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May 12, 2017

The Honorable Maria Elena-James  
United States District Court for the Northern District of California

Re: Yates v. West Contra Costa USD  
U.S.D.C. (N.D. Cal) Case No. 3:16-cv-01077MEJ  
Dispute Regarding Plaintiff's Responses to Interrogatories, Set One; and  
Inspection Demand, Set One.

Dear Judge Elena-James:

On May 12, 2017, the parties met and conferred in Chambers regarding plaintiff Fernando Yates' discovery responses to Interrogatories, Set One; and Inspection Demand, Set One pursuant to Court Order.

Additionally, the parties also met regarding Plaintiff's interrogatories, and request for production of documents to the District while in Chambers.

The following are the parties' position on the disputed discovery issues:

**I. PLAINTIFF'S RESPONSES TO DISTRICT'S DISCOVERY**

**INTERROGATORY NO. ONE**

Interrogatory No. One states "Itemize all economic damages that you claim to have resulted from your separation from employment with the West Contra Costa Unified School District including, but not limited to, lost wages, medical or mental health care expenses, out-of-pocket expenses and any other financial losses."

**Defendant's Position on Interrogatory No. One**

Plaintiff did not object to the Interrogatory but instead wrote "benefits", circled the "1" in Interrogatory No. 1 and drew an arrow to the back page (see Exhibit B). The back page has three calculations - the first calculation shows \$177.27 times 12 months equals \$2,127.24 for West Contra Costa Unified School District; the next calculation

simply has \$11,141.28 for Vallejo Unified School District; and the last calculation is illegible. At the very bottom, plaintiff lists \$25,650 in total benefits.

At the April 7, 2017 in-person meeting, plaintiff agreed to amend his itemizations to provide a response that could be understood. Plaintiff has since reneged on his agreement. The District is entitled to discover the itemization that plaintiff is claiming as economic damages.

At the May 12, 2017 meeting in chambers, the District again explained that plaintiff's handwriting is illegible and that he needs to proper amended responses in typewritten form. Plaintiff refused.

#### Plaintiff's Position on Interrogatory No. One

At the April 7, 2017, not agreed in-person meeting, it is false that I agreed to amend my itemizations, I answered interrogatory No. 1, and served responses on March 10, 2017, but Defendant's counsel did not understand my response. For that reason as a courtesy I sent an email on March 22, 2017, explaining in more detail my itemizations. During the April 7, 2017, deposition I explained my itemizations again in deep detail; later on Mr. Murphy introduce me to Mr. Ly, and he asked me to meet with him in his office and I explained to him my itemizations again.

### **INTERROGATORY NO. TWO**

Interrogatory No. Two states "IDENTIFY all witnesses who can corroborate each element of economic damages that you allegedly suffered as a result of your separation from employment with the West Contra Costa Unified School District."

#### Defendant's Position on Interrogatory No. Two

Plaintiff simply writes "benefits documents". He did not identify any witnesses. At the April 7, 2017 in-person meeting, plaintiff orally identified the witnesses. Plaintiff agreed to amend his responses to identify his witnesses. Plaintiff has since reneged on his agreement. Plaintiff needs to identify his witnesses in writing to prevent any possible future controversies about which witnesses he identified orally at the meeting.

At the May 12, 2017 meeting in chambers, the District again requested plaintiff to amend his responses in typewritten form so that there will be no future controversies on who the witnesses are. Plaintiff refused.

#### Plaintiff's Position on Interrogatory No. Two

At the April 7, 2017, not agreed in-person meeting, plaintiff wrote the names of the witnesses requested by Defendant's counsel, but at the May 12, 2017, stated that he do not have that document, it seems that he "lost it". However, I provided him the name of the witnesses again. Akemi Lund, benefits specialist business service division, Vallejo City Unified School District, and Alissa Wilkinson, payroll technician, Stanislaus Union School District, I previously provided two e-mails to Defendant's counsel with a detailed information, about the itemizations claimed by Plaintiff.

### **INSPECTION DEMAND NO. 5**

Inspection Demand No. 5 requests plaintiff to produce "Any and all documents sent to or received from the California Commission on Teacher Credentialing relating or referring to suspension(s) of any teaching credential that you hold or to resolution of any such suspension(s)."

