

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE ECLIPSE GROUP LLP,

Plaintiff,

Case No.: 15cv1411-JLS (BLM)

**INTERVENOR'S MOTION TO COMPEL**

TARGET CORPORATION, et al,

## Defendants.

**ORDER REQUIRING SUPPLEMENTAL  
PLEADINGS REGARDING  
INTERVENOR'S MOTION TO COMPEL**

On March 7, 2017, Intervenor filed a motion to compel which was later stricken at the request of Defendants in order to permit the parties to meet and confer in an effort to resolve the discovery dispute. ECF No. 74, 74, 78. On March 8, 2017, the Court ordered "the parties to meet and confer regarding the discovery issues addressed in Intervenor Plaintiff's Motion to Compel" and to file a Joint Status Report detailing the efforts. ECF No. 78 at 2. The parties filed their Joint Status Report and included a number of legal objections and discovery compromises proposed by Defendants. ECF No. 81 at 9-13. After reviewing the Joint Status Report, the Court ordered Intervenor to file his motion to compel and stated that if Intervenor is moving to compel a further response to any of the discovery requests described in Exhibit A of the Joint Status Report, he "**must** describe Defendants' proposed compromise or objection and explain why the compromise is not appropriate and/or why the objection is not legally correct. ECF No. 82 at 1-2 (emphasis added). Intervenor filed his motion to compel on March 23, 2017 [ECF No. 83-1 ("MTC")] and Defendants filed their opposition on March 30, 2017 [ECF No. 88 ("Oppo.")].

1        In his motion to compel, Intervenor requests that the Court compel responses to sixty  
2 (60) requests for production of documents, twenty-eight (28) requests for admissions, and  
3 twenty-six (26) interrogatories. ECF Nos. 85-1 – 85-6. Generally speaking, the discovery  
4 requests are very broad. Id. Defendants objected to the requests but for many of the requests,  
5 Defendants offered to respond to a revised and narrowed version of the original request. ECF  
6 No. 85-11. Despite the Court’s explicit order requiring Intervenor to explain why Defendants’  
7 proposed compromises were not acceptable and why their objections were legally insufficient,  
8 Intervenor failed to do so.<sup>1</sup>

9        On April 4, 2017, Defendants filed a Supplemental Declaration of Jason Cirlin in  
10 Opposition to Intervenor’s Second Motion to Compel [see ECF No. 91 (“Cirlin Supp. Decl.”)]  
11 stating that they

12        emailed to Intervenor Stephen Lobbin, the following supplemental responses: (a)  
13 Defendant Kmart Corporation’s Supplemental Responses to Intervenor’s Requests  
14 for Production of Documents, (b) Defendant Target Corporation’s Supplemental  
15 Responses to Intervenor’s Requests for Production of Documents, (c) Defendant  
16 Kmart Corporation’s Supplemental Responses to Intervenor’s Requests for  
17 Admission, (d) Defendant Target Corporation’s Supplemental Responses to  
18 Intervenor’s Requests for Admission, (e) Defendant Kmart Corporation’s  
19 Supplemental Responses to Intervenor’s Interrogatories, (f) Defendant Target  
20 Corporation’s Supplemental Responses to Intervenor’s Interrogatories, incorporating  
the results of the meet and confer process between counsel. The  
21 production of documents is being finalized and will be completed prior to Friday  
22 April 7, 2017.

23 Cirlin Supp. Decl. at 2. In light of Defendants’ representations, the Court believes that the  
24 pending discovery dispute may be resolved or narrowed. Because it is unclear from the  
25 supplemental declaration which specific responses were supplemented and whether or not the  
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27       <sup>1</sup> For example, with respect to Interrogatories 1-9, Intervenor states that “Defendants proposed  
28 revisions (only in some instances), but still have not answered anything. Moreover, their  
limitations on scope are not proper objections, but they may state the limitations of the  
information in their response.” MTC at 9. Intervenor fails to state specifically what Defendants’  
propose, fails to explain why Defendants’ proposed compromise is unacceptable, and fails to  
adequately address Defendants’ legal objections.

1 supplemental responses are satisfactory to Intervenor, the Court **ORDERS** Intervenor to file a  
2 supplemental pleading on or before **April 19, 2017**, clearly stating for each and every request,  
3 if the supplemental response and production has obviated the need for the motion to compel a  
4 response and, if not, what Defendants provided in the supplemental response or production,  
5 why the response or production is still insufficient, and why Defendants' proposed compromise  
6 for the request is not acceptable. Defendants may file a response to the supplemental pleading  
7 on or before **April 26, 2017**.

8 The Court notes that many of Intervenor's original discovery requests are overbroad and  
9 not proportional to the needs of the case as required by Federal Rule of Civil Procedure 26(b)(1).<sup>2</sup>  
10 Accordingly, it is important that Intervenor heed the Court's order and provide the specified  
11 information regarding Defendants' supplemental responses, production, and offers to  
12 compromise. A failure to do so may result in the Court denying Intervenor's motion to compel  
13 further responses because Intervenor will not have provided sufficient law and facts to justify  
14 the broad discovery requests.

15 **IT IS SO ORDERED.**

16 Dated: 4/7/2017



17 Hon. Barbara L. Major  
18 United States Magistrate Judge

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21  
22 <sup>2</sup> The Court reminds Intervenor that the Federal Rules of Civil Procedure ("FRCP") were amended  
23 in December 2015 and the appropriate standard for the scope of discovery under FRCP26(b)(1)  
24 which used to authorize parties to "obtain discovery regarding any nonprivileged matter that is  
25 relevant to any party's claim or defense" and courts to "order discovery of any matter relevant  
26 to the subject matter involved in the action," has been modified to permit parties to obtain  
27 discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense  
28 and proportional to the needs of the case." FRCP26(b)(1) (emphasis added). In his motion to  
compel, Intervenor states that "all of the discovery sought is relevant information" and that "the  
relevancy of the requests and interrogatories at issue is obvious as stated," but fails to provide  
any specific facts or argument and fails to address the proportionality of the requests. MTC at  
2, 4.