

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
SAN JOSE DIVISION**

STEVE R. ROJAS and ANDREA N.
ROJAS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

BOSCH SOLAR ENERGY
CORPORATION,

Defendant.

Case No. 18-cv-05841-BLF

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM
NONDISPOSITIVE PRETRIAL ORDER
OF MAGISTRATE JUDGE**

[Re: ECF 79]

In this putative class action, Plaintiffs Steve R. Rojas and Andrea N. Rojas (“Plaintiffs”) sue Defendant Bosch Solar Energy Corporation (“Bosch”) for breach of warranty and related claims arising out of alleged defects in solar panels manufactured by Bosch. Before the Court is Bosch’s motion for relief from a Stipulated Protective Order issued by Magistrate Judge Nathanael M. Cousins on January 15, 2020.

The motion is DENIED for the reasons discussed below.

I. BACKGROUND

The Stipulated Protective Order at issue governs production of documents by non-party NB Baker Electric, Inc., dba Baker Electric Solar (“Baker”), in response to a subpoena duces tecum served by Plaintiffs in November 2019. Bosch had retained Baker to help facilitate Bosch’s voluntary recall of certain solar panels in 2017. *See* Valenta Decl. ¶¶ 2-4 & Exh. A, ECF 79-1. For each recall claim it approved, Bosch provided the consumer’s name and contact information to Baker, which then was to remove the faulty panels and install replacement panels. *See id.* This consumer contact information is contained in documents in Baker’s possession that are responsive

1 to Plaintiffs’ subpoena. *See* Wylie Decl. ¶¶ 1-3 & Exh. A. Baker initially objected to the
2 subpoena based in part on third-party privacy interests. *Id.* However, Plaintiffs and Baker
3 ultimately agreed to production under the Stipulated Protective Order issued by Judge Cousins on
4 January 15, 2020. *See* Stipulated Protective Order, ECF 77.

5 Under the Stipulated Protective Order, Plaintiffs may utilize the documents produced by
6 Baker to contact potential witnesses and potential class members. *See* Stipulated Protective Order
7 ¶ 2, ECF 77. However, “Plaintiffs and/or Plaintiffs’ counsel shall first explain the purpose of their
8 communication and then inform each contacted individual or entity that he/she/it has the right not
9 to speak with Plaintiffs and/or Plaintiffs’ counsel and, upon a declination, Plaintiffs and/or
10 Plaintiffs’ counsel shall immediately terminate the conversation and will not contact such
11 individual or entity again.” *Id.* ¶ 3. The Stipulated Protective Order contains provisions to ensure
12 that documents produced by Baker are kept confidential and are used solely for purposes of this
13 lawsuit. *See id.* ¶¶ 3-6.

14 On January 29, 2020, Bosch filed a motion before Judge Cousins requesting leave to seek
15 reconsideration of the Stipulated Protective Order (“Recon Motion”), and a motion before this
16 Court requesting relief from Judge Cousins’ Stipulated Protective Order (“Motion for Relief”).
17 *See* Recon Motion, ECF 78; Motion for Relief, ECF 79. Judge Cousins immediately set a hearing
18 on the Recon Motion. *See* Clerk’s Notice, ECF 80. This Court issued an order extending its 14-
19 day deadline to act on the Motion for Relief by an additional 14 days, through February 26, 2020,
20 so that it would have the benefit of Judge Cousin’s ruling on the Recon Motion when evaluating
21 the Motion for Relief. *See* Order Extending Court’s 14-day Period to Act, ECF 85.

22 On February 11, 2020, Judge Cousins issued an order denying Bosch’s Recon Motion. *See*
23 Order Denying Recon Motion, ECF 86. Judge Cousins found that Bosch had not shown
24 reasonable diligence, because Bosch had notice of the subpoena to Baker on November 7, 2019
25 but Bosch did not object to document production until it filed its Recon Motion on January 29,
26 2020. *See id.* at 2. Judge Cousins also found that even if Bosch had been reasonably diligent, the
27 discovery sought by the subpoena was relevant under Fed. R. Civ. P. 26(b)(1), as the requested
28 documents are probative of liability issues. *See id.*

1 On February 14, 2020, Bosch filed a request for a ruling on its Motion for Relief in light of
2 Judge Cousins’ denial of Bosch’s Recon Motion. *See* Request for Ruling, ECF 87.

