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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DEVANAN MAHARAJ, individually and
12 on behalf of all similarly situated
13 employees and aggrieved of Defendants in
14 the State of California,

Plaintiff,

15 v.

16 CHARTER COMMUNICATIONS, INC.;;
17 and DOES 1 through 50,

Defendant.
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Case No.: 20cv64-BAS-LL

**ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL FURTHER
RESPONSES TO PLAINTIFF'S
INTERROGATORIES NOS. 5 TO 8
AND DENYING REQUEST FOR
MONETARY SANCTIONS**

[ECF No. 47]

20 Before the Court is Plaintiff Devanan Maharaj's Motion to Compel further responses
21 from Defendant Charter Communications, Inc. to Plaintiff's Interrogatories Nos. 5
22 through 8 and request for sanctions [ECF No. 47 ("Motion" or "MTC")] and Defendant's
23 opposition [ECF No. 50 ("Opposition" or "Oppo.")] . For the reasons set forth below, the
24 Court **GRANTS** Plaintiff's Motion to Compel and **DENIES** Plaintiff's request for
25 monetary sanctions.

26 **I. RELEVANT BACKGROUND**

27 This case arises from Plaintiff's work as a maintenance technician for Defendant in
28 a non-exempt position in San Diego County. ECF No. 21 ¶ 8; Oppo. at 6. Plaintiff filed his

1 original complaint in San Diego County Superior Court on November 5, 2019, which
2 Defendant removed to federal court on January 8, 2020. ECF Nos. 1, 1-2. On
3 May 15, 2020, Plaintiff filed the operative First Amended Complaint (“FAC”).
4 ECF No. 21 (“FAC”).

5 The FAC is both a representative action (under the Private Attorneys General Act
6 (“PAGA”)) and a putative class action for alleged wage and hour violations of California’s
7 Labor Code. FAC ¶¶ 1, 57, 162–64. Plaintiff alleges nine causes of action: eight for the
8 class action and one for the PAGA claim. Id. ¶¶ 57, 162–64. In the putative class action,
9 Plaintiff seeks to represent a “Maintenance Technician Class” consisting of “[a]ll current
10 and former non-exempt employees of Defendants CHARTER COMMUNICATIONS,
11 INC. who worked as a maintenance technician in the State of California during any pay
12 period at any time from November 5, 2015, through the present.” Id. ¶ 58. Plaintiff also
13 seeks to represent a “Waiting Time Penalties Subclass” defined as “[a]ll members of the
14 Maintenance Technician Class, whose employment with Defendants ended at any time
15 from November 5, 2016, through the present.” Id. ¶ 59.

16 The eight causes of action asserted by Plaintiff and the class are: (1) failure to
17 provide off-duty meal periods (California Labor Code §§ 226.7, 512(a), 1198); (2) failure
18 to provide rest periods (id. §§ 226.7, 1198); (3) failure to pay minimum and regular wages
19 for all hours worked (id. §§ 1194, 1197, 1198); (4) failure to pay all overtime wages
20 (id. §§ 510, 1194, 1198); (5) failure to pay all reporting time pay (id. § 558); (6) failure to
21 provide accurate itemized wage statements (id. §§ 226, 246, 1198); (7) failure to timely
22 pay all wages due upon separation of employment (id. §§ 201–203); and (8) violation of
23 California’s Unfair Competition Law (“UCL”), California Business and Professions Code
24 § 17200, *et seq.* See FAC.

25 The ninth cause of action is a representative claim under PAGA, California Labor
26 Code § 2698, *et seq.* FAC ¶¶ 161–86. PAGA was enacted to “remedy systemic
27 underenforcement” of Labor Code violations by adopting a schedule of civil penalties for
28 such violations and “deputizing employees harmed by labor violations to sue on behalf of

1 the state and collect penalties, to be shared with the state and other affected employees.”
2 Williams v. Superior Ct., 3 Cal. 5th 531, 545 (2017) (citations omitted). Plaintiff seeks to
3 bring a PAGA claim on behalf of the State of California for various violations of the Labor
4 Code by Defendant against him and all other non-exempt employees of Defendant in
5 California during the period of September 1, 2018 to the present. MTC at 6. The alleged
6 violations include (1) failure to pay minimum and regular wages for all hours worked;
7 (2) failure to pay all overtime wages; (3) failure to provide lawfully compliant meal
8 periods; (4) failure to provide rest periods; (5) failure to pay meal and rest premium wages
9 owed; and (6) failure to keep and provide accurate itemized wage statements.
10 FAC ¶¶ 161–86.

11 On May 29, 2020, Defendant filed a motion to dismiss the FAC, arguing that the
12 putative class action and PAGA action “should be dismissed, or alternatively, stayed, under
13 the ‘first-to-file’ rule, the Colorado River abstention doctrine, and [the] Court’s inherent
14 power to control the proceedings before it.”¹ ECF No. 23 at 7.

15 The parties held a discovery dispute conference call with the Court in June 2020 and
16 the Court subsequently issued a briefing schedule for Plaintiff’s motion to compel further
17 responses to Plaintiff’s April 17, 2020 Requests for Production and Interrogatories,
18 Set One. See ECF Nos. 24; 32 at 1. The Court later granted several joint motions to continue
19 the deadline to file the motion to compel while the motion to dismiss was pending.
20 ECF Nos. 27, 30, 32, 43.

