UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOHN FLORES, et al., Plaintiffs, v. BANK OF AMERICA, et al., Defendants.	Civil No. 11-1817-JM(WVG) ORDER DENYING PLAINTIFFS' APPLICATION TO COMPEL FURTHER RESPONSES TO INTERROGATORIES ORDER SUSTAINING DEFENDANTS' OBJECTIONS TO PLAINTIFFS' INTERROGATORIES NOS. 20-24

Plaintiffs and Defendants have informed the Court of a discovery dispute regarding Plaintiffs' interrogatories nos. 20-24 and Defendants' responses thereto. They have submitted a Joint Statement for Determination of Discovery Disputes ("Joint Statement"). The Court, having reviewed the Joint Statement, the authorities cited therein, the interrogatories at issue and the responses thereto, and GOOD CAUSE APPEARING, HEREBY DENIES Plaintiffs' application to compel further responses to the interrogatories and SUSTAINS Defendants' objections to the interrogatories.

A. Arguments

In Flores, Plaintiffs define the putative class as: "All persons in the United States who entered into a Loan Agreement (Interest Only to Fixed Rate) with Defendants but were not provided the agreed to loan modifications."

In Jones, Plaintiffs define the putative class as: "All persons in the United States who entered into a Loan Agreement (5-1 ARM 10 Year IO) with Defendants but were not provided the agreed to loan modifications."

Plaintiffs argue that the interrogatories seek information that is relevant to the class certification issues of numerosity, commonality and typicality. Plaintiff cites several cases that they believe supports the propriety of the discovery they seek. These cases are Bell v. Lockheed Martin, 270 F.R.D. 186 (D. NJ 2010), In re Bank of America Wage & Hour Litigation, 275 F.R.D. 534 (D. KS 2011), Vallabharpurapu v. Burger King, 276 F.R.D. 611 (N.D. Cal. 2007), and Putnam v. Eli Lilly, 508 F. Supp 2d 812 (C.D. Cal. 2007). Plaintiffs argue that these cases support their assertions that discovery outside of the putative class definition is proper and appropriate.

Defendants argue that the interrogatories are vague, overbroad, unduly burdensome, seek information outside the class definition, and implicate their customers' privacy interests. Further, Defendants contend that Plaintiffs have not shown good cause for the discovery they seek.

B. Ruling

When a court manages pre-class certification discovery, it must balance the need to promote effective case management, the need

to prevent potential abuse and the need to protect the rights of all parties. Consequently, the discovery must be broad enough to give plaintiffs a 'realistic opportunity to meet (the certification) requirements.' However, it must also protect the defendants against discovery that is irrelevant or invades privileged and confidential areas. Pre-certification discovery is within the discretion of the court, and limitations may be imposed within the court's discretion. U.S. Equal Employment Opportunity Commission v. ABM Industries, Inc., 2008 WL 5385618 at *4 (E.D. Cal. 2008) (citations omitted). A class representative engaging in pre-certification discovery must show good cause that warrants expansion of discovery beyond the class, as defined in the complaint. Martinet v. Spherion Atlantic Enterprises, 2008 WL 2557490 (S. D. Cal. 2008).

Here, the interrogatories are vague, overbroad and unduly burdensome. Further, its appears to the Court that the only purpose of Plaintiffs' interrogatories in issue in the Joint Statement is to allow Plaintiffs to search for other customers of Defendants with claims similar to those of the Plaintiffs in Flores and Jones, without any factual connection to the Plaintiffs in Flores and Jones other than that they are Defendants' customers who did not receive loan modifications. In the Court's view, the type of discovery sought by Plaintiffs constitutes a "fishing expedition" which would be unduly burdensome for Defendants to further respond. Moreover, Plaintiffs have failed to show good cause for the requested discovery.

Plaintiff's cited cases do not apply in this case. Bell, supra, is an employment discrimination class action in which the discovery requests fell within the class definition or within the

general allegations of the complaint. Further, the court noted that "' in employment discrimination cases, Courts generally grant wide latitude to... plaintiffs who seek to conduct company wide discovery, and the relevant issue is the extent to which the case involves a common policy or practice.'" [citing Gutierrez v. Johnson & Johnson, 2002 US Dist. LEXIS 15418 at *1 (D. NJ 2002).

Here, this case does not involve employment discrimination, where the parties are afforded wide latitude to conduct discovery and the requests fall outside the class definition. Further, Plaintiffs do not allege a common practice or policy with regard to Defendants' loan modification agreements. Moreover, Bell is not binding on this Court.

Bank of America Wage & Hour Employment Practices Litigation, supra, is a class action regarding Bank of America's wage and hour practices. The discovery requests in that case fell within the class definition or within the general allegations of the complaint. Plaintiffs in that case argued that the discovery sought would likely provide relevant information regarding their claims. Bank of America did not assert that it would be unduly burdensome to produce the requested information.

Here, this case does not involve claims regarding wage and hour practices and Defendants objected to the requested discovery as, *inter alia,* unduly burdensome. Further, this case is not binding on this Court.