3 **II. LEGAL STANDARD**

4 A district court may refer nondispositive pretrial matters to a magistrate judge for
5 disposition. *See* 28 U.S.C. § 636(b)(1)(A). “When a pretrial matter not dispositive of a party’s
6 claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must
7 promptly conduct the required proceedings and, when appropriate, issue a written order stating the
8 decision.” Fed. R. Civ. P. 72(a). “A party may serve and file objections to the order within 14
9 days after being served with a copy.” *Id.* In this district, such an objection must be made as a
10 “Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge.” Civ. L.R. 72-2.

11 “Unless otherwise ordered by the assigned District Judge, no response need be filed and no
12 hearing will be held concerning the motion.” Civ. L.R. 72-2. “The District Judge may deny the
13 motion by written order at any time, but may not grant it without first giving the opposing party an
14 opportunity to respond.” *Id.* “If no order denying the motion or setting a briefing schedule is
15 made within 14 days of filing the motion, the motion shall be deemed denied.” *Id.*

16 “A non-dispositive order entered by a magistrate must be deferred to unless it is ‘clearly
17 erroneous or contrary to law.’” *Grimes v. City & Cty. of San Francisco*, 951 F.2d 236, 241 (9th
18 Cir. 1991) (citing Fed. R. Civ. P. 72(a), 28 U.S.C. § 636(b)(1)(A)). “[T]he magistrate’s factual
19 determinations are reviewed for clear error, and the magistrate’s legal conclusions are reviewed to
20 determine whether they are contrary to law.” *Perry v. Schwarzenegger*, 268 F.R.D. 344, 348
21 (N.D. Cal. 2010). This standard is highly deferential – the district court “may not simply
22 substitute its judgment for that of the deciding court.” *Grimes*, 951 F.2d at 241.

23 **III. DISCUSSION**

24 Bosch asserts two bases for relief from Judge Cousins’ Stipulated Protective Order. First,
25 Bosch argues that the Stipulated Protective Order provides for discovery that is not relevant within
26 the meaning of Federal Rule of Civil Procedure 26(b)(1). Second, Bosch argues that the
27 Stipulated Protective Order does not adequately protect the privacy interests of putative class
28 members. The Court addresses those arguments in turn.

1 **A. Relevance**

2 Rule 26 limits discovery to “matter that is relevant to any party’s claim or defense.” Fed.
3 R. Civ. P. 26(b)(1). Bosch contends that the sole purpose of the discovery sought from Baker is to
4 locate potential class members, and that such discovery does not satisfy Rule 26 in light of *In re*
5 *Williams-Sonoma, Inc.*, 947 F.3d 535 (9th Cir. 2020).

6 *Williams-Sonoma* addressed a putative class action brought by a Kentucky resident based
7 on alleged misrepresentations regarding the thread count of Williams-Sonoma’s linens. Before a
8 class was certified, the district court determined that the plaintiff’s claims were governed by
9 Kentucky law, and that Kentucky consumer law prohibited class actions. *See Williams-Sonoma*,
10 947 F.3d at 538. The plaintiff thereafter sought discovery that admittedly was “for the sole
11 purpose of aiding his counsel’s attempt to find a California purchaser of bedding from Williams-
12 Sonoma who might be willing to sue.” *Id.* The district court ordered Williams-Sonoma to
13 produce a list of all California customers who purchased bedding products of the type referred to
14 in the complaint. *See id.* The Ninth Circuit determined that “using discovery to find a client to be
15 the named plaintiff before a class action is certified is not within the scope of Rule 26(b)(1),” and
16 on that basis it granted Williams-Sonoma’s petition for a writ of mandamus directing the district
17 court to vacate its discovery order. *Id.* at 540.

18 Judge Cousins expressly distinguished *Williams-Sonoma* in his order denying Bosch’s
19 Recon Motion, stating: “I find that the discovery sought from Baker is ‘relevant to any party’s
20 claim or defense’ under Fed. R. Civ. P. 26(b)(1) because the documents requested are probative of
21 liability issues in the case and are not solely to find a new class representative. It therefore was
22 not an abuse of process for plaintiffs to seek documents from Baker or for the Court to approve the
23 stipulated protective order at ECF 77.” Order Denying Recon Motion at 2, ECF 86.