21 On February 23, 2021, the district judge denied Defendant’s motion to dismiss the
22 FAC. ECF No. 44.

23 Plaintiff timely filed the instant Motion on March 3, 2021, and Defendant timely
24 filed its Opposition on March 17, 2021. MTC, Oppo.

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¹ Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817–19 (1976).

1 **II. DISCOVERY REQUESTS AT ISSUE**

2 At issue here are Interrogatories Nos. 5 through 8 of Set One propounded by Plaintiff
3 upon Defendant. MTC at 6–7. Interrogatory No. 5 seeks the number of non-exempt
4 employees of Defendant who currently work as maintenance technicians in California who
5 did not enter into an arbitration agreement. ECF No. 47-1 at 17. Interrogatory No. 6 seeks
6 the name, job title, hire date, home address, last known telephone number, last known cell
7 phone number, and email address of the non-exempt employees of Defendant who
8 currently work as maintenance technicians in California and did not enter into an arbitration
9 agreement. Id. at 18. Interrogatory No. 7 seeks the total number of non-exempt employees
10 of Defendant who worked as maintenance technicians in California at any time from
11 November 5, 2015 through the present and who did not enter into an arbitration agreement.
12 Id. at 20. Interrogatory No. 8 seeks the name, job title, hire date, home address, last known
13 telephone number, last known cell phone number, and email address of the non-exempt
14 employees of Defendant who worked as maintenance technicians in California from
15 November 5, 2015 through the present and who did not enter into an arbitration agreement.
16 Id. at 21.

17 Defendant objected on various grounds, but the parties met and conferred several
18 times and narrowed their dispute. See ECF No. 47-1 at 17–22; MTC at 7–8; Oppo at 7–9.
19 Plaintiff limited his request and currently seeks the identities, contact information, and
20 employment history of all non-exempt maintenance technician employees without
21 arbitration agreements who worked for Defendant in California during the class period.
22 MTC at 7; ECF No. 47-1, Declaration of David X. Lin (hereinafter “Lin Decl.”), ¶ 10.
23 Defendant provided some responses to Plaintiff, including that approximately 166
24 maintenance technicians employed during the class period did not enter into arbitration
25 agreements with Defendant and that there are a total of thirty-nine work locations in
26 California. ECF No. 50-1, Declaration of Keith J. Rasher (hereinafter
27 “Rasher Decl.”), ¶ 11; Lin Decl. ¶ 11. Defendant ultimately stated it would produce the
28 names and contact information for the requested putative class members subject to a time

1 and pay data sampling for thirty-nine individuals, via a randomized methodology.² Rasher
2 Decl. ¶ 15. Plaintiff rejected the offer of a sampling and moves to compel the identities,
3 contact information, and employment information for the 166 maintenance technicians
4 who did not enter into arbitration agreements, pursuant to Interrogatories Nos. 5
5 through 8. MTC at 8, 17.

6 **III. LEGAL STANDARD**

7 The scope of discovery under the Federal Rules of Civil Procedure is defined as
8 follows:

9 Parties may obtain discovery regarding any nonprivileged matter that is
10 relevant to any party's claim or defense and proportional to the needs of the
11 case, considering the importance of the issues at stake in the action, the
12 amount in controversy, the parties' relative access to relevant information, the
13 parties' resources, the importance of the discovery in resolving the issues, and
14 whether the burden or expense of the proposed discovery outweighs its likely
benefit. Information within this scope of discovery need not be admissible in
evidence to be discoverable.

15 Fed. R. Civ. P. 26(b)(1).

16 District courts have broad discretion to determine relevancy for discovery purposes.
17 See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad
18 discretion to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing
19 that courts must limit discovery where the party seeking the discovery "has had ample
20 opportunity to obtain the information by discovery in the action" or where the proposed
21 discovery is "unreasonably cumulative or duplicative," "obtain[able] from some other
22 source that is more convenient, less burdensome, or less expensive," or where it "is outside
23 the scope permitted by Rule 26(b)(1)"). An interrogatory may relate to any matter that may
24 be inquired under Rule 26(b). Fed. R. Civ. P. 33(a)(2).

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27 ² Defendant proposed providing information for the eight maintenance technicians who
28 worked in the same location as Plaintiff, plus thirty-one randomly chosen individuals
throughout Defendant's California locations. Oppo. at 15.

1 Pursuant to Federal Rule of Civil Procedure 37, “a party may move for an order
2 compelling disclosure of discovery.” Fed. R. Civ. P. 37(a)(1). “The party seeking to compel
3 discovery has the burden of establishing that its request satisfies the relevancy
4 requirement” of Rule 26. Louisiana Pac. Corp. v. Money Mkt. 1 Institutional Inv. Dealer,
5 285 F.R.D. 481, 485 (N.D. Cal. 2012). Thereafter, the party opposing discovery has the
6 burden of showing that the discovery should be prohibited, and the burden of “clarifying,
7 explaining and supporting its objections.” DIRECTV, Inc. v. Trone, 209 F.R.D. 455, 458
8 (C.D. Cal. 2002) (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)).
9 Under the liberal discovery principles of the Federal Rules, parties opposing discovery are
10 “required to carry a heavy burden of showing why discovery was denied.” Blankenship v.
11 Hearst Corp., 519 F.2d at 429. “A district court is vested with broad discretion to permit or
12 deny discovery.” Laub v. U.S. Dep't of Interior, 342 F.3d 1080, 1093 (9th Cir. 2003).

