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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIASTEPHANIE HEREDIA,
Plaintiff,
v.
EDDIE BAUER LLC,
Defendant.

Case No. 16-cv-06236-BLF (SVK)

**ORDER ON DISCOVERY DISPUTE
JOINT REPORT RE DISCOVERY OF
CONTACT INFORMATION FOR
PUTATIVE CLASS MEMBERS**

Re: Dkt. No. 21

Before the Court is the parties' joint report concerning a dispute over Plaintiff's request for discovery of contact information for all putative class members. ECF 21. After consideration of the joint report, relevant legal authority, and good cause appearing, the Court GRANTS Plaintiff's request on the terms and conditions set forth below.

BACKGROUND

Plaintiff alleges that she was employed by Defendant Eddie Bauer LLC at a retail store in Gilroy, California. Complaint, ECF 1-1, at ¶ 8. Plaintiff alleges that she was required to undergo security checks after she clocked out of work, as well as after she clocked out to take 30-minute meal breaks and 10-minute rest breaks, but that she was not paid any applicable minimum wages and/or overtime for these security checks. See *id.* at ¶ 18. Plaintiff alleges violations of California Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 2698 et seq. and California's Unfair Competition Law, Business and Professions Code § 17200 et seq. *Id.* at ¶ 9. Plaintiff seeks to bring these claims on behalf of a class of all non-exempt retail store employees who were employed by Defendants in the State of California at any time from September 28, 2012, through the present. *Id.* at ¶ 17.

Defendant denies Plaintiff's allegations and denies that this case should proceed as a class action. See Joint CMC Statement, ECF 16, at 2. Defendant admits that it has an "exit inspection

United States District Court
Northern District of California

1 policy” under which “[n]on-exempt store associates have their bags, packages, briefcases,
2 backpacks and other parcels inspected by a member of store management whenever they leave the
3 store.” Id. Defendant argues, however, that “[e]mployees may not be subject to a bag check or
4 exit inspection if they do not have a bag or other container when leaving the store.” Id.; see also
5 ECF 21 at 4. Defendant also claims that any exit inspections are not compensable because they
6 are de minimis. ECF 16 at 2.

7 **A. Legal Standards**

8 A member of a class may sue on behalf of all class members only if: “(1) the class is so
9 numerous that joinder of all members is impracticable; (2) there are questions of law or fact
10 common to the class; (3) the claims or defenses of the representative parties are typical of the
11 claims or defenses of the class; and (4) the representative parties will fairly and adequately protect
12 the interests of the class.” Fed. R. Civ. P. 23(a).

13 The availability and scope of pre-certification discovery lie within the discretion of the
14 Court. *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 942 (9th Cir. 2009). The Ninth
15 Circuit has held that it is not an abuse of discretion to deny pre-certification discovery where the
16 plaintiff does not either make a prima facie showing that the Rule 23 class action requirements are
17 satisfied or show “that discovery is likely to produce substantiation of the class allegations.”
18 *Mantolete v. Bolger*, 767 F.2d 1416, 1424 (9th Cir. 1985). The Ninth Circuit, however, has also
19 noted that “the better and more advisable practice for a District Court to follow is to afford the
20 litigants an opportunity to present evidence as to whether a class action is maintainable.” *Vinole*,
21 571 F.3d at 942 (quoting *Doninger v. Pac. Northwest Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir.
22 1977)).

23 **B. Discussion**

24 **1. Contact information for putative class members**

25 To the extent such a showing is required before pre-certification discovery is allowed, the
26 Court finds that Plaintiff has made a prima facie showing that the class action requirements of
27 Rule 23 are met and that, even if she had not, the limited discovery she seeks may substantiate her
28 class certification allegations.

1 Courts often rely on the plaintiff's reasonable allegations for concluding that the plaintiff
2 has made a prima facie showing. *Barerras v. Michaels Stores, Inc.*, No. C 12-4474 (PJH), 2015
3 U.S. Dist. LEXIS 54166, at *9-10 (N.D. Cal. April 24, 2015). Here, Plaintiff alleges that (1) the
4 class, i.e., all non-exempt retail store employees who were employed by Defendants in the State of
5 California at any time from September 28, 2012, through the present, is so numerous that joinder
6 of all members is impracticable; (2) there are questions of law or fact concerning Defendant's
7 alleged policies and practices for payment of wages, provision of breaks, and provision of payroll
8 records that are common to the class; (3) the claims or defenses of Plaintiff are typical of the
9 claims or defenses of the class; and (4) Plaintiff will fairly and adequately protect the interests of
10 the class. ECF 1-1 at ¶¶ 17-30. These allegations establish a prima facie showing that the class
11 action requirements of Rule 23 are met.

12 The Court also concludes that the discovery Plaintiff seeks—the contact information for all
13 putative class members—is necessary to her class certification motion. Disclosure of putative
14 class members' contact information "is a common practice in the class action context." *Rodriguez*
15 *v. Nike Retail Servs., Inc.*, No. 5:14-cv-01508-BLF (HRL), 2015 U.S. Dist. LEXIS 56377, at *4
16 (N.D. Cal. April 29, 2015) (internal quotation marks and citation omitted), motion for relief from
17 non-dispositive order denied at ECF 43; see also *Bell v. Delta Air Lines, Inc.*, No. C13-
18 01199YGR (LB), 2014 WL 985829, at *3 (N.D. Cal. Mar. 7, 2014) (collecting cases).

