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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

<p>JESUS ROMERO, a Minor, by and through his Guardian ad Litem, MERIDA RAMOS; et al., Plaintiffs,</p> <p>v.</p> <p>MACY'S, INC., fka FEDERATED DEPARTMENT STORES, INC., a Delaware corporation; et al., Defendants.</p>

Case No.: 15cv815-GPC-MDD

ORDER ON JOINT MOTION TO DETERMINE DISCOVERY DISPUTE REGARDING DEFENDANT RALPH LAUREN CORPORATION'S RESPONSES TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET ONE

[ECF NO. 79]

Before the Court is the Joint Motion of Plaintiffs and Defendant Ralph Lauren Corporation presenting Plaintiffs' Motion to Compel further responses to Plaintiffs' special interrogatories. The Joint Motion was filed on

1 August 22, 2016. (ECF No. 79). The case involves allegations that a boy's
2 gingham shirt worn by Plaintiff in January 2005, when he was 8 years old,
3 allegedly purchased from Defendant Macy's, Inc., in August or September
4 2004, and manufactured by Defendant Ralph Lauren Corporation, caught fire
5 and injured Plaintiff. Plaintiffs allege that the shirt was not 100% cotton as
6 claimed on the labels. No receipts or labels are available.

7 At issue are Defendant Ralph Lauren Corporation's responses to
8 Special Interrogatories 1, 2, 15, 16, 20, 22 and 23. Special Interrogatories 15,
9 16, 22 and 23 are "contention" interrogatories. Special Interrogatories 1, 2
10 and 20 are of the more common variety.

11 Special Interrogatories 1, 2 and 20

12 The issues regarding the responses to Special Interrogatories 1, 2 and
13 20 are similar and will be treated together. Special Interrogatory 1 calls for a
14 description of the technical specifications relating to the design and
15 manufacture of boy's gingham shirts from January 1, 2003, through
16 December 31, 2005. Special Interrogatory 2 calls for a description of the
17 quality control policies and procedures relating to the design, manufacture
18 and distribution of the subject shirts during the same time period. Special
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1 Interrogatory 20 calls for Defendant to state all product codes for the subject
2 shirts during the same time period.

3 Defendant has responded that for the period of January 1, 2003,
4 through July 2, 2004, the subject shirts were designed, manufactured and
5 distributed by other identified defendants. Consequently, for that period, it
6 has no technical specifications, quality control policies and procedures nor
7 product codes for the subject shirts that it can describe. Plaintiffs assert that
8 Defendant “should” have this information because of its relationship with
9 other defendants but provide no evidence to support an inference that
10 Defendant is hiding responsive information.

11 For the period from July 2, 2004, through December 31, 2005,
12 Defendant asserts that other identified defendants were responsible for
13 design and manufacture of the subject shirts and, rather than provide a
14 description, produced all of the responsive documents in its possession – a
15 total of 84 pages. Plaintiffs claim this response to be inadequate because the
16 responsive information is not apparent in those documents. Defendant
17 responds that these documents are all that there is that is arguably
18 responsive and Plaintiffs’ claimed inability to decipher them is not credible.
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1 Regarding the period January 1, 2003, through July 2, 2004,
2 Defendant's response is sufficient. The Court declines Plaintiffs' invitation to
3 compel Defendants to detail efforts undertaken to supply responsive
4 information.

5 For the period July 2, 2004, through December 31, 2005, the issue is
6 whether Defendant's response, providing records, is sufficient. Rule 33(d),
7 Fed. R. Civ. P., provides that if the answer to an interrogatory may be
8 determined by examining a party's business records, and if the burden of
9 deriving the answer from the records is the same for either party, it is
10 appropriate for the responding party to answer by specifying the records that
11 must reviewed "in sufficient detail to enable the interrogating party to locate
12 and identify them as readily as the responding party could." Rule 33(d)(1).
13 Plaintiffs claim that they cannot derive the answers to the subject
14 interrogatories from the documents supplied. Defendant, therefore, must
15 specifically identify, among the business records it has provided, the
16 documents that provide the answers to each of the subject interrogatories.

18 Special Interrogatories 15, 16, 22 and 23

19 Defendant did not provide any substantive responses to these
20 contention interrogatories. Defendant asserts variously overbreadth,

1 vagueness, privilege and that contention interrogatories are premature at
2 this phase of the litigation.

3 The Court finds that these contention interrogatories are not
4 premature. Discovery opened in this case regarding this Defendant by at
5 least June 11, 2015, with the initial Case Management Conference. (ECF
6 Nos. 11, 12). Expert discovery is closed and all discovery must be completed
7 by December 7, 2015. (ECF No. 74). Sufficient discovery has been obtained
8 such that summary judgment motions have been filed, including by this
9 Defendant. (ECF No. 66). The Court overrules Defendant's objection
10 regarding timeliness for each of these special interrogatories. Next, the
11 Court will address specific objections to each contention interrogatory.

12 Special Interrogatory 15

13 This interrogatory requires that if Defendant contends that the subject
14 boy's gingham shirts met all applicable federal flammability standards for
15 children's apparel, the Defendant must state all facts upon which the
16 contention is based and identify all documents upon which the contention is
17 based. Defendant responded with a truckload of boilerplate objections.
18 Ultimately, in connection with this Motion, Defendant specifically addresses
19 only the issue of timeliness, addressed earlier by the Court, and the issue of
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1 whether the phrase “all applicable federal flammability standards” is
2 overbroad, vague, ambiguous and burdensome. (ECF No. 79 at 21-22).