#### **Defendant's Position On Inspection Demand No. 5**

Plaintiff put "CTC Public Information" but did not produce any documents. At the April 7, 2017 in-person meeting at the office for defendant's counsel, plaintiff agreed to amend his response and produce all documents responsive to Inspection Demand No. 5. Plaintiff has since reneged on his agreement. The suspension of a teaching credential is a significant issue in this matter. Plaintiff alleges that the District discriminated against him in violation of the American Disabilities Act. To make a prima facie claim, plaintiff must show that he is a qualified individual who can perform the essential functions of the position. The issue of suspension of plaintiff's teaching credential is pertinent to whether plaintiff is a qualified individual under an ADA claim.

At May 12, 2017 meet and confer at Chambers, Mr. Yates stated that Document bates stamped no. WCCUSD 00311 is the only responsive document to Inspection Demand No. 5. Defendant requested that Mr. Yates amend his response in proper typewritten form in compliance with the discovery rules to identify that WCCUSD 00311 is responsive to Inspection No. 5.

#### **Plaintiff's Position on Inspection Demand No. 5**

I did explain to Defendant's counsel that the document is an October 16, 2014 e-mail, I explained it before several times. Mr. Ly and Mr. Murphy did not communicate properly. This morning Mr. Yates showed the document again to Mr. Ly, and he recognized it, in response to their inspection demand set 1, document requested No. 5

### **INSPECTION DEMAND No. 6**

Inspection Demand No. 6 requests plaintiff to produce “Any and all pay stubs, W-2 forms or other evidence of earnings you have had from October 1, 2014 through the date of your response to this Inspection Demand.”

#### Defendant’s Position on Inspection Demand No. 6

At the April 7, 2017 in-person meeting, plaintiff’s agreement to amend his response and provide responsive documents was conditioned on his investigation of whether he currently earns more at his current position than during his employment with the District. If plaintiff earns more in his current position, plaintiff will withdraw his lost wage claim as there is no basis for a lost wage claim. If he earns less, plaintiff will amend his responses and will produce the responsive documents. In an April 10, 2017 e-mail, plaintiff stated “I will investigate the amount of money that I made at WCCUSD and the other district for summer school.” He stated that he is not providing W-2s for the years he is not claiming for lost wages. He states that “on April 14, 2017, I will send you the documents under my control.” (A true and correct copy of the April 10, 2017 E-mail is attached as Exhibit C to this letter.) To date, plaintiff has not received an amended response or any documents.

At the May 12, 2017 meeting in Chambers, plaintiff represented orally he was not making a lost wage claim. The District requested that plaintiff confirmed this in writing by amending his response to Inspection Demand No. 6 to state that his not making a lost wages claim. The District will not demand the W-2 and other documents stated in Inspection Demand No. 6 if plaintiff will confirm in writing his is withdrawing his lost wages claim. The plaintiff stated that he wants the judge to decide.

#### Plaintiff’s Position on Inspection Demand No. 6

I spoke with the legal help attorney and lost wages will not be claimed, for that reason Defendant’s counsel request is irrelevant.

## **II. PLAINTIFF’S REQUEST FOR INTERROGATORIES**

### **Defendant refuses to answer Plaintiff’s interrogatories**

**This responses are very important because Plaintiff is trying to prove that Mrs. Cheryl Cotton, Director of Human Resources perpetrated perjury on her declaration February 17, 2017**

- 1) Interrogatory No. 7 - Give the correct dates requested to Plaintiff to write on his WCCUSD letter of resignation form given to Plaintiff by the Human Director of Human Resources on the November 14, 2014,

meeting with Director of Human Resources Mrs. Cheryl Cotton, CTA Rep Rhem Bell , and Plaintiff

#### Defendant's Position

Interrogatory No. 7 actually states "Give the correct dates requested to plaintiff on his letter of resignation form dated November 14, 2014."

Defendant responded by stating "Defendant objects to this Interrogatory on the basis that is vague, ambiguous, unintelligible, assumes facts not in evidence, lacks foundation, and is not full and complete in itself. Defendant cannot answer this Interrogatory as it is currently worded."

Plaintiff filed a Motion to Compel, which the court denied. In the April 20, 2017 Denial Order, the Court stated "The court agrees with Defendant that the majority of the Interrogatories are difficult to understand, and the meet and confer process will give Plaintiff the opportunity to clarify his requests." (Order, p.3, line 8-10.)

Defendant tried to discuss with plaintiff in the May 12, 2017 conference about amending his Interrogatory to make it more comprehensible, but plaintiff refused, saying he wants "the judge to decide."

