

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

DONNA HINES,

No. C-07-4145 CW (EMC)

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND MOTION FOR DEFENDANT'S
NONCOMPLIANCE WITH COURT
ORDER**

CALIFORNIA PUBLIC UTILITIES
COMMISSION, *et al.*,

Defendants.

(Docket No. 247)

_____ /

Plaintiff Donna Hines has filed a motion, in which she asks for the following relief: (1) that the Court reconsider its order of December 23, 2009, *see* Docket No. 229 (order); (2) that the Court order Defendant to comply with the December 23 order and/or sanction Defendant for failure to comply with the same; (3) that the Court permit discovery beyond the numeric limits provided for in the Federal Rules of Civil Procedure; and (4) that the Court extend the time for fact discovery. Because Ms. Hines has now filed a separate motion to extend the time for discovery, *see* Docket No. 253 (motion), which is set for hearing on March 31, 2010, the Court shall address only the first three requests for relief.

///
///
///
///
///

United States District Court
For the Northern District of California

1 **I. DISCUSSION**

2 A. Motion for Reconsideration

3 Ms. Hines appears to be asking for reconsideration of that part of the Court’s December 23
4 order in which it denied Ms. Hines’s request for production of information related to the criteria
5 used to draft the Statements of Qualifications (“SOQs”) for the job positions at issue. Ms. Hines
6 argues that the Court should reconsider this ruling based on a document prepared by a third party,
7 CPS Human Resource Service (“CPS”). In the document, performed an organizational review of
8 Defendant CPUC’s Human Resources Department.

9 In its papers, CPUC argues that Ms. Hines’s motion for reconsideration must be rejected
10 outright because the Court cannot take judicial notice of the CPS document, as Ms. Hines has
11 requested. While, as a formal matter, the Court agrees that the CPS document does not fall within
12 the bounds of Federal Rule of Evidence 201, CPUC has failed to establish that the Court may
13 examine only admissible evidence for purposes of a discovery motion. Moreover, CPUC has not
14 made any contention that the CPS document is not authentic or unreliable. Accordingly, for
15 purposes of this motion, the Court shall consider the contents of the CPS document.

16 That being said, the Court does not find that the CPS document justifies reconsideration of
17 the December 23 order. Whether a party is entitled to reconsideration is governed by Civil Local
18 Rule 7-9. That rule provides that, a party moving for reconsideration of an order must show, *e.g.*,
19 the emergency of new material facts since the challenged order or a manifest failure by the court to
20 consider material facts presented to the court before issuance of the challenged order. *See* Civ. L.R.
21 7-9(b). Ms. Hines has failed to meet this standard. She has not shown, for example, that the CPS
22 document was not available to her prior to the issuance of the December 23 order. Nor was the CPS
23 document part of her original motion to compel.

24 Even if the Court were to take into consideration the contents of the CPS document, it would
25 still rule against Ms. Hines on the merits. Ms. Hines points to no part of the document in which CPS
26 makes any statements about discriminatory or retaliatory conduct. While the CPS document refers
27 to complaints being made that “the wrong candidates are too often promoted,” CPS Document at 5,
28 there is no indication that that is because of the way that SOQs are drafted. Similarly, while the CPS

1 document refers to the need to improve the testing model for the PURA classes,¹ *see* CPS Document
2 at 45, the criticism had nothing to do with the drafting of the criteria for the SOQs. *See* CPS
3 Document at 5 (stating that “[t]he traditional process of conducting an exam, developing an
4 appointment list several weeks later, and then holding job interviews in order to make a new hire is
5 not the best method to use in many cases” and “is especially inadequate when the employer needs to
6 hire people from outside civil service” or “when a new hire has demonstrated the ability to move up
7 the hierarchy faster than the exam calendar permits”).

8 In short, the Court concludes, as it did previously, that in order for Ms. Hines to litigate her
9 case she is in need of the SOQs themselves but has shown no need for information about the criteria
10 used to draft the SOQs. Because she has the SOQs themselves, Ms. Hines may argue that as,
11 phrased, they too often lead to the wrong candidate being promoted, are discriminatory, and so forth.

12 B. Motion to Compel Compliance with Court Order and/or to Sanction for Failure to Comply

13 According to Ms. Hines, CPUC has failed to comply with the December 23 order because it
14 has failed to produce: (1) documents related to two Commission Advisory positions for which she
15 applied and (2) documents related to CPUC requests for authorization of personnel actions from
16 state agencies (*e.g.*, Department of Personnel Administration, State Personnel Board). Ms. Hines
17 also seems to be arguing that CPUC failed to produce documents within the timeframe ordered by
18 the Court on December 23.

19 To the extent Ms. Hines has complaints about the failure to produce documents, the Court is
20 satisfied from the declarations submitted by the CPUC that it has produced all responsive
21 information that it has. *See generally* Coffman Decl.; Lee Decl.; Mattias Decl. In light of these
22 declarations, any declaration from CPUC’s executive director or assistant general counsel is
23 unnecessary. To the extent responsive documents have not been produced within the timeframe
24 ordered by the Court, the alleged delay of one month is not excessive and Ms. Hines has not shown
25 that she has been prejudiced as a result. Certainly, the sanction sought by Ms. Hines -- *i.e.*, waiver
26 of the attorney-client privilege -- is not appropriate under the circumstances.

27
28 ¹ Plaintiff has been an employee of the CPUC as a PURA (*i.e.*, a Public Utilities Regulatory Analyst).

1 Accordingly, the Court denies the relief requested by Ms. Hines.

2 C. Motion to Permit Discovery in Excess of Numeric Limits Imposed by Federal Rules

3 Finally, Ms. Hines asks that the Court give her leave to propound more than the twenty-five
4 interrogatories permitted by the Federal Rules. Under Federal Rule of Civil Procedure 33(a), a party
5 may be given leave to serve more than twenty-five interrogatories “to the extent consistent with Rule
6 26(b)(2).” Under Rule 26(b)(2), one factor for a court to consider is burden or expense of the
7 additional discovery weighed against the likely benefit of the additional discovery. In the instant
8 case, Ms. Hines’s primary argument is that more interrogatories are needed because of the
9 deficiencies identified in the CPS document. But, as reflected in the discussion above, that
10 document has no relevance to Ms. Hines’s case. While the document may discuss problems with the
11 Human Resources Department, nothing about the document indicates that the hiring or promotion
12 process within the CPUC is discriminatory or retaliatory. Because the likely benefit of additional
13 interrogatories is so small, it is easily outweighed by the burden of additional interrogatories on the
14 CPUC -- particularly given the current discovery deadlines in this case.

15 **II. CONCLUSION**

16 For the foregoing reasons, Ms. Hines’s motions are denied.

17 This order disposes of Docket No. 247.

18
19 IT IS SO ORDERED.

20
21 Dated: March 15, 2010

22 
23 _____
24 EDWARD M. CHEN
25 United States Magistrate Judge
26
27
28

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

DONNA HINES,

No. C-07-4145 CW (EMC)

Plaintiff,

v.

CERTIFICATE OF SERVICE

CALIFORNIA PUBLIC UTILITIES
COMMISSION, *et al.*,

Defendants.

_____ /

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

Donna Hines
268 Bush Street, #3204
San Francisco, CA 94104
415-205-3377

Dated: March 15, 2010

RICHARD W. WIEKING, CLERK

By: _____ /s/
Leni Doyle
Deputy Clerk