13 **IV. DISCUSSION**

14 Plaintiff contends that Defendant should be compelled to provide the requested
15 information because (1) Defendant stipulated to providing substantive responses to
16 Plaintiff’s Interrogatories, reserving the right to elect to use a Belaire-West opt-out
17 procedure;³ (2) the requested discovery is relevant and proportional to the needs of the
18 case; and (3) Plaintiff has established a prima facie case under Rule 23(a).⁴ MTC at 9–15.

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22 ³ In Belaire-West Landscape, Inc. v. Superior Court, 149 Cal. App. 4th 554 (2007), the
23 California appellate court found that an opt-out notice adequately protected the privacy
24 rights of current and former employees whose contact information was ordered to be
25 disclosed. Id. at 556. The opt-out notice gave the employees, *inter alia*, notice of the action,
26 assurance they were under no obligation to talk to counsel, assurance that their employer
27 may not retaliate against them for providing or refusing to provide any information, and an
28 opportunity to opt out of disclosure by returning an enclosed postcard. Id. at 557–58.

⁴ The term “Rule” in this Order refers to the Federal Rules of Civil Procedure unless stated
otherwise.

1 Defendant argues that it should not be compelled to provide the requested discovery
2 because (1) Defendant cannot engage in substantive, merits-based discovery without
3 risking a waiver of its right to arbitrate, which it asserted in a pending motion to compel
4 arbitration; (2) discovery should be stayed until the motion to compel arbitration is ruled
5 on; (3) Plaintiff has not established a prima facie case under Rule 23(a) to allow disclosure
6 of discovery at locations where Plaintiff did not work; and (4) producing evidence of all
7 maintenance technicians from every California location for the putative class period is
8 overbroad, not proportional to the needs of the case, violates third-party privacy, and is
9 unduly harassing to Defendant and its current and former employees. *Oppo*. at 9–18.

10 **A. Stipulation**

11 Plaintiff contends that the parties reached a stipulation that was reflected in their
12 joint motion to amend the scheduling order and continue motion to compel deadlines filed
13 on June 19, 2020. *Lin Decl.* ¶ 6. The joint motion states that “Defendant has stipulated to
14 provide substantive responses to Plaintiff’s Interrogatories, but reserves the right to elect
15 whether to engage in the *Belaire-West* process.” *ECF No. 26* at 3. Plaintiff argues that
16 because Defendant stipulated to responding to the Interrogatories, but now proposes to
17 provide only part of the information requested, Defendant has acted in bad faith and must
18 be compelled to provide full and complete responses. *MTC* at 9.

19 Defendant argues that it stipulated to providing substantive responses, as opposed to
20 merely objecting, and that it never stipulated to providing Plaintiff with the identities and
21 contact information of all putative class members. *Oppo*. at 11–12. Defendant states that it
22 offered to produce substantive responses “subject to the time and pay data sampling being
23 discussed by the parties.” *Rasher Decl.* ¶¶ 10, 13, 15.

24 The Court is not convinced that Defendant stipulated to providing the requested
25 information for all putative class members. A “substantive response” was not clearly
26 defined by the parties to be either a response without qualifications or a response that was
27 not merely an objection. It is undisputed that Defendant offered to produce the information
28 as to a sampling of the employees; therefore, Defendant provided a response that was not

1 a mere objection. But because of the ambiguity of the term “substantive response,” the
2 Court cannot find that Defendant stipulated to providing the identities and contact
3 information of all putative class members.

4 **B. Pending Motion to Compel Arbitration**

5 Defendant claims that it risks a waiver of its right to arbitration if it now produces
6 the substantive, merits-based discovery requested by Plaintiff. *Oppo.* at 9. Defendant
7 further argues that discovery should be stayed while its motion to compel arbitration is
8 pending. *Id.* at 10–11.

9 Determining whether the right to compel arbitration has been waived “must be
10 conducted in light of the strong federal policy favoring enforcement of arbitration
11 agreements.” *Martin v. Yasuda*, 829 F.3d 1118, 1124 (9th Cir. 2016) (citation omitted). A
12 party arguing that a waiver of arbitration has occurred “bears a heavy burden of proof.” *Id.*
13 (citation omitted). Therefore, “[a] party seeking to prove waiver of a right to arbitration
14 must demonstrate: (1) knowledge of an existing right to compel arbitration; (2) acts
15 inconsistent with that existing right; and (3) prejudice to the party opposing arbitration
16 resulting from such inconsistent acts.” *Id.* (citation omitted).

17 First, the Court finds that if Defendant produces or participates in discovery because
18 of a Court order compelling it to do so as a result of the instant Motion, this discrete action
19 would not be an act inconsistent with the right to arbitrate, such that it would waive that
20 right.⁵ Although Defendant is correct that answering discovery, combined with other
21 actions, has resulted in a finding of acts inconsistent with the right to arbitrate, the Court
22 finds the specific and narrow act of complying with the instant Order to be distinguishable.
23 *See id.* at 26 (finding a party engaged in acts inconsistent with the right to arbitrate when
24 it spent considerable time on a joint stipulation structuring the litigation, filing a motion to
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27 ⁵ The undersigned notes that this is her own finding in the context of deciding whether this
28 Motion should be granted or denied. The determination of the pending motion to compel
arbitration is solely that of the district judge.

