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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GEOFFREY MOYLE, et al.,

Plaintiffs,

vs.

LIBERTY MUTUAL RETIREMENT  
BENEFIT PLAN, et al.,

Defendants.

CASE NO. 10cv2179-GPC (MDD)

ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFFS' MOTIONS TO  
COMPEL

[ECF NOS. 194 and 201]

On November 9, 2012, and November 14, 2012, Plaintiffs filed *ex parte* motions for the resolution of discovery disputes. The motions are to compel further discovery responses from Defendants. (ECF Nos. 194 and 201). Defendants responded on December 12, 2012 (ECF No. 207). The Court will address the disputed items below.

Background

The Complaint was filed on October 19, 2010. (ECF No. 1). After early legal skirmishes were resolved in the district court, discovery opened following a Case Management Conference on June 20, 2011. (ECF No. 31). The Scheduling Order was filed on July 10, 2011. (ECF No. 32). The case results from the acquisition of Golden Eagle Insurance Company by Liberty Mutual Insurance Company. A class of former Golden Eagle employees has been certified. (ECF No. 113). The primary claim of the class is that they were misled into believing, by materially false statements and

1 omissions, that their time with Golden Eagle would be credited for vesting into the  
2 retirement benefits program of Liberty Mutual.

3 Despite the relatively straightforward nature of the claim, this case has  
4 spawned rather extensive litigation, including discovery litigation before this Court.  
5 Litigation regarding discovery commenced gently enough with disputes filed on  
6 December 9 and 14, 2011. (ECF Nos. 66, 70). In response, this Court held a  
7 discovery conference on January 23, 2012. (ECF No. 94). As a consequence of  
8 discussions at the conference, these initial discovery motions were denied without  
9 prejudice. (ECF No. 96).

10 Beginning in late August 2012, however, this case veered away from the  
11 cooperative advocacy envisioned by the Federal Rules and endorsed by the judges of  
12 the Southern District of California. Between August 28, 2012, and November 14,  
13 2012, twelve discovery disputes were brought before the Court. The Court held three  
14 discovery conferences and issued Orders deciding four individual disputes. Following  
15 two of the discovery conferences, six motions were withdrawn or rendered moot by  
16 agreement of the parties.

17 According to Defendants, Plaintiffs have propounded 479 requests for  
18 production (excluding subparts), 193 interrogatories (excluding subparts) and 30  
19 requests for admission. (ECF No. 207 at 2). Two agreements between the parties  
20 were endorsed by the Court and cover many, if not all, of the disputed items. (*See*  
21 ECF Nos. 153 and 158 endorsed by the Court in ECF Nos. 154 and 161). Plaintiffs do  
22 not address the agreements and have not sought their enforcement. Instead,  
23 Plaintiffs appear to have moved to compel responses to requests for production and  
24 interrogatories served prior to the agreements being made. The impact of the  
25 agreements will be addressed below as appropriate.

#### 26 Legal Standard

27 The Federal Rules of Civil Procedure generally allow for broad discovery,  
28 authorizing parties to obtain discovery regarding “any nonprivileged matter that is

1 relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). Also, “[f]or good  
2 cause, the court may order discovery of any matter relevant to the subject matter  
3 involved in the action.” *Id.* Relevant information for discovery purposes includes any  
4 information “reasonably calculated to lead to the discovery of admissible evidence,”  
5 and need not be admissible at trial to be discoverable. *Id.* There is no requirement  
6 that the information sought directly relate to a particular issue in the case. Rather,  
7 relevance encompasses any matter that “bears on” or could reasonably lead to matter  
8 that could bear on, any issue that is or may be presented in the case. *Oppenheimer*  
9 *Fund, Inc. v. Sanders*, 437 U.S. 340, 354 (1978). District courts have broad discretion  
10 to determine relevancy for discovery purposes. *See Hallett v. Morgan*, 296 F.3d 732,  
11 751 (9th Cir. 2002). Similarly, district courts have broad discretion to limit discovery  
12 where the discovery sought is “unreasonably cumulative or duplicative, or can be  
13 obtained from some other source that is more convenient, less burdensome, or less  
14 expensive.” Fed. R. Civ. P. 26(b)(2)(C). Limits also should be imposed where the  
15 burden or expense outweighs the likely benefits. *Id.*

16 “An interrogatory may relate to any matter that may be inquired under Rule  
17 26(b).” Fed. R. Civ. P. 33(a)(2). The responding party must answer each interrogatory  
18 by stating the appropriate objection(s) with specificity or by “answer[ing] separately  
19 and fully in writing under oath.” *Id.* at 33(b). The responding party has the option in  
20 certain circumstances to answer an interrogatory by specifying responsive records  
21 and making those records available to the interrogating party. *Id.* at 33(d).