Vallabharpurapu was a case arising under the Americans With Disabilities Act ("ADA") in which Plaintiffs sought to certify a class of persons who use wheelchairs or scooters for mobility. Plaintiffs sought relevant discovery that was within the definition

of the class. The plaintiffs in this case asked the defendant to document the conditions of its restaurants before it made any alterations to them (to make them accessible to physically challenged customers), or to give them notice before such alterations were made. The defendants documented the conditions of the restaurants prior to making the alterations, but refused to provide the plaintiffs with the documentation or allow them to make their own inspections. The plaintiffs later learned that the defendant had made the alterations in its restaurants without giving the plaintiffs notice, so they could inspect the restaurants prior to the alterations being made. The only available evidence to document the conditions of the restaurants prior to the restaurants' alterations was in the defendant's possession. The court ruled that since the defendant precluded the plaintiffs from performing their own inspections, it was unfair for the defendants to withhold from the Plaintiffs the documentation of the pre-alteration inspections.

Here, this is not an ADA accessibility case. Further, Defendants have not prevented Plaintiff from obtaining relevant evidence related generally to the defined class.

Putnam, supra, is another class action regarding the defendants' wage and hour practices. In that case, the plaintiffs' requests were within the class definition. Further, the defendants did not offer any adequate explanation why the requested information was not relevant and discoverable.

Here, this is not a wage and hour practices case, and Defendants interposed valid objections to Plaintiffs' requests.

In each of the cases cited by Plaintiffs, the salient and distinguishing fact present, which is not present here, is that the

plaintiffs requested discovery that was within the class definition or the factual assertions generally asserted in the complaint. In this case, Plaintiffs seek discovery pertaining to categories of Defendants' customers, who may have applied for loan modifications under other programs, that fall well outside the class definition or any general allegations in the Complaint. This distinguishing factor is critical and, at this stage of discovery, militates against the broad discovery that Plaintiffs desire.

1. The Interrogatories and Responses

a. Interrogatory No. 20 states:[1/] The name(s) given by you to all of your home loan modification programs under which your customers were sent a loan modification agreement that was effective once the customer signed, notarized and timely returned the agreement.

Defendants responded to the interrogatory as being overbroad, unduly burdensome, and is vague as to the terms "all home loan modification programs" and "that was effective once the customer signed, notarized and timely returned the agreement."

The Court finds that the interrogatory is vague as to the meanings of the terms "all home loan modification *programs"* and "that was *effective* once the customer signed, notarized and timely returned the agreement." Further, the interrogatory, as stated, is overbroad and unduly burdensome for Defendants to further respond. Defendants' objections to this interrogatory are SUSTAINED.

b. Interrogatory No. 21 states: Identify the documents you provide to your customers in conjunction with home loan modification

[1/]The Court notes that counsel did not provide it with the actual interrogatories and responses at issue. The Court assumes that the interrogatories and responses stated in the Joint Statement are accurate.

requests or applications for all of your home loan modification programs under which your customers were sent a loan modification agreement that was effective once the customer signed, notarized and timely returned the agreement.

Defendants responded to the interrogatory as being overbroad, unduly burdensome, and vague as to the terms "all home loan modification programs" and "that was effective once the customer signed, notarized and timely returned the agreement."

The Court finds that the interrogatory is vague as to the meanings of the terms "all home loan modification *programs"* and "that was *effective* once the customer signed, notarized and timely returned the agreement." Further, the interrogatory, as stated, is overbroad and unduly burdensome for Defendants to further respond. Defendants' objections to this interrogatory are SUSTAINED.

c. Interrogatory No. 22 states: Identify the documents and information you require from your customers to process loan modifications for all of your home loan modification programs under which your customers were sent a loan modification agreement that became effective once the customer signed, notarized and timely returned the agreement.

Defendants responded to the interrogatory as being overbroad, unduly burdensome, and vague as to the terms "all home loan modification programs" and "that was effective once the customer signed, notarized and timely returned the agreement."

The Court finds that the interrogatory is vague as to the meanings of the terms "all home loan modification *programs"* and "that was *effective* once the customer signed, notarized and timely returned the agreement." Further, the interrogatory, as stated, is

overbroad and unduly burdensome for Defendants to further respond. Defendants' objections to this interrogatory are SUSTAINED.

d. Interrogatory No. 23 states: For all of your home loan modification programs identified in Interrogatories nos. 19 and 20, state the total number of customers who were sent a loan modification agreement, signed and returned the agreement, and were not provided a loan modification.

Defendants responded to the interrogatory (and interrogatory no. 20) as being overbroad, unduly burdensome, and vague as to the terms "all home loan modification programs" and "that was effective once the customer signed, notarized and timely returned the agreement."

As the Court found with interrogatory no. 20, the interrogatory is vague as to the meanings of the terms "all home loan modification *programs"* and overbroad as to the terms "signed, notarized returned the agreement." Further, the interrogatory, as stated, is unduly burdensome for Defendants to further respond. Defendants' objections to this interrogatory are SUSTAINED.

e. Interrogatory No. 24 states: For each customer identified in interrogatory no. 23, state each customer's name, telephone number and address.

Defendants responded to the interrogatory as being overbroad, unduly burdensome, implicates the privacy interests of its customers, and vague as to the terms "all home loan modification programs" and "that was effective once the customer signed, notarized and timely returned the agreement."

Since this interrogatory relates to interrogatory no. 23, and the Court has sustained Defendants' objections to interrogatory no. 23, it SUSTAINS Defendants' objections to interrogatory no. 24.

Therefore, Defendants' objections to interrogatories nos. 20-24 are SUSTAINED and Plaintiffs' application to compel further responses to interrogatories nos. 20-24 is DENIED.

DATED: December 27, 2012

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