

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ERIC BENEDICT, on behalf of himself and classes of those similarly situated,)	Case No.: 13-CV-0119-LHK
)	ORDER RE: PROTECTIVE ORDER
Plaintiff,)	
v.)	
HEWLETT-PACKARD COMPANY,)	
Defendant.)	

On May 8, 2013, pursuant to this Court’s Order, the parties submitted a Joint Letter Brief addressing whether Opt-In Plaintiffs in the instant case should be given access to Defendant’s discovery designated “CONFIDENTIAL.” ECF No. 39.

The extent to which FLSA opt-in plaintiffs are subject to individualized discovery remains unsettled. *See Hoffman v. Constr. Protective Servs., Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008) (noting that the district court in that action had recognized this area of the law as unsettled); *Coldiron v. Pizza Hut, Inc.*, CV03-05865TJHMCX, 2004 WL 2601180 (C.D. Cal. Oct. 25, 2004) (recognizing two lines of cases regarding individualized discovery in opt-in class actions). In the parties’ Joint Letter Brief, neither party cites to precedent governing opt-in plaintiffs’ access to materials designated as confidential, or the implications of such access for individualized discovery. Furthermore, each of the cases Defendant cites as authority for opt-in discovery refers to discovery following conditional certification of an opt-in class. *See Hill v. R&L Carriers Shared*

1 *Services, LLC*, CV 09-1907 CW MEJ, 2010 WL 3769247, at *2 (N.D. Cal. Sept. 22, 2010);
2 *Coldiron*, 2004 WL 2601180, at *2; *Abubakar v. City of Solano*, CIVS-06-2268LKKEFB, 2008
3 WL 508911, at *2 (E.D. Cal. Feb. 22, 2008). In the instant case, Plaintiff’s Motion for Conditional
4 FLSA Certification will be heard on September 19, 2013.

5 The Court finds that at this stage of the litigation, prior to conditional certification, Opt-In
6 Plaintiffs may access Defendant’s discovery designated “CONFIDENTIAL,” under the conditions
7 Plaintiff proposes in the Joint Letter Brief. However, any Opt-In Plaintiff who chooses to access
8 such material shall also be subject to reciprocal, reasonable, and appropriate discovery.

9 **IT IS SO ORDERD.**

10 May 14, 2013

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12 _____
13 LUCY H. KOH
14 United States District Judge