1 dismiss, entering into a protective order, answering discovery, preparing for and
2 conducting a deposition, and not asserting its right to arbitration until “well after” the time
3 it determined it had a right to arbitrate). Here, Defendant is resisting responding in full to
4 the requested Interrogatories or otherwise participating in discovery while its motion to
5 compel arbitration is pending. Furthermore, the third element of proving waiver of the right
6 to arbitrate cannot be met. Plaintiff cannot claim to be prejudiced by Defendant complying
7 with the Court’s order on this Motion because it is the result of Plaintiff’s efforts and only
8 serves to benefit Plaintiff. Therefore, the Court is not persuaded that granting the Motion
9 would cause Defendant to waive its right to arbitrate. The Court makes no opinion on
10 whether any actions outside of this one single act—complying with this Court’s instant
11 Order—would be considered acts inconsistent with the right to arbitrate.

12 Second, the Court notes there is no rule requiring the automatic stay of discovery
13 while a motion to compel arbitration is pending. The subject of this Order is a Motion to
14 Compel discovery and Defendant has not filed a motion to stay discovery. Additionally,
15 the Court notes that it issued an order on April 13, 2021 granting the parties’ joint motion
16 to vacate certain discovery-related deadlines pending the resolution of Defendant’s motion
17 to compel arbitration. ECF No. 54. Therefore, a stay of discovery at this time is not
18 warranted.

19 The Court now turns to the merits of the Motion seeking to compel responses to the
20 Interrogatories.

21 **C. Prima Facie Case Under Rule 23(a)**

22 Plaintiff argues that the Court has discretion on whether to require Plaintiff to
23 establish a prima facie case under Rule 23(a) before allowing class-wide discovery, but
24 that even if it is required, Plaintiff has established a prima facie case here by properly
25 pleading all elements of Rule 23(a). MTC at 14–15. Defendant argues that Plaintiff has not

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1 established a prima facie case under Rule 23(a) to allow disclosure of discovery at locations
2 where Plaintiff did not work.⁶ Oppo. at 12.

3 A party seeking certification of a class action must first meet the prerequisites of
4 Rule 23(a), which states the following:

5 One or more members of a class may sue or be sued as representative parties
6 on behalf of all members only if:

7 (1) the class is so numerous that joinder of all members is impracticable;

8 (2) there are questions of law or fact common to the class;

9 (3) the claims or defenses of the representative parties are typical of the
10 claims or defenses of the class; and

11 (4) the representative parties will fairly and adequately protect the interests
12 of the class.

13 Fed. R. Civ. P. 23(a).

14 “District courts have broad discretion to control the class certification process, and
15 ‘[w]hether or not discovery will be permitted . . . lies within the sound discretion of the
16 trial court.’” Vinole v. Countrywide Home Loans, Inc., 571 F.3d 935, 942 (9th Cir. 2009)
17 (quoting Kamm v. Cal. City Dev. Co., 509 F.2d 205, 209 (9th Cir.1975)). The Ninth Circuit
18 has noted “that the better and more advisable practice for a District Court to follow is to
19 afford the litigants an opportunity to present evidence as to whether a class action was
20 maintainable.” Doninger v. Pac. Nw. Bell, Inc., 564 F.2d 1304, 1313 (9th Cir. 1977). “And,
21 the necessary antecedent to the presentation of evidence is, in most cases, enough discovery
22 to obtain the material, especially when the information is within the sole possession of the

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24 ⁶ The Court finds that some of the parties’ specific arguments regarding commonality and
25 whether discovery is warranted outside of the location where Plaintiff worked are more
26 appropriately addressed in terms of proportionality and whether the requested contact
27 information is overbroad pursuant to Rule 26 and will discuss them in that context in a later
28 section. See Trujillo v. Chef’s Warehouse W. Coast LLC, No. 219CV08370DSFMAAX,
2020 WL 7315346, at *4 (C.D. Cal. Oct. 19, 2020) (noting that the prima facie showing
informs the question of “*whether* discovery should be permitted in the first instance,” and
then Rule 26 “informs the question of *what* discovery should be permitted”).

1 defendant.” Id. “Although in some cases a district court should allow discovery to aid the
2 determination of whether a class action is maintainable, the plaintiff bears the burden of
3 advancing a prima facie showing that the class action requirements of Fed. R. Civ. P. 23
4 are satisfied or that discovery is likely to produce substantiation of the class allegations.”
5 Mantolite v. Bolger, 767 F.2d 1416, 1424 (9th Cir. 1985), as amended (Aug. 27, 1985).
6 A prima facie showing is not required in all cases, and if a court chooses to require one, it
7 should not be “strict.” Trujillo v. Chef’s Warehouse W. Coast LLC, 2020 WL 7315346,
8 at *4; Coleman v. Jenny Craig, Inc., No. 11-cv-1301-MMA DHB, 2013 WL 2896884,
9 at *7 (S.D. Cal. June 12, 2013) (noting that it is the court’s discretion on whether to require
10 a prima facie showing before allowing pre-certification discovery in a class action and
11 refusing to require Plaintiff to prove a likelihood of success at the class certification stage
12 as “beyond the burden permissible” in a prima facie showing).