24 “District courts review a magistrate judge’s relevance determinations for abuse of
25 discretion.” *Estate of Najera-Aguirre v. Cty. of Riverside*, No. ED CV 18-762-DMG (SPx), 2019
26 WL 6898944, at *2 (C.D. Cal. Aug. 22, 2019). “A magistrate judge abuses her discretion ‘only
27 when [her] decision is based on an erroneous conclusion of law or where the record contains no
28 evidence on which [she] rationally could have based that decision.’” *Id.* (quoting *Premium Serv.*

1 *Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975)). Nothing in this record
2 suggests that Judge Cousins’ finding of relevance was based on an erroneous conclusion of law or
3 insufficient evidence. Moreover, his finding is consistent with decisions of other district courts
4 addressing requests for discovery of putative class members’ contact information. “[D]istrict
5 courts in this Circuit have often found that as a general rule, before class certification has taken
6 place, all parties are entitled to equal access to persons who potentially have an interest in or
7 relevant knowledge of the subject of the action, but who are not yet parties.” *Arredondo v. Sw. &*
8 *Pac. Specialty Fin., Inc.*, No. 1:18-cv-01737-DAD-SKO, 2019 WL 6128657, at *3 (E.D. Cal.
9 Nov. 19, 2019) (internal quotation marks, citation, and alteration omitted). “For that reason,
10 discovery of the putative class members’ contact information is routinely allowed.” *Id.*; *see also*
11 *Martin*, 2017 WL 4517819, at *3 (“Disclosure of contact information for putative class members
12 is a common practice in the class action context.”).

13 Bosch asserts that “the likely purpose” of Plaintiffs’ subpoena is “to find a new California
14 plaintiff due to the atypicality of the named Plaintiffs’ claims.” Motion for Relief at 4, ECF 79.
15 That assertion is purely speculative. In support, Bosch cites to this Court’s comment at a hearing
16 questioning whether Plaintiffs can satisfy the typicality requirement of Rule 23. This Court’s
17 comment does not constitute evidence of Plaintiffs’ motivation in issuing the subpoena to Baker.

18 Bosch has failed to show that Judge Cousins’ issuance of a Stipulated Protective Order,
19 permitting routine discovery of documents that he expressly found to be relevant under Rule 26,
20 was clearly erroneous or contrary to law.

21 **B. Privacy Interests**

22 Bosch next argues that the Stipulated Protective Order does not adequately protect the
23 privacy interests of putative class members. Specifically, Bosch contends that Judge Cousins
24 should have balanced those privacy interests against Plaintiffs’ need for discovery using the test
25 articulated by the California Supreme Court in *Pioneer Elecs. (USA) v. Superior Court*, 40 Cal.
26 4th 360 (2007). Bosch also contends that if he was going to permit discovery, Judge Cousins
27 should have required an opt-out notice pursuant to *Belaire-West Landscape, Inc. v. Superior*
28 *Court*, 149 Cal. App. 4th 554 (2007).

1 In *Pioneer*, the plaintiff brought a putative consumer class action against the seller of
2 allegedly defective DVD players. *See Pioneer*, 40 Cal. 4th at 363. The plaintiff moved to compel
3 the defendant seller to produce unredacted copies of customer complaints, as well as contact
4 information for each complainant. *See id.* The discovery dispute made its way to the California
5 Supreme Court, which held that a court considering such a dispute must balance the privacy
6 interests of putative class members against legitimate competing interests such as the discovery
7 rights of civil litigants. *See id.* at 370-71. The California Supreme Court indicated that
8 “[p]rotective measures, safeguards and other alternatives may minimize the privacy intrusion.” *Id.*
9 at 371. “[I]f intrusion is limited and confidential information is carefully shielded from disclosure
10 except to those who have a legitimate need to know, privacy concerns are assuaged.” *Id.* (internal
11 quotation marks and citation omitted).