22 Similarly, a party may request the production of any document within the  
23 scope of Rule 26(b). Fed. R. Civ. P. 34(a). “For each item or category, the response  
24 must either state that inspection and related activities will be permitted as requested  
25 or state an objection to the request, including the reasons.” *Id.* at 34(b). The  
26 responding party is responsible for all items in “the responding party’s possession,  
27 custody, or control.” *Id.* at 34(a)(1). Actual possession, custody or control is not  
28 required. Rather, “[a] party may be ordered to produce a document in the possession

1 of a non-party entity if that party has a legal right to obtain the document or has  
2 control over the entity who is in possession of the document. *Soto v. City of Concord*,  
3 162 F.R.D. 603, 620 (N.D.Cal.1995).

#### 4 Discussion

5 It is a struggle, to say the least, to determine what is actually at issue, what  
6 has been produced and what remains to be produced. Some of the requests for  
7 production are duplicative or cumulative. *Compare* Moyle RFPs 111, 120 (Set Two)  
8 in ECF No. 194, *with* Rollason RFPs 18 and 4 in ECF No. 201. In some instances, it  
9 appears that there really is no dispute except that Defendants have not produced  
10 certain information as quickly as Plaintiffs would like. *See* Moyle RFP 102 (Set Two)  
11 in ECF No. 194. In some instances, Defendants have stated that no responsive  
12 documents exist or that responsive documents have been produced but Plaintiffs  
13 insist on a stronger response. *See* Moyle RFPs 134-136 and Defendants' responses.  
14 In at least one example, Plaintiffs concede that their request for production may be  
15 overbroad. *See* Moyle RFP 103 (Set Two) in ECF No. 194.

16 Defendants fare no better by filing a consolidated response to the motions in  
17 ECF No. 194 and 201 yet failing to address Moyle RFPs 120-122, 130 in ECF No. 194  
18 and failing to address any of the disputed items in ECF No. 201 (except those  
19 fortuitously duplicated in earlier requests contained within ECF No. 194 to which  
20 they did respond). (ECF No. 207). Defendants did address items not presented by  
21 Plaintiffs as disputed. *See* responses to Moyle RFPs 106-110 in ECF No. 207.

22 The Court has been asked to rule and it will do so. The result, considering the  
23 confusing, incomplete mishmash before the Court, may be a function of the old adage,  
24 "garbage in, garbage out."

#### 25 **ECF No. 194**

26 ECF No. 194 is Plaintiffs' motion to compel further responses to Requests for  
27 Production served by Plaintiff Moyle and Interrogatories served by Plaintiff Sanders.

28

1 Moyle Requests for Production - Sets Two and Three

2 RFP 98: Plaintiff requests the production of all documents regarding  
3 retirement benefit statements ever provided to “old” Golden Eagle employees.  
4 According to Plaintiff, the parties agreed that Defendants would produce retirement  
5 benefit statements for 117 randomly selected individuals for the years, 1993-1999,  
6 2001 and 2008. Also according to Plaintiff, Defendants have not complied with the  
7 agreement. Defendants do not address Plaintiff’s claim that the parties agreed to a  
8 limited production. Instead, Defendants generally object on grounds of relevance and  
9 that the information sought is cumulative.

10 Defendants’ general objections cannot carry the day and they did not address  
11 Plaintiffs’ allegations regarding their agreement. The Court will enforce the  
12 agreement. Defendants are **ORDERED** to produce retirement benefit statements for  
13 117 randomly selected individuals from the group of “old” Golden Eagle employees  
14 from the years 1993-1999, 2001 and 2008.

15 RFP 101: Plaintiff requests the production of all documents constituting or  
16 referring to rough drafts, edited versions, red-line versions, working copies, notes and  
17 comments regarding any Summary Plan Descriptions. Defendants objected that the  
18 request is overbroad and irrelevant. Defendants assert that the request is not  
19 limited to the retirement benefit plan at issue in this case, is not limited by time and  
20 is not limited to the potential class members in this case.