19 Defendant does not dispute that Plaintiff is entitled to discovery of contact information for
20 putative class members who were employed during the relevant time period at the same store in
21 Gilroy, California where Plaintiff worked. The parties' present dispute is instead over whether
22 Plaintiff is entitled to obtain contact information for all of Defendant's California employees
23 during the relevant time period. Defendant's main arguments are that (1) its security inspections
24 do not impact all employees because employees who leave a store without carrying any bags are
25 not subject to a security check, and (2) Plaintiff "cannot know" if the bag check process was
26 conducted in the same way in other stores. ECF 21 at 4.

27 In support of its arguments, Defendant cites cases in which courts have ordered production
28 of contact information limited to only the locations where the plaintiff was employed. See *Nguyen*

1 v. Baxter Healthcare Corp., 275 F.R.D. 503, 508 (C.D. Cal. 2011); Williams v. Sup. Ct., 236 Cal.
2 App. 4th 1151, review granted and opinion superseded by 354 P.3d 301 (Cal. 2015). Plaintiff
3 attempts to distinguish those cases as involving allegations that employers had deviated from their
4 stated employment policies, whereas in this case Plaintiff contends that Defendants' policies
5 themselves violate the Labor Code and other laws. See ECF 21 at 3.

6 The Court is not persuaded that the scope of discoverable contact information should in all
7 cases turn on whether a plaintiff frames his or her claim as the existence of a policy, rather than
8 violation of a policy. Of greater significance in this case are Defendant's repeated references to its
9 "exit inspection policy." See, e.g., ECF 16 at 2; ECF 21 at 4. Defendant's claim that not all
10 employees are subject to that policy does not depend on where the employees were located, but on
11 whether they carried a bag or other container when they exited the store. See ECF 16 at 2; ECF 21
12 at 4. Defendant's argument that Plaintiff "cannot know" whether Defendant follows the same
13 policies or procedures in other stores, ECF 21 at 4, is also unpersuasive. Defendant should not be
14 able to cite Plaintiff's lack of knowledge as to whether Defendant has a uniform policy as a reason
15 to deny Plaintiff's ability to contact employees of other stores to investigate this issue, particularly
16 in light of Defendant's repeated references to its "exit inspection policy." "[T]he necessary
17 antecedent to the presentation of evidence" concerning whether the requirements for bringing a
18 class action are satisfied "is, in most cases, enough discovery to obtain the material, especially
19 when the information is within the sole possession of the defendant." Doninger, 564 F.2d at 1313.

20 Accordingly, Defendant has not demonstrated a reason to limit discovery of contact
21 information to employees of Defendant's Gilroy store, and Plaintiff is entitled to discovery of the
22 requested contact information for all putative class members statewide.

23 2. Opt-out procedure

24 Both parties' "final proposals" and proposed orders included in the Joint Report appear to
25 contemplate an opt-out procedure. See, e.g., ECF 21 at 5 (Plaintiff's proposal that "opt-out notices
26 [] be sent to 50% of the class based on a sample selected by Plaintiff"); ECF 22 at ¶ 5
27 (Defendant's proposal that Defendant produce contact information to a third-party administrator to
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1 perform the Belaire notification process).¹ But the Parties' Joint Report focuses on the scope of
2 contact information that should be discoverable, rather than the procedures for the production and
3 use of that information. Accordingly, this Order is limited to the issue of the scope of employee
4 contact information that must be provided by Defendant. The parties are ordered to meet and
5 confer as to the opt-out procedure to be employed in this case, including whether the contact
6 information should be provided directly to Plaintiff's counsel or to a third-party administrator and
7 whether any additional measures (such as a protective order) are necessary before Defendant
8 produces contact information for the putative class members.

9 **CONCLUSION**

10 For the foregoing reasons, the Court ORDERS that Defendant produce the names and last
11 known addresses and telephone numbers of all non-exempt employees who have been employed
12 at any retail stores owned or operated by Defendant in the State of California from September 28,
13 2012, through the present. Within ten (10) days of this Order, the parties shall meet and confer in
14 person or by telephone as to the opt-out procedure to be followed in this case and, if there is any
15 disagreement on the opt-out procedure, file a joint submission that complies with the
16 undersigned's Civil Scheduling and Discovery Standing Order.

17 **SO ORDERED.**

18 Dated: April 10, 2017

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20 _____
21 SUSAN VAN KEULEN
22 United States Magistrate Judge

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28 ¹ Belaire-West Landscape Inc. v. Sup. Ct., 149 Cal. App. 4th 554, 557-58 (2007) describes an
"opt-out" notice that is sent to potential class members to inform them of the lawsuit and explain
that, if they do not want to have their contact information sent to plaintiff's counsel, they can
complete and return an enclosed postcard.