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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

ANDRE SCOTT, et al.,
Plaintiffs,
v.
COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC,
Defendant.

Case No. [16-cv-06869-EMC](#) (NJV)

**ORDER ON DISCOVERY LETTER
BRIEF**

Re: Dkt. No. 35

Before the court is the parties’ Joint Letter Brief (Doc. 35) in which Defendant Comcast Cable Communications Management, LLC (“Comcast”) moves the court for an order to compel Plaintiffs Andre Scott and Ken Fassler to produce all documents relevant to Comcast’s Requests for Production Nos. 17 and 18. Plaintiff Elijah Maxwell-Wilson has already consented to the production of the requested materials. The matter came on for hearing on July 18, 2017, before the undersigned.

BACKGROUND

Plaintiffs Scott and Fassler represent a class which “allege that Defendants failed to provide them and all other similarly situated individuals with meal periods, failed to provide them with rest periods, failed to pay premium wages for unprovided meal and/or rest periods, failed to pay overtime wages for any overtime hours worked, and failed to pay double time wages for any double time hours worked.” Compl. (Doc. 1) at 2. Defendant asserts that the information sought in these requests would reveal what Plaintiffs were doing during the workday and where, and are therefore relevant to defending these claims.

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1 **Request No. 17**

2 This request seeks “e-mails, text messages, instant messages, cell phone records (including
3 location data) and credit card and bank statements ‘evidencing non-work related activities’ in
4 which Plaintiffs engaged during working hours while Comcast employed them.” Disc. Letter Br.
5 (Doc. 35) at 1. Comcast argues that these requests are relevant to show(among other things):

6 (1) the dates and times Plaintiffs engaged in personal non-work activities during the
7 workday; (2) the frequency in which Plaintiffs engaged in personal activities during
8 the workday; (3) the restaurants, coffee shops, stores and other facilities which
9 Plaintiffs frequented during the workday; (4) the specific times of day Plaintiffs
started and stopped working; and (5) the amount of time Plaintiffs spent in the field
(e.g., whether Plaintiffs spent more than half their working time away from the
employer’s place of business).

10 *Id.* at 2. Plaintiffs argue that “[t]his type of information is of a personal nature and protected by
11 Plaintiffs’ right to privacy.” *Id.* at 3.

12 As an initial matter, the court finds that Defendants have shown that this information is
13 relevant under Federal Rule of Civil Procedure 26(b)(1). Certainly evidence of how and where
14 Plaintiffs’ spent their workday is relevant to defending claims predicated on allegations that
15 Plaintiffs were not given any time for breaks during the work day. *See Quintana v. Claire’s*
16 *Boutiques, Inc.*, No. 5:13-CV-00368-PSG, 2014 WL 3371847, at *2 (N.D. Cal. July 9, 2014).
17 Plaintiffs do not explicitly contest the basic relevancy of this request. Instead, they ask the court
18 to balance their privacy rights against the need for the discovery. However, “because [Plaintiffs]
19 put these records at issue by initiating this action, [they] cannot now withdraw behind privacy
20 concerns to avoid producing relevant material.” *Id.* at *3 (citing *Mas v. Cumulus Media Inc.*, No.
21 C-10-1396 EMC, 2010 WL 4916402, at *2 (N.D. Cal. Nov. 22, 2010) (“While the Court is not
22 unsympathetic to Plaintiff’s privacy concerns, the bottom line is that Plaintiff chose to initiate this
23 litigation seeking, *inter alia*, reimbursement of business expenses.”)).

24 Plaintiffs also raised the concern of third party privacy rights. The court is concerned
25 about those as well. Accordingly, all information produced pursuant to Request No. 17 shall be
26 subject to a protective order. If Plaintiffs believe that the current protective order that is in place is
27 not adequate, they shall meet and confer with counsel for Defendant and either jointly submit an
28 adequate protective order or propose another procedure that will protect third parties. The court

1 notes that the court in *Quintana* discussed the defendant’s willingness to redact the third party
2 information. Should the parties not be able to resolve this issue amicably, Plaintiffs can move for
3 the court’s involvement.

4 **Request No. 18**

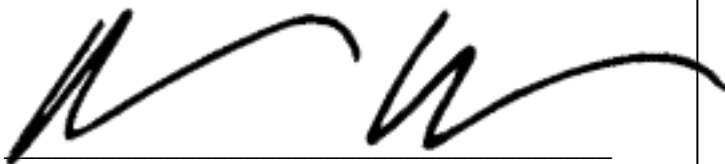
5 This request seeks “cell phone records showing all calls and text messages Plaintiffs made
6 and/or received while Comcast employed them.” Here the court finds that Comcast has not shown
7 that this information is relevant and discoverable under Federal Rule of Civil Procedure 26(b)(1).
8 Neither the arguments in the briefing nor those made at the hearing show how this information is
9 relevant to the wage and hour claims in this case, which revolve around the Plaintiff employees’
10 time spent during the work day. The court agrees that the information sought would be invasive
11 of Plaintiffs’ privacy and does not find that the initiation of the claims in this suit put such
12 information in play.

13 **CONCLUSION**

14 Accordingly, it is ORDERED that the request for production No. 17 is GRANTED as to
15 Plaintiff Scott for the period of May 14, 2012 to August 17, 2013, and Plaintiff Fassler for the
16 period of May 14, 2012 to August 17, 2014, subject to a protective order. It is further ORDERED
17 that request No. 18 is DENIED.

18 **IT IS SO ORDERED.**

19 Dated: July 24, 2017



NANDOR J. VADAS
United States Magistrate Judge