21 The Court agrees with Defendants that this request is overbroad. The Court  
22 declines to re-write it and will not enforce it. Defendants need not respond further.

23 RFP 102: Plaintiff requests the production of personnel files for the named  
24 Plaintiffs and for any other class member that Defendants intend to use at trial. It  
25 is premature to require Defendants to determine what evidence they will seek to use  
26 at trial. Nonetheless, Defendants agreed to produce the personnel files for the named  
27 Plaintiffs. It is unclear whether they have done so. The Court will enforce the  
28 agreement and **ORDERS** Defendants to produce the personnel files for the named

1 Plaintiffs. To the extent that Defendants intend to rely at trial on the contents of  
2 personnel files of others, those materials must be produced in accordance with the  
3 district court's pre-trial order or as otherwise required by law.

4 RFP 103: Plaintiff requests the production of documents provided to third-  
5 party Hewitt Associates (the record-keeper for the Liberty Mutual retirement plan)  
6 that relate to the plan. Defendants object for overbreadth because the request is not  
7 limited in time. Defendants also respond by reference to the Rule 30(b)(6) deposition  
8 of a Hewitt designee. Plaintiff admits that this RFP may be overbroad and if the  
9 Court so finds, recommends that the Court narrow the request to "old" Golden Eagle  
10 employees.

11 There has been quite a bit of discovery and a discovery dispute regarding  
12 Hewitt Associates. *See* ECF Nos. 143, 152 and 160. The RFP is overbroad. The  
13 Court will not enforce it and declines to re-write it for Plaintiff. No further response  
14 is required.

15 RFP 111: Plaintiff requests the production of all documents regarding  
16 proposals made to the Conservation Court regarding the rehabilitation or acquisition  
17 of any part of "old" Golden Eagle. Defendants object that the request is overbroad  
18 and rather unhelpfully refer the Court to their objection to RFP 101 above.

19 Despite the lack of any substance in their response, Defendants do have the  
20 better of it; this RFP is overbroad as it would pertain to matters well beyond how  
21 "old" Golden Eagle employees would be considered in Liberty Mutual's retirement  
22 benefit plan. The Court will not re-write it and will not enforce it. No further  
23 response is required.

24 RFP 120: Plaintiff requests the production of all documents constituting or  
25 referring to the Proposed Vote of the Compensation Committee dated August 13,  
26 1997. Defendants did not address this RFP in their consolidated motion response.  
27 Defendants generally objected, without discussion, on grounds of relevance, burden,  
28 breadth and possible privilege.

1 Defendants' general objections, having been submitted without substance, are  
2 **OVERRULED**. Defendants are **ORDERED** to produce responsive, non-privileged  
3 material or, if Defendants claim to have produced such material previously, identify  
4 the responsive material in its prior productions.

5 RFP 121: Plaintiff requests the production of minutes of the August 13, 1997,  
6 Compensation Committee meeting. This request appears to require production of  
7 items included in RFP 120 above and the same ruling applies.

8 RFP 122: Plaintiff requests the production of all documents referring to a  
9 document produced by Defendants and identified a "Human Resource Analysis."  
10 Defendants did not address this RFP in their consolidated motion response.  
11 Defendants generally objected, without discussion, on grounds of relevance, burden,  
12 breadth and possible privilege.

13 Defendants' general objections, having been submitted without substance, are  
14 **OVERRULED**. Defendants are **ORDERED** to produce responsive, non-privileged  
15 material or, if Defendants claim to have produced such material previously, identify  
16 the responsive material in its prior productions.

17 RFP 130: Plaintiff requests the production of all documents pertaining to the  
18 Golden Eagle Board of Directors action on September 26, 1997. Defendants did not  
19 address this RFP in their consolidated motion response. Defendants generally  
20 objected, without discussion, on grounds of relevance, burden, breadth and possible  
21 privilege.

22 Defendants' general objections, having been submitted without substance, are  
23 **OVERRULED**. Defendants are **ORDERED** to produce responsive, non-privileged  
24 material or, if Defendants claim to have produced such material previously, identify  
25 the responsive material in its prior productions.

26 RFP 134: Plaintiff requests the production of all documents referring to the  
27 determination of social security benefits for "new" Golden Eagle employees.  
28 Defendants assert that responsive documents have been produced. No further

1 response is required.