3 Defendant’s response is curious considering that in its Motion for
4 Summary Judgment filed on June 29, 2016, Defendant argues that the boy’s
5 gingham shirt at issue was in compliance with the Federal Flammability Act,
6 15 U.S.C. § 1191 et seq., and the Textile Products Identification Act, 15
7 U.S.C. § 70. (ECF No. 66 at 9-15). Defendant identified the statutes,
8 described the testing performed by its experts and presented its view that the
9 shirt is compliant with these statutes. (*Id.*). While deferring on the question
10 of “all federal flammability standards,” the Defendant could and should have
11 answered the interrogatory regarding the federal flammability standards of
12 which it was aware.

13 Defendant does have a point, however, regarding the requirement that
14 it state “all” facts and identify “all” documents supporting its contention.
15 “Courts ‘will generally find [contention interrogatories] overly broad and
16 unduly burdensome on their face to the extent they ask for “every fact [or “all
17 facts”] which support identified allegations or defenses.’ ‘Interrogatories
18 may, however, properly ask for the “principal or material” facts which
19 support an allegation or defense.’” *Hernandez v. Best Buy Co., Inc.*, No.

1 13cv2587-JM-KSC, 2014 WL 5454505 *6 (S.D. Cal. Oct. 27, 2014) *quoting*
2 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404-405 (D. Kan. 1998).

3 Accordingly, with regard to Special Interrogatory 15, Defendant is
4 ordered to supplement its response to state whether it contends that the boy's
5 gingham shirts complied with *any* federal flammability standards, identify
6 those standards, and state the material facts and identify the material
7 documents supporting its contention.

8 Special Interrogatory 16

9 In this special interrogatory, Plaintiff requires Defendant to state
10 whether it contends that the shirt at issue was not a "boy's gingham shirt,"
11 presumably as defined elsewhere, and to state all facts supporting this
12 contention. Defendant challenges this interrogatory on the grounds that
13 Plaintiff has failed to establish that the shirt was a "boy's gingham shirt" so
14 that it need not disclose its view on the matter.

15 Defendant's position is frivolous. Contention interrogatories, like any
16 other form of discovery, may be used to discover "any nonprivileged matter
17 that is relevant to any party's claim **or defense** . . ." Fed. R. Civ. P. 26(b)(1);
18 *see Hernandez v. Best Buy Co., Inc.*, 2014 WL 5454505 *5. Plaintiff is entitled
19 to discover on the question of whether the shirt at issue is a "boy's gingham
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1 shirt” will be an issue at trial. As with Special Interrogatory 15, assuming
2 that Defendant will contend that the shirt is not a “boy’s gingham shirt,”
3 Defendant need only provide material facts, as opposed to all facts,
4 supporting its contention.

5 Special Interrogatory 22

6 In this interrogatory, Plaintiff requires Defendant to identify the
7 affirmative defenses asserted in its Answer and state “all facts” upon which
8 the affirmative defense is based. Defendant objected on a variety of grounds,
9 all of which are unavailing. Defendant presented 19 affirmative defenses in
10 its operative Answer. (ECF No. 20). Defendant’s objection that a response
11 would invade privilege is unfounded – by its terms the interrogatory calls for
12 a statement of facts to support each of the asserted defenses. *See Hernandez*
13 *v. Best Buy Co., Inc.*, 2014 WL 5454505 *6.

14 In its Supplemental Response, Defendant presents a factual statement
15 regarding the design and manufacture of boy’s gingham shirts nearly
16 identical to the statement provided in response to special interrogatories 1, 2
17 and 20. No reference is made to the affirmative defenses asserted by
18 Defendant. (ECF No. 79 at 27-28). The response is insufficient and not
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1 responsive. Defendant must respond specifically and state the material facts
2 upon which each of its asserted affirmative defenses is based.

3 Special Interrogatory 23

4 This interrogatory builds on Special Interrogatory 22 requiring
5 Defendant to identify “all persons” with knowledge of facts and “any
6 documents” upon which the affirmative defense is based. In response, in
7 addition to its general objections and its objections based upon privilege, all
8 of which are overruled, Defendant responded by identifying its expert
9 Marcelo Hirschler, Carolyn Mitchell, Michael Kessler, Plaintiff and his
10 parents. Defendant also referred Plaintiff to the asset and purchase
11 agreement and transition agreement for other individuals. (ECF No. 79 at
12 31).


13 This response is insufficient. Unless each of these individuals know the
14 facts supporting each of the affirmative defenses, Defendant must specify
15 which witnesses know facts supporting which affirmative defense. Similarly,
16 the identification of the asset and purchase agreement and transition
17 agreement to identify other individuals is insufficient under Rule 33(d).
18 Defendant must specify which individuals have information regarding which
19 affirmative defenses.
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1 Other than its reference to the agreements, made solely regarding
2 identification of witnesses, Defendant failed to respond regarding whether
3 there are documents that support each of its affirmative defenses. Defendant
4 must respond specifically and identify any material documents supporting
5 each of its affirmative defenses.

6 CONCLUSION AND ORDER

7 As provided herein, Defendant is **ORDERED** to provide further
8 responses to each of the special interrogatories addressed herein no later
9 than 14 days following the filing of this Order.

10 Dated: September 12, 2016

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12 Hon. Mitchell D. Dembin
13 United States Magistrate Judge
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