magistrate Judge  
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