13 Here, the Court finds that Plaintiff is not required to establish a prima facie case
14 under Rule 23(a) before allowing pre-certification discovery. The Court, in its discretion,
15 declines to require a prima facie showing. See Vinole v. Countrywide Home Loans, Inc.,
16 571 F.3d at 942; Amaraut v. Sprint/United Mgmt. Co., No. 3:19-CV-411-WQH-AHG,
17 2020 WL 8024170, at *8 (S.D. Cal. Jan. 14, 2020) (“Here, the Court uses its discretion and
18 does not require a *prima facie* showing as a prerequisite for pre-certification discovery.”)

19 However, even if a prima facie showing is required, the Court finds that Plaintiff has
20 established a prima facie case. Regarding numerosity, Defendant avers that there are 166
21 putative class members—maintenance technicians who did not enter into arbitration
22 agreements with Defendant—currently at issue. Rasher Decl. ¶ 11; Lin Decl. ¶ 11. That is
23 a sufficient number such that joinder becomes impractical. Regarding commonality,
24 Plaintiff alleges that common questions of law and fact apply to them, including, *inter alia*,
25 “[w]hether Defendants failed to permit Maintenance Technician Class members to take
26 off-duty rest periods of at least 10 minutes for every four hours worked, or major fraction
27 thereof, because Defendants required them to remain on-duty at all times during their shifts,
28 including their breaks.” FAC ¶ 63. Regarding typicality, Plaintiff alleges that he was a

1 maintenance technician employee and subject to the same policies, practices, and course
2 of conduct as other maintenance technician employees throughout the state of California,
3 and the remedies sought by Plaintiff and the putative class members are the same.
4 Id. ¶¶ 64–65. Regarding adequacy of representation, Plaintiff alleges that he has no
5 fundamental conflict of interest with the class or subclass he seeks to represent and that he
6 will adequately protect the interests of all class members to obtain full compensation due
7 to him and putative class members. Id. ¶ 66. Plaintiff has also retained attorneys with
8 significant employment litigation and class action experience. Id. The Court finds that the
9 allegations above are sufficient to establish a prima facie case under Rule 23(a) because
10 they appear on their face to address the Rule 23(a) elements. See Trujillo v. Chef's
11 Warehouse W. Coast LLC, 2020 WL 7315346, at *4 (finding the plaintiff made a prima
12 facie case for class relief under Rule 23 by the allegations in his complaint addressing the
13 Rule 23(a) elements); Amaraut v. Sprint/United Mgmt. Co., 2020 WL 8024170, at *9
14 (finding that plaintiffs sufficiently alleged Rule 23 class action requirements in their
15 complaint to establish a prima facie case); Faraji v. Target Corp.,
16 No. EDCV17155ODWSPX, 2017 WL 8292781, at *4 (C.D. Cal. Apr. 28, 2017) (finding
17 the plaintiff made a prima facie showing by “explaining how she intends to satisfy the class
18 certification elements, including identifying common questions of fact and law, describing
19 how her claims are typical and she will be an adequate class representative, and explaining
20 why class treatment will be a superior means to resolve the claims”); Goundar v. Redfin
21 Corp., No. CV133698PSGMRWX, 2014 WL 12524649, at *1–2 (C.D. Cal. July 21, 2014)
22 (finding prima facie case established even though the plaintiff offered “only minimal
23 explanations about the putative class claims and present[ed] no evidence in support of her
24 contention that Rule 23 certification will be appropriate at a later stage of the action”).

25 The Court also finds that the discovery sought here is likely to produce substantiation
26 of the class allegations, which the Ninth Circuit has found to be a determination the Court
27 may choose to make before allowing pre-certification discovery. See Mantolete v. Bolger,
28 767 F.2d at 1424. It is common in class actions to produce names, addresses, and telephone

1 numbers of putative class members. Artis v. Deere & Co., 276 F.R.D. 348, 352
2 (N.D. Cal. 2011). The Court finds that the contact information that Plaintiff seeks will
3 enable Plaintiff to contact putative class members to gather evidence to show commonality
4 of claims and whether the certification requirements under Rule 23 can be met. Faraji v.
5 Target Corp., 2017 WL 8292781, at *4; Artis v. Deere & Co., 276 F.R.D. at 352.

6 Having determined that pre-certification discovery is warranted, the Court turns to
7 whether the scope of the discovery requested by Plaintiff should be allowed.

8 **D. Relevance**

9 Plaintiff contends that the identity, contact, and employment information sought is
10 relevant because “the information is likely to lead to the discovery of admissible evidence
11 that will prove or disprove [] Plaintiff’s claims or Defendant’s defenses.” MTC at 10.
12 Defendant does not appear to dispute that the requested information is relevant. See Oppo.

