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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KERRIE STONE,)
)
 Plaintiff,)
)
 v.)
)
 ADVANCE AMERICA, CASH ADVANCE)
 CENTERS INC., ADVANCE AMERICA,)
 CASH ADVANCE CENTERS OF)
 CALIFORNIA, LLC and DOES 1 through 50,)
 inclusive,,)
)
 Defendants.)

Case No. 08cv1549 WQH (WMC)
**ORDER FOLLOWING TELEPHONIC
DISCOVERY CONFERENCE RE: (1)
REQUEST TO RE-OPEN DISCOVERY
AND (2) DISCOVERABILITY OF
NAMES AND CONTACT
INFORMATION OF DEFENDANTS'
FORMER EMPLOYEES**

The Court held a telephonic discovery conference on September 17, 2010. Marita Lauinger, Esq., appeared for Plaintiff. Steuart Thomsen, Esq. and Richard Valdez, Esq., appeared for Defendants. The conference was placed on the record. Accordingly, all oral rulings made by Judge McCurine at the September 17, 2010 teleconference are incorporated fully herein. In addition, the Court issues the following orders:

1. Counsel informed the Court at the September 17, 2010 teleconference that notice is no longer at issue in this case. Accordingly, Plaintiff's request for additional DDO audit reports is **DENIED**. The Court finds the cost of identifying and producing said reports is not justified and irrelevant to an issue which is no longer active in the case.

2. Discovery is closed per the Court's First Amended Scheduling Order. With one exception, the Court finds no good cause exists to allow further discovery. On June 25, 2010 Plaintiff served interrogatories upon defendant, seeking the identity and contact information of

1 defendants' former employees during the class period. Plaintiff is not seeking to obtain the identity
2 of potential class members. Plaintiff timely propounded the interrogatories served upon defendants.
3 The propounding of the interrogatories complied with the operative Scheduling Order. Defendant
4 contends a notice procedure is necessary to obtain this information pursuant to *Pioneer Electronics,*
5 *Inc. v. Superior Court, 40 Cal. 4th 360 (2007)*. Plaintiff contends notice is not required. Defendants
6 rely on *Belaire-West landscape, Inc. v. Superior Court, 149 Cal. App. 4th 554 (2007)*. Plaintiff
7 relies on *Puerto v. Superior Court 158 Cal. App. 4th 1242 (2008)*.

8 Defendants' reliance on *Belaire* is misplaced. *Belaire* was a putative class action involving
9 alleged wage and hour violations. The class plaintiffs propounded interrogatories seeking the
10 identity and contact information of defendant's current and former employees. The defendant
11 employer objected. The trial court in *Belaire* granted in part the employee's motion to provide the
12 information, requiring disclosure of that information through an opt-out procedure. Defendant
13 employer filed a writ of mandamus which the Court of Appeal denied, finding the discovery of the
14 identity and contact information of potential class members (who were secondarily also witnesses)
15 was appropriate under *Pioneer*. The issue in *Belaire* was discovery of potential class members, not
16 the discovery of potential witnesses. On December 4, 2009, this Court issued its ordered directing
17 the parties to use an opt-out procedure to identify additional putative class members. In the present
18 case plaintiff now seeks witness information from defendants.

19 *Puerto* is a more helpful and relevant case. It also involved alleged wage and hour
20 violations. In *Puerto*, plaintiffs propounded a form interrogatory requiring defendant to provide the
21 contact information of *percipient witnesses*. In responding to the interrogatory, defendant had
22 identified these witnesses by name, but withheld the contact information. The trial court issued an
23 order requiring disclosure by an opt-in procedure. Plaintiff filed a writ of mandate which the Court
24 of Appeal granted, overruling the trial court's requirement of an opt-in procedure on the ground the
25 plaintiffs were entitled to the information sought under California Rule of Civil Procedure Section
26 2017. 010 without the need for any notice provision: "Let a peremptory writ of mandate issue
27 directing the superior court to vacate its order allowing disclosure and contact only if the witness
28 consents, and to enter a new order directing the disclosure of contact information for the individuals

1 identified in response to Form Interrogatory No. 12.1.” *Puerto*, at 1260.

2 Two key factors compelled the Court of Appeal’s decision in *Puerto*. First, “Petitioners had
3 a statutory entitlement to the contact information for these witnesses [under] Code of Civil
4 Procedure Section 2017. 010.” *Id.* at 1249. Second, “[c]entral to the discovery process is the
5 identification of potential witnesses.” *Id.* The Court of Appeal in *Puerto* appropriately distinguished
6 *Pioneer*: “while we applied the framework from *Pioneer*..., we also note that salient distinctions
7 exist between that case and the circumstances here. In *Pioneer*, the plaintiffs sought not just contact
8 information, but the very identity of the affected individuals; here the witnesses’ identities have
9 already been disclosed. Moreover, the discovery in *Pioneer* was precertification discovery designed
10 to identify members of the class rather than to locate percipient witnesses, although the Supreme
11 Court did note that some number of the potential class members would also be witnesses. This
12 procedural distinction explains why the opt-out letter outcome of *Pioneer* is not necessarily
13 appropriate here: in *Pioneer* the plaintiffs were looking for people who would want to participate
14 in the lawsuit.... In contrast, a percipient witness’s willingness to participate in civil discovery has
15 never been considered relevant—witnesses may be compelled to appear and testify whether they want
16 to or not.” *Id.* at 1251

17 The reasoning set forth in *Puerto* is equally compelling here. Plaintiff’s discovery is not
18 done to identify potential class members. Indeed, this Court has already issued an order allowing
19 discovery of potential class members through an opt-out procedure.¹ Further, under Federal Rule
20 of Civil Procedure 26 (a) (1) (A.) “[a] party must, without awaiting a discovery request, provide to
21 the other parties... [t]he name and, if known, the address and telephone number of each individual
22 likely to have discoverable in the information....” Moreover, subsection (b) of that Rule states a
23 party “may obtain discovery regarding any non-privileged matter that is relevant to any parties claim
24 or defense-including... The identity and location of persons who know any discoverable matter.”
25 Under the Federal Rules, the information plaintiff seeks is clearly discoverable. Moreover, there is
26 no requirement for any notice provision that would limit this very basic discovery to which plaintiff
27 is clearly entitled under our rules.

¹ See Order Re: Discovery, issued December 4, 2009 [Doc. No. 75].