#### Plaintiff's Position

Every time Plaintiff request Interrogatories from Defendant, the answer is the same: " Defendant objects...and is not full and complete itself". I clarified the question to Defendant's counsel, but he refused to give an answer.

The answer to this interrogatories, are very important, because Plaintiff is trying to prove that Mrs. Cheryl Cotton, Director of Human Resources, perpetrated perjury on her declaration on February 17, 2017, she declared: " He (Plaintiff) did not return the completed document and the district has never received a completed and signed letter of resignation from him"

- 2) Interrogatory No. 13 - Did WCCUSD discussed with CTA Rhem Bell about their concerns regarding Plaintiff, brain surgery affecting his ability to teach?

#### Defendant's Position

Interrogatory No. 13 states “Did WCCUSD shared with CTA Bell Rhem their concerns about plaintiff brain surgery?”

Defendant tried discussing with plaintiff at the May 12, 2017 conference if he is inquiring if any WCCUSD employee ever share their concerns with Bell Rhem about plaintiff’s brain surgery. Plaintiff stated he wanted to talk to the judge.

Plaintiff’s position

Defendant’s counsel is an absolute lie. The question is very clear, however Plaintiff clarified it for Defendant’s counsel, but he argued again: “ Defendant objects...

This interrogatory is very important, because Plaintiff is trying to prove that Defendant shared with CTA rep Rhem Bell their concerns for Plaintiff’s brain surgery affecting his ability to teach. Defendant seems to continue thinking the same, because on May 2017, requested all medical records to Plaintiff’s neurosurgeon, Dr. Spetzler, Phoenix Barrow and Spine institute.

**111. PLAINTIFF’S REQUEST FOR PRODUCTION OF DOCUMENTS**

**This e-mails are important because Plaintiff is trying to establish that Mrs, Cheryl Cotton, Director of Human Resources, perpetrated perjury on her declararion on February 17, 2017.**

- 1) Defendant refuses to produce all e-mails between WCCUSD and CTA Rhem Bell regarding Plaintiff. On their Defendant’s amended initial disclosures, Defendant fails to produce all the e-mails. requested, Plaintiff identified additional e-mails between WCCUSD and CTA Rhem Bell, and not produced by Defendant. At the May 12, 2017, meeting in chambers Defendant’s counsel did not about the e-mails not produced by Defendant, and stated: ”Those are all the e-mails the gave me”.

Defendant’s Position

Defendant believes that Plaintiff is referring to Inspection Demand No. 1, Set No. 5, which states, “E-mails between CTA Rhem Bell and West Contra Costa Unified School District pertaining plaintiff Fernando Yates.”

Defendant stated the following in its discovery responses –

“Defendant objects to this Request as overbroad, vague, ambiguous, burdensome and oppressive. Documents responsive to this Request have already been produced. Without waiving said objections, plaintiff responds as follows:

Please see WCCUSD Bates No. 138, 140, 160, 161, 165, 167, 256, 257-274, 289, 291, 294, 297, 299-369. Defendant will not produce these documents again as these documents have already been produced to plaintiff.”

Plaintiff filed a Motion to Compel, which the court denied. In the April 20, 2017 Denial Order, the Court stated “Defendant has not refused to produce documents: in response to RFP Nos. 1 and 2, Defendant indicates it *already* produced documents and identifies specific Bates-numbered documents that are responsive to the RFPs. *Id.* Defendant need not produce documents that already have been produced. During the meet and confer process, Plaintiff should explain the basis for his belief that Defendant is withholding other responsive documents.” (Order, p.3, line 14-18.)

Defendant asked plaintiff at the May 12, 2017 conference regarding his basis for why he thinks the District is withholding e-mails. Plaintiff claims that he sent e-mails between Rhem Bell and the District that were not produced by the District. Counsel for the District has not seen this purported e-mail. Plaintiff represented he cannot reproduce this e-mail that he supposedly sent. Counsel for the District represented to plaintiff that non-privileged e-mails regarding plaintiff has already been produced.

The parties thank this Court for its time and attention to this matter.

/s/ Fernando Yates  
FERNANDO YATES, In Pro Se  
Plaintiff

/s/James Huan Ly  
JAMES HUAN LY  
Edrington Schirmer & Murphy LLP  
Attorneys for Defendant West Contra Costa Unified School District