2 RFP 135: Plaintiff requests the production of the formula used to determine  
3 the social security benefits of “new” Golden Eagle employees. Defendants claim to  
4 have produced the responsive information. No further response is required.

5 RFP 136: Plaintiff requests the production of the formula used to determine  
6 the accrued amount for “new” Golden Eagle employees under the Liberty Mutual  
7 retirement benefit plan. Defendants, in addition to their standard general objections,  
8 suggest that they have produced the requested information by referring to documents  
9 and testimony reflecting the accrued amounts. Defendants do not state  
10 unequivocally that they have provided the formula used. If they have not done so,  
11 Defendants are **ORDERED** to produce the formula. If the formula has been  
12 produced, no further response is required.

13 RFP 137: Plaintiff requests the production of the salary history for every “new”  
14 Golden Eagle employee from date of hire through 1997. Defendants object on the  
15 grounds that pre-1997 salary is not a component of any formula calculating pension  
16 benefits for the class. In its motion response, Defendants assert that it does not  
17 possess salary data for the years before 1997 and that if any such data exists, it is in  
18 the massive collection of stored electronic information that has been produced  
19 pursuant to agreement with Plaintiffs.

20 Defendants need not respond further.

21 Sanders Interrogatories

22 At issue are Sanders Interrogatories 1, 2, 5, 6, 7, 15 and 24. These  
23 interrogatories generally pertain to electronically stored information (“ESI”), the  
24 litigation hold put in place by Defendants and the efforts made by Defendants to  
25 search for responsive data.

26 ESI Stipulation

27 On September 18, 2012, the parties filed with the Court a Joint Stipulation  
28 and Motion Regarding the Production of Electronically Stored Information. (ECF No.



1 153). The Court granted the Motion and endorsed the Stipulation the next day.  
2 (ECF No. 154). As reflected in the Stipulation, there were 3.74 terabytes of data  
3 secured by Defendants which may contain relevant information. The parties agreed  
4 that Defendants would produce the metadata from the store. Plaintiffs would review  
5 the metadata and narrow the scope of the actual data to be produced. According to  
6 Defendants, the process proceeded to conclusion. See ECF No. 207 at 2. Plaintiffs do  
7 not address the Stipulation in their motion and have not brought any motion to  
8 enforce the Stipulation. The Interrogatories at issue appear to have been served  
9 prior to the Stipulation. Consequently, the motion to compel further responses to  
10 Sanders Interrogatories 1, 5, 6, 7, 15 and 24 is **DENIED** as moot.

11 Litigation Hold

12 On September 21, 2012, the parties filed a Joint Motion and Stipulation  
13 Regarding the Production of Documents Subject to Defendants' Litigation Hold.  
14 (ECF No. 158). The Motion was granted and the stipulation endorsed by the Court  
15 on September 27, 2012. (ECF No. 161). Pursuant to their stipulation, approximately  
16 500 gigabytes of data from multiple custodians was identified. The parties agreed  
17 that Plaintiffs could select up to 7 custodians and prepare 12 Boolean searches to run  
18 against that data. The parties would then meet and confer to discuss the volume of  
19 data resulting from the searches and responsive data would be produced on a rolling  
20 basis. (ECF No. 158). According to Defendants, the agreed-upon process has been  
21 continuing with Plaintiffs' third set of revised searches sent to Defendants on  
22 December 7, 2012. Defendants report that they are running the revised searches and  
23 will respond "promptly" to Plaintiffs. Plaintiffs do not address the stipulation in their  
24 motion to compel and, as before, it appears that the relevant interrogatory was  
25 served prior to the stipulation. Consequently, the motion to compel further responses  
26 to Sanders Interrogatory 2 is **DENIED** as moot.

27 ECF No. 201

28 ECF No. 201 is Plaintiffs' motion to compel further responses to eight Requests

1 for Production served by Plaintiff Rollason. As mentioned above, Defendants, despite  
2 filing a consolidated motion response, did not address these requests for production.  
3 Consequently, the Court will rule based upon the responses provided by Defendants  
4 following service of the requests and will consider Defendants' responses to identical  
5 requests addressed elsewhere.

6 RFP 1: Plaintiff requests production of all documents regarding benefit  
7 worksheets provided to "new" Golden Eagle employees upon their date of  
8 termination. Defendants generally object but state that they are making efforts to  
9 locate or generate responsive documents through their outside vendor. It appears  
10 that Plaintiff has not received any further response.