13 The Court agrees with Plaintiff that contact and employment information of potential
14 class members is relevant. The potential class members will likely have knowledge relevant
15 to the claims or defenses, which will enable Plaintiff to determine commonality and
16 typicality of the class claims. See Sansone v. Charter Commc'ns, Inc., No. 17-cv-01880-
17 WQH-JLB, 2019 WL 460728, at *6 (S.D. Cal. Feb. 6, 2019) (finding class contact
18 information is relevant before certification because “it is sufficient for Plaintiff to show
19 that class contact information would aid in confirming Plaintiffs’ theories of liability and
20 further developing evidence in support of class certification”); Artis v. Deere & Co., 276
21 F.R.D. at 352 (“The contact information and subsequent contact with potential class
22 members is necessary to determine whether Plaintiff’s claims are typical of the class, and
23 ultimately whether the action may be maintained as a class action.”); Putnam v.
24 Eli Lilly & Co., 508 F. Supp. 2d 812, 814 (C.D. Cal. 2007) (finding contact information is
25 relevant before certification because “contact with those individuals could well be useful
26 for plaintiff to determine, at a minimum, the commonality and typicality prongs of
27 Rule 23”).

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1 Because the Court has found that Plaintiff has met its burden of showing that the
2 requested contact information is relevant, the burden now shifts to Defendant to show that
3 the requested discovery should be prohibited. In doing so, Defendant has the heavy burden
4 of “clarifying, explaining and supporting its objections” to show why discovery should be
5 denied. See Blankenship v. Hearst Corp., 519 F.2d at 429 (9th Cir. 1975); DIRECTV, Inc.
6 v. Trone, 209 F.R.D. at 458 (citation omitted).

7 E. Proportionality

8 Defendant argues that producing evidence of all maintenance technicians from every
9 California location in the putative class period is overbroad and not proportional to the
10 needs of the case because Plaintiff has not produced evidence to indicate company-wide
11 violations. Oppo. at 14.

12 Plaintiff contends that the requested contact information is proportional to the needs
13 of the case, and also offers as evidence of company-wide violations other lawsuits in
14 California with similar claims for missed meal and rest breaks and unpaid wages and a
15 purported set of written policies applicable to all maintenance technicians employed at all
16 of Defendant’s locations.⁷ MTC at 11–15; Lin Decl. ¶¶ 16–19; ECF No. 47-1 at 41–112
17 (Exhibits 9–12 to the MTC).

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21 ⁷ Plaintiff includes a request for judicial notice of Exhibits 9 to 12 of his Motion, which are
22 court documents in other cases pending against Defendant in other courts. ECF No. 47-2.
23 Exhibits 9 and 12 are complaints, Exhibit 11 is a minute order, and Exhibit 10 is a purported
24 copy of Defendant’s On-Call policy attached as an exhibit to the complaint contained in
25 Exhibit 9. Id. The Court takes judicial notice of Exhibits 9 to 12 for their existence, but not
26 for the truth of “the arguments and disputed facts contained therein.” See Almont
27 Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc., 99 F. Supp. 3d 1110, 1125
28 (C.D. Cal. 2015) (“The Court may take judicial notice of a fact ‘that is not subject to
reasonable dispute because it . . . can be accurately and readily determined from sources
whose accuracy cannot reasonably be questioned.’ Fed. R. Evid. 201(b)(2). Courts may
take judicial notice of public records, including court records from another case.”); see also
Lee v. City of Los Angeles, 250 F.3d 668, 689–90 (9th Cir. 2001).

1 Other judges in this district have been faced with the question of whether
2 pre-certification discovery of contact information for putative class members in a wage and
3 hour class action will be allowed outside of the location where a named plaintiff worked.
4 It is often a fact-driven decision in which the court weighs whether plaintiff has produced
5 any evidence to support company-wide discovery and whether defendant has produced any
6 evidence to negate plaintiff's evidence or allegations of company-wide violations, or to
7 show that company policy follows applicable laws. See Amaraut v. Sprint/United Mgmt.
8 Co., 2020 WL 8024170, at *9–10 (finding discovery appropriate at locations other than
9 where plaintiffs worked because defendant failed to meet its burden to support its
10 objections); Frieri v. Sysco Corp., No. 316cv01432JLSNLS, 2017 WL 2908777, at *3
11 (S.D. Cal. July 7, 2017) (finding discovery of contact information for putative class
12 members appropriate at locations other than where plaintiff worked despite a lack of
13 evidence from plaintiff because defendant offered no evidence to refute allegations of
14 company-wide violations); Coleman v. Jenny Craig, Inc., 2013 WL 2896884, at *9
15 (limiting discovery to locations where plaintiff worked because plaintiff only provided
16 facts to support allegations of violations at plaintiff's work locations and defendant
17 presented evidence of lawful company-wide policies).

18 Here, Plaintiff's evidence of company-wide violations is slim. The Court agrees with
19 Defendant that Plaintiff's allegations of class-wide violations are not substantiated by
20 citations to other complaints filed against Defendant. See Mantolete v. Bolger, 767 F.2d
21 at 1424–25 (finding plaintiff's submission of two other complaints filed elsewhere against
22 defendant did not provide a likelihood that discovery measures would “produce persuasive
23 information substantiating the class action allegations” (citation omitted)); Franco v. Bank
24 of Am., No. 09cv1364-LAB BLM, 2009 WL 8729265, at *4 (S.D. Cal. Dec. 1, 2009)
25 (finding plaintiff's submission of two other complaints filed elsewhere against defendant
26 alleging similar California Labor Code violations was not sufficient to show broader
27 discovery would substantiate his class allegations). However, Plaintiff also submitted a
28 document titled “Official Company Policy” with Defendant's company name that also

