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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL E. TAYLOR, et al.,	)	Civil No. 09-2909-AJB(WVG)
	)	
Plaintiffs,	)	ORDER DENYING WITHOUT
	)	PREJUDICE PLAINTIFFS' REQUEST
v.	)	TO COMPEL CONTACT INFORMATION
	)	OF PUTATIVE CLASS MEMBERS
WADDELL & REED, INC., et al.,	)	
	)	
Defendants.	)	
	)	
	)	

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On April 11, 2012, Plaintiffs submitted a letter to the Court that requested that Defendants be compelled to produce the contact information of putative class members, Financial Advisors ("FAs"), past and present, from December 2005 to the present. On April 13, 2012, Defendants submitted to the Court a letter that opposed Plaintiffs' request. After considering the letter briefs submitted by the parties and the applicable law, and GOOD CAUSE APPEARING, Plaintiffs' request is DENIED without prejudice.

BACKGROUND

On January 21, 2011, the Court ordered Defendants to permit Plaintiffs to contact then-current FAs using Defendant's e-mail

1 system. Plaintiffs utilized this means to communicate with putative  
2 class members. In an e-mail to the then-current FAs, Plaintiffs'  
3 attorneys identified themselves, advised that a lawsuit was filed  
4 and invited the FAs and others (presumably former FAs that the  
5 current FAs may know) interested in the lawsuit to contact the  
6 attorneys to learn more about the case.

7 Plaintiffs once again have requested Defendants to identify  
8 all California FAs and to produce their contact information (name,  
9 work and home address, and work, home and cell phone numbers) who  
10 worked for Defendants from December 2005 to the present. Defendants  
11 have opposed the requests primarily on the grounds that the requests  
12 are premature and would violate the FAs' privacy rights.

### 13 DISCUSSION

14 The Court is not persuaded that the privacy interests of the  
15 putative class members would be violated by the disclosure of the  
16 contact information requested by Plaintiffs. Pioneer Electric  
17 (USA), Inc. v. Superior Court, 40 Cal. 4<sup>th</sup> 360, 373 (2007), Belaire-  
18 West Landscape, Inc. v. Superior Court, 149 Cal. App. 4<sup>th</sup> 554, 562  
19 (2007). However, the Court agrees with Defendants that Plaintiffs  
20 have not diligently pursued the avenues available to them to  
21 ascertain the identity of putative class members of FAs, past and  
22 present, in California.

23 Plaintiffs argue that Defendants have "almost exclusive  
24 access to the putative class members." The Court disagrees, at least  
25 as it pertains to the current FAs. The current FAs are readily  
26 ascertainable by simply going to Defendants' public website and  
27 typing in a zip code number. The FAs that service the area in and  
28 around the zip code immediately appear by name, address, e-mail

1 address and phone number. While searching for the current FAs may  
2 take some effort by Plaintiffs to work their way through the zip  
3 codes assigned in California, it is not a difficult task. Presum-  
4 ably, Plaintiffs already have done this by virtue of their mass e-  
5 mail notification sent in January 2011. Also, presumably, those FAs,  
6 current as well as former, if any, who are interested in joining the  
7 lawsuit have reached out to Plaintiffs' attorneys and made their  
8 intentions known. If current FAs have not contacted Plaintiffs'  
9 attorneys or done so in sufficient numbers, this may be an indica-  
10 tion, as Defendants argue, that there simply is no merit to  
11 Plaintiffs' lawsuit.

12 As to former FAs, Plaintiffs are partly correct. Undoubtedly  
13 Defendants know the identity of its former FAs. Whether Defendants  
14 also have the current contact information of those former FAs is  
15 another question altogether. Regardless, Plaintiffs have access to  
16 current FAs and with a modicum of effort, which to date has not been  
17 demonstrated by Plaintiffs, can interview or depose those FAs who  
18 may be able to reveal the identity of former colleagues who  
19 Plaintiffs can then find and interview. This effort may not bear  
20 fruit and Plaintiffs may very well not be able to identify any  
21 former FAs, but they must at least try to do so. It does not appear  
22 that Plaintiffs have done so, or if they have, Plaintiffs have not  
23 so described their efforts to the Court. Until Plaintiffs have  
24 diligently tried and failed, the Court is not of the mind to order  
25 Defendants to do Plaintiffs' work. Doninger v. Pacific Northwest  
26 Bell, Inc., 564 F.2d 1304, 1313 (9<sup>th</sup> Cir. 1977), Krzesniak v. Cendant  
27 Corp., 2007 WL 756905 at \*1 (C.D. Cal. 2007).

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1 Plaintiffs also argue that contacting the current FAs via  
2 their work e-mail addresses or work phone numbers at Defendants'  
3 offices is inadequate. However, Plaintiffs fail to offer even one  
4 reason why contacting current FAs in this manner is inadequate.  
5 Although Plaintiffs have failed to offer an explanation, the Court  
6 disagrees. Contacting current FAs at Defendants' offices may be the  
7 best method to obtain current FAs' personal contact information or  
8 to make arrangements for a more private discussion.

9 Moreover, Plaintiffs do not need to contact all FAs working  
10 for Defendants in California to establish the Rule 23 requirements  
11 of numerosity, commonality, typicality and adequacy. The Court  
12 believes, and Plaintiffs have not presented any argument to the  
13 contrary, that Plaintiffs may satisfy the Rule 23 requirements on a  
14 motion to certify the class, based upon information obtained from  
15 current FAs whose contact information is immediately and readily  
16 accessible to Plaintiffs via Defendants' website.

17 Plaintiffs "bear the burden of advancing a *prima facie*  
18 showing that the class action requirements of Fed. R. Civ. P. 23 are  
19 satisfied or that discovery is likely to produce substantiation of  
20 the class allegations." Mantolete v. Bolger, 767 F.2d 1416, 1424  
21 (9<sup>th</sup> Cir. 1985); Doninger, 564 F.2d at 1313. Plaintiffs simply have  
22 not met their burden or made the required showing.

23 The Court acknowledges that "the propriety of a class action  
24 cannot be determined in some cases without discovery." Kaminske v.  
25 JP Morgan Chase Bank N.A., 2010 WL 5782995 at \*2 (C.D. Cal. 2010).  
26 Plaintiffs are not precluded from taking discovery. Current FAs with  
27 a wealth of relevant information are available and within reach of  
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1 Plaintiffs if only they would make the effort to obtain the  
2 information they seek.

3 Plaintiffs' request that Defendants be compelled to produce  
4 the contact information of putative class members, Financial  
5 Advisors ("FAs"), past and present, from December 2005 to the  
6 present, is DENIED without prejudice.

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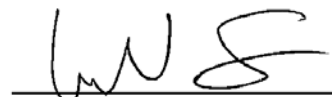
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10 DATED: April 27, 2012

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Hon. William V. Gallo  
U.S. Magistrate Judge

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