11 Defendants are **ORDERED** to provide responsive documents or state  
12 unequivocally that responsive documents cannot be located despite reasonable  
13 efforts. Defendants further are **ORDERED** to describe the reasonable efforts  
14 undertaken to locate responsive documents.

15 RFP 2: Plaintiff requests production of all documents regarding retirement  
16 benefits provided to "new" Golden Eagle employees upon employment termination.  
17 This RFP appears duplicative of RFP 1 above. The same ruling obtains.

18 RFP 3: Plaintiff requests the production of all documents provided to "new"  
19 Golden Eagle employees upon commencement of retirement benefits. Defendants  
20 objections are generic.

21 Defendants' general objections, having been submitted without substance, are  
22 **OVERRULED**. Defendants are **ORDERED** to produce responsive, non-privileged  
23 material or, if Defendants claim to have produced such material previously, identify  
24 the responsive material in its prior productions.

25 RFP 4: Plaintiff requests the production of all documents concerning the  
26 proposed vote of the Compensation Committee on August 13, 1997. This RFP  
27 duplicates Moyle RFP No. 120 above. Defendants generally objected, without  
28 discussion, on grounds of relevance, burden, breadth and possible privilege.

1 Defendants' general objections, having been submitted without substance, are  
2 **OVERRULED**. Defendants are **ORDERED** to produce responsive, non-privileged  
3 material or, if Defendants claim to have produced such material previously, identify  
4 the responsive material in its prior productions.

5 RFP 6: Plaintiff requests the production of all documents regarding pension  
6 evaluations by Defendants' pension actuary. Defendants generally objected, without  
7 discussion, on grounds of relevance, burden, breadth and possible privilege.

8 Despite the lack of any substance in their response, Defendants do have the  
9 better of it; this RFP is overbroad as it would pertain to matters well beyond how  
10 "old" Golden Eagle employees would be considered in Liberty Mutual's retirement  
11 benefit plan. The Court will not re-write it and will not enforce it. No further  
12 response is required.

13 RFP 7: Plaintiff requests the production of all documents regarding Hewitt  
14 Associates actuarial reports from 1997 to present. Defendants generally objected,  
15 without discussion, on grounds of relevance, burden, breadth and possible privilege.

16 Despite the lack of any substance in their response, Defendants do have the  
17 better of it; this RFP is overbroad as it would pertain to matters well beyond how  
18 "old" Golden Eagle employees would be considered in Liberty Mutual's retirement  
19 benefit plan. The Court will not re-write it and will not enforce it. No further  
20 response is required.

21 RFP 10: Plaintiff requests the production of all documents regarding  
22 correspondence between John St. Martin and Sasha Blom regarding past service  
23 credits. Defendants generally objected, without discussion, on grounds of relevance,  
24 burden, breadth and possible privilege.

25 Despite the lack of any substance in their response, Defendants do have the  
26 better of it; this RFP is overbroad as it would pertain to matters well beyond how  
27 "old" Golden Eagle employees would be considered in Liberty Mutual's retirement  
28 benefit plan. The Court will not re-write it and will not enforce it. No further

1 response is required.

2 RFP 18: Plaintiff requests the production of all documents regarding the  
3 Golden Eagle conservatorship proceeding. Defendants generally objected, without  
4 discussion, on grounds of relevance, burden, breadth and possible privilege.

5 Despite the lack of any substance in their response, Defendants do have the  
6 better of it; this RFP is overbroad as it would pertain to matters well beyond how  
7 “old” Golden Eagle employees would be considered in Liberty Mutual’s retirement  
8 benefit plan. Plaintiff has offered to narrow the scope of this RFP to “predicate facts.”  
9 Defendants refused to agree to this limitation. The Court will not re-write the RFP  
10 and will not enforce it. No further response is required.


11 Conclusion

12 As discussed herein, Plaintiffs’ Motions to Compel are **GRANTED IN PART**  
13 **AND DENIED IN PART**. To the extent that Defendants have been ordered to  
14 produce further responses or responsive documents, such responses or production  
15 must be made no later than January 25, 2013, absent further Order of the Court.

16 IT IS SO ORDERED.

17 DATED: January 7, 2013.

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Hon. Mitchell D. Dembin  
U.S. Magistrate Judge