1 includes in the heading the following: “Corporate Policy: On-Call,” “Last Revised:
2 December 2016,” and “Applicable To: All Non-Exempt Field Ops Employees.”
3 ECF No. 47-1 at 63–65 (Exhibit 10 to the MTC) (hereinafter “Exhibit 10”). Exhibit 10 was
4 attached as an exhibit in another lawsuit initiated by maintenance technician employees
5 against Defendant in the Central District of California. MTC at 14; Lin Decl. § 17. Plaintiff
6 alleges that this policy is part of a “set of written policies applicable to all Maintenance
7 Technician employees at all of [Defendant’s] locations which require employees to monitor
8 their phones [at] all times, [Ex. 10], which is consistent with Plaintiff’s Complaint and First
9 Amended Complaint.” MTC at 15; Lin Decl. § 17. Defendant contends that Exhibit 10
10 “never has been produced, authenticated, or otherwise attested to by Charter in this
11 lawsuit.” Oppo. at 18. Defendant further contends that Plaintiff’s attempt to tie Exhibit 10
12 to Plaintiff’s claims should fail because the FAC does not allege that Plaintiff was unpaid
13 by being required to “monitor his phone” while “on call.” Id.

14 The Court notes that in the FAC, Plaintiff refers to the requirement of monitoring
15 and answering his work phone or radio and responding to calls from supervisors and/or
16 customers “at all times” [FAC § 27] to support his allegations of Defendant’s failure to
17 provide meal periods [FAC § 79], failure to provide rest periods [FAC § 96], failure to pay
18 minimum and regular wages [FAC § 107], and failure to pay all overtime wages
19 [FAC § 118]. The Court is not convinced that an on-call policy requiring employees to
20 monitor their phones at all times is irrelevant to these claims, as Defendant contends.
21 Additionally, the Court notes that Defendant offers no evidence in the form of declarations
22 or submission of policies that Defendant’s on-call policy conforms with California law or
23 that it does not apply company-wide. Defendant argues that “[m]ultiple courts, including
24 those in this District, hold that plaintiffs are not entitled to discovery at locations where
25 they never worked without evidence to indicate company-wide violations” and cites to
26 persuasive, non-binding cases. Oppo. at 14. However, the Court notes that multiple courts,
27 including those in this District, have also allowed discovery at locations where named
28 plaintiffs did not work even without evidence to indicate company-wide violations.

1 See Amaraut v. Sprint/United Mgmt. Co., 2020 WL 8024170, at *10; Frieri v. Sysco Corp.,
2 2017 WL 2908777, at *3, 5. This serves only to show that district courts have wide
3 discretion to permit or deny discovery. See Laub v. U.S. Dep't of Interior,
4 342 F.3d 1080, 1093.

5 Although Plaintiff provides slim evidence of company-wide violations, the burden
6 is on Defendant to clarify, explain, and support its objections to producing discovery. See
7 Blankenship v. Hearst Corp., 519 F.2d at 429; DIRECTV, Inc. v. Trone, 209 F.R.D. at 458.
8 Defendant offers no evidence to refute Plaintiff's allegations that Exhibit 10 is a
9 company-wide policy that requires Plaintiff and putative class members to monitor their
10 phones at all times in violation of California Labor Code. Therefore, Defendant fails to
11 meet its burden to support its objections that class-wide discovery is overbroad and not
12 proportional to the needs of the case at this stage, and the Court overrules Defendant's
13 objection that discovery of the requested contact information should be limited to the
14 location where Plaintiff worked. See Amaraut v. Sprint/United Mgmt. Co.,
15 2020 WL 8024170, at *10; Frieri v. Sysco Corp., 2017 WL 2908777, at *3, 5.

16 **F. Privacy**

17 Defendant argues that producing evidence of all maintenance technicians from every
18 California location in the putative class period violates third-party privacy and is unduly
19 harassing to Defendant and its current and former employees. *Oppo*. at 14.

20 In diversity actions, a federal court will apply state law to questions of privilege,
21 including the privilege of privacy. See In re California Pub. Utilities Comm'n,
22 892 F.2d 778, 781 (9th Cir. 1989); see also Fed. R. Evid. 501 (“But in a civil case, state
23 law governs privilege regarding a claim or defense for which state law supplies the rule of
24 decision.”). In California, the right to privacy is set forth in Article I, Section I of the
25 California Constitution. Goro v. Flowers Foods, Inc., 334 F.R.D. 275, 286–87
26 (S.D. Cal. 2018). The California Supreme Court established a framework for assessing
27 privacy claims in which “[t]he party asserting a privacy right must establish a legally
28 protected privacy interest, an objectively reasonable expectation of privacy in the given

1 circumstances, and a threatened intrusion that is serious.” Williams v. Superior Ct.,
2 3 Cal. 5th at 552 (citing Hill v. Nat'l Collegiate Athletic Assn., 7 Cal. 4th 1, 35–37 (1994)).
3 “The party seeking information may raise in response whatever legitimate and important
4 countervailing interests disclosure serves, while the party seeking protection may identify
5 feasible alternatives that serve the same interests or protective measures that would
6 diminish the loss of privacy.” Id. The court then balances these considerations. Id. (citing
7 Hill v. Nat'l Collegiate Athletic Assn., 7 Cal. 4th at 37–40).