12 “In diversity jurisdiction cases, federal courts can recognize a third-party’s privacy rights
13 under state law.” *Billal v. Alere Health, LLC*, No. SACV 14-00390 AN, 2014 WL 12844179, at
14 *2 (C.D. Cal. Dec. 4, 2014). Thus, in diversity cases, district courts in this Circuit generally apply
15 the *Pioneer* test when discovery requests implicate the privacy rights of putative class members.
16 *See, e.g., McEwan v. OSP Grp., L.P.*, No. 14-CV-2823-BEN (WVG), 2016 WL 1241530, at *3-4
17 (S.D. Cal. Mar. 30, 2016) (applying *Pioneer* test to precertification discovery dispute in diversity
18 action); *Cholakyan v. Mercedes-Benz USA, LLC*, No. CV 10-5944 MMM JC, 2011 WL 7575379,
19 at *7 (C.D. Cal. Dec. 20, 2011) (same); *Bright v. Dennis Garberg & Assocs., Inc.*, No. CV 10-
20 7933 AHM(JCX), 2011 WL 13150146, at *6 (C.D. Cal. Nov. 15, 2011) (same).

21 Bosch argues that the Stipulated Protective Order “does not comply with California law”
22 because Judge Cousins did not apply the *Pioneer* balancing test. *See* Motion for Relief at 4-5,
23 ECF 79. As an initial matter, federal question jurisdiction lies in this case, as Plaintiffs assert a
24 claim under the Magnuson-Moss Warranty Act, MMWA”), 15 U.S.C. § 2310. *See* Second Am’d
25 Compl., ECF 53. Consequently, it is not clear whether *Pioneer* applies. Even assuming it does,
26 Bosch has not demonstrated that Judge Cousins’ issuance of the Stipulated Protective Order is at
27 odds with *Pioneer*. Numerous courts in this Circuit have concluded that a plaintiff’s discovery
28 needs outweigh putative class members’ privacy interests in their contact information, particularly

1 where production of the contact information is safeguarded by a protective order or other
 2 appropriate measure. *See, e.g., Goro v. Flowers Foods, Inc.*, No. 17-CV-02580-JLS-JLB, 2018
 3 WL 3956018, at *10 (S.D. Cal. Aug. 17, 2018) (compelling production of putative class members’
 4 contact information where information was subject to a protective order and the plaintiffs’ counsel
 5 was required to inform each putative class member of the right not to talk to counsel); *McEwan*,
 6 2016 WL 1241530, at *4 (finding that disclosure of contact information did not constitute a
 7 serious invasion of privacy interests, and any confidentiality concerns were addressed by
 8 protective order); *Cholakyan*, 2011 WL 7575379, at *7 (finding that the plaintiff’s right to pursue
 9 the lawsuit outweighed privacy rights of putative class members and noting that production was
 10 governed by protective order). Bosch has not cited a single decision in which discovery of
 11 putative class members’ contact information was denied on privacy grounds.

12 Bosch contends that any discovery of contact information should be subject to a *Belaire-*
 13 *West* notice. In *Belaire-West*, a California appellate court held that third-party privacy concerns
 14 were addressed by a notice informing putative class members that they could opt out if they did
 15 not want their contact information disclosed to the plaintiff’s attorneys. *See Belaire-West*, 149
 16 Cal. App. 4th at 561. While such a notice could be used in this case, Bosch has not demonstrated
 17 that Judge Cousins erred by failing to require a *Belaire-West* notice. To the contrary, “[t]he
 18 predominant practice among courts in the Northern District of California is to allow pre-
 19 certification discovery of putative class members’ confidential contact information subject to a
 20 protective order, without requiring a *Belaire-West* notice. *Austin v. Foodliner, Inc.*, No. 16-cv-
 21 07185-HSG (DMR), 2018 WL 1168694, at *2 (N.D. Cal. Mar. 6, 2018) (internal quotation marks,
 22 citation, and alteration omitted). “Courts in this district generally have required *Belaire-West*
 23 notices only when there are special privacy concerns, such as the disclosure of medical or financial
 24 information, and/or when the parties have agreed to such notice.” *Id.* Bosch has failed to show
 25 that special privacy concerns exist in the present case.

26 In conclusion, Judge Cousins’ issuance of the Stipulated Protective Order was consistent
 27 with the predominant approach of district courts in this Circuit. Bosch has failed to establish that
 28 the Stipulated Protective Order was clearly erroneous or contrary to law.

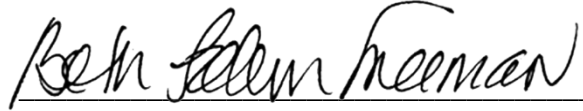
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. ORDER

Bosch’s Motion for Relief from Judge Cousins’ Stipulated Protective Order is DENIED.

This order terminates ECF 79.

Dated: February 20, 2020



BETH LABSON FREEMAN
United States District Judge