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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6 SAN JOSE DIVISION

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8 RAY DELGADO,  
9 Plaintiff,

10 v.

11 MARKETSOURCE, INC.,  
12 Defendant.

Case No. [17-cv-07370-LHK](#) (VKD)

**INTERIM ORDER RE DISCOVERY  
DISPUTE RE PAGA-RELATED  
DISCOVERY**

Re: Dkt. No. 59

13 In this action, plaintiff Ray Delgado asserts a claim under California's Private Attorneys  
14 General Act ("PAGA") against defendant MarketSource, Inc. ("MarketSource") for failure to pay  
15 final wages upon termination of employment, in violation of California Labor Code § 201. Mr.  
16 Delgado seeks the following discovery of MarketSource in connection with that claim:

- 17
- 18 1. The date of termination for each MarketSource employee who was involuntarily  
terminated during the PAGA period<sup>1</sup> (Interrogatory No. 17);
  - 19 2. The date final wages were paid to each such employee (Interrogatory No. 18);
  - 20 3. Copies of the paychecks reflecting the payment of final wages to each such employee  
(Request for Production No. 67);
  - 21 4. Copies of the wage statements reflecting the payment of final wages to each such  
22 employee (Request for Production No. 68).

23 Dkt. No. 59 at ECF 9, 12.

24 The Court conducted a hearing on this dispute on April 23, 2019. At the hearing, Mr.  
25 Delgado represented that he recently identified and disclosed to MarketSource the names of five  
26 former employees who contend that they were not paid final wages upon termination of their

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28 <sup>1</sup> The parties agree that the period of time encompassed by Mr. Delgado's PAGA claim is  
September 26, 2016 to the present.

1 employment. Dkt. No. 64. MarketSource contends that for at least two of those employees, their  
2 employment was terminated before commencement of the PAGA period. *Id.*

3 MarketSource objects to Mr. Delgado's discovery requests on several grounds, including  
4 that the discovery is not proportional to the needs of the case because it would require  
5 investigation of the termination dates and final wage payment dates for 963 former employees.  
6 This argument is very similar to MarketSource's principal argument in support of its pending  
7 motion to strike Mr. Delgado's PAGA claim. See Dkt. No. 52. The parties appear to agree that  
8 Judge Koh's decision with respect to the motion to strike may moot this discovery dispute in its  
9 entirety, and at the very least will inform its resolution.

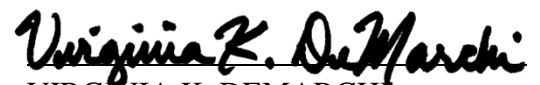
10 The Court defers ruling on this discovery dispute at this time. However, if the decision on  
11 the motion to strike does not moot the relief Mr. Delgado seeks here, the parties should be  
12 prepared, upon further order of the Court, to confer about and update the Court regarding the  
13 following matters which are presently not addressed in the joint discovery submission:

- 14 1. The time required for MarketSource to provide responsive information and documents  
15 with respect to the five employees identified in Mr. Delgado's amended initial  
16 disclosures;
- 17 2. A procedure for assessing whether the termination and final wage payment data in  
18 MarketSource's records (i.e. the PeopleSoft system) for a given terminated employee  
19 requires further investigation (e.g., whether a query of the PeopleSoft system reflects  
20 an apparent violation that may be due to data entry errors), and if so, what amount of  
21 time MarketSource would require to conduct such further investigation;
- 22 3. If MarketSource contends that such further investigation would be prohibitively  
23 burdensome, a method for investigating and producing data for a statistically  
24 significant sample of the relevant terminated employees.

25 **IT IS SO ORDERED.**

26 Dated: April 23, 2019

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VIRGINIA K. DEMARCHI  
United States Magistrate Judge