8 The California Supreme Court has noted with approval other courts’ applications of
9 the privacy framework in wage and hour class actions and collective actions in which they
10 found that “fellow employees would not be expected to want to conceal their contact
11 information from plaintiffs asserting employment law violations, the state policies in favor
12 of effective enforcement of these laws weigh on the side of disclosure, and any residual
13 privacy concerns can be protected by issuing so-called *Belaire-West* notices affording
14 notice and an opportunity to opt out from disclosure.” Id. at 553. “Generally, federal courts
15 in this circuit have held that a protective order, in lieu of a *Belaire-West* notice, sufficiently
16 protects putative class members and aggrieved employees’ privacy interests in the
17 confidentiality of their contact information.” Amaraut v. Sprint/United Mgmt. Co.,
18 2020 WL 8024170, at *7 (collecting cases).

19 Here, the Court finds that the putative class members’ contact information is
20 discoverable and not barred by privacy. Defendant has made no arguments in support of
21 its single contention that the requested contact information would violate third-party
22 privacy and be unduly harassing. The Court finds that although putative class members
23 have a legitimate privacy interest in their contact information, they would not be expected
24 to want to conceal their contact information from Plaintiff who is asserting employment
25 law violations on behalf of the putative members. Williams v. Superior Ct., 3 Cal. 5th
26 at 553–54. The Court also finds that there is no serious invasion of privacy because the
27 parties can enter into a stipulated protective order subject to the Court’s approval. See
28 Amaraut v. Sprint/United Mgmt. Co., 2020 WL 8024170, at *7; Austin v. Foodliner, Inc.,

1 No. 16CV07185HSGDMR, 2018 WL 1168694, at *3 (N.D. Cal. Mar. 6, 2018) (holding
2 that a protective order is sufficient to protect the privacy interests of putative class members
3 and aggrieved employees in their contact information and that a Belaire-West notice is
4 therefore not required). The Court finds that a protective order instead of a Belaire-West
5 notice is appropriate here.⁸ See Amaraut v. Sprint/United Mgmt. Co., 2020 WL 8024170,
6 at *7; Austin v. Foodliner, Inc., 2018 WL 1168694, at *3. Accordingly, the Court overrules
7 Defendant’s objections as to third-party privacy and harassment.

8 The Court orders Plaintiff’s counsel to inform the contacted putative class members
9 that they have the right not to talk or communicate with counsel, and if they decline to talk
10 or communicate, then counsel shall terminate the conversation and not contact them again.
11 See Austin v. Foodliner, Inc., 2018 WL 1168694, at *3. Plaintiff’s counsel must also
12 inform each contacted putative class member that the Court compelled Defendant Charter
13 Communications, Inc. to disclose employee contact information, and that the contact
14 information was provided solely for this lawsuit and cannot be distributed for other uses.
15 Id.

16 **G. Sanctions**

17 Plaintiff argues that Defendant had no substantial justification to refuse to provide
18 adequate answers to Interrogatories Nos. 5 to 8 and so Plaintiff is entitled to monetary
19 sanctions in the amount of \$6,150 for costs and attorneys’ fees incurred in bringing this
20 Motion. MTC at 16–17; Lin Decl. ¶ 10. Defendant contends that sanctions should be denied
21

22
23 ⁸ Plaintiff stated that in meet-and-confer discussions with Defendant, Plaintiff had
24 stipulated to Defendant’s right to elect to utilize a Belaire-West opt-out notice in exchange
25 for Defendant’s substantive responses to the Interrogatories at issue. MTC at 7–8;
26 Lin Decl. ¶¶ 6–7. Plaintiff avers that he sent a proposed Belaire-West notice to Defendant
27 in July 2020 but received no response despite follow up emails. MTC at 8;
28 Lin Decl. ¶¶ 8–9; ECF No. 47-1 at 25–28 (Exhibit 3 to the MTC). In its Opposition,
Defendant is silent on the proposed Belaire-West notice and instead states that it offered to
produce the requested information for a sampling of maintenance technicians and made no
mention of the utilization of a Belaire-West opt-out notice. Oppo. at 5–6, 7–8, 11–12.

1 because Defendant acted “reasonably, and consistent with established law, when it offered
2 a reasonable sampling of putative class contact information.” *Oppo*. at 18. Defendant
3 further argues that Plaintiff failed to produce any evidence supporting his request for
4 class-wide discovery at this stage and “ignores Southern District of California authority on
5 this issue.” *Id.*

6 If a motion to compel discovery is granted, pursuant to Rule 37(a)(5), the court must,
7 after giving an opportunity to be heard, require the party whose conduct necessitated the
8 motion, to pay the movant’s reasonable expenses incurred in making the motion, including
9 attorney’s fees. Fed. R. Civ. P. 37(a)(5)(A). However, the court must not order payment if
10 (1) the moving party filed the motion before attempting in good faith to obtain discovery
11 without court intervention; (2) the opposing party's nondisclosure, response, or objection
12 was substantially justified; or (3) other circumstances make an award of expenses unjust.
13 *Id.* An action in the discovery context is “substantially justified” if reasonable people could
14 differ on the matter in dispute. *See Pierce v. Underwood*, 487 U.S. 552, 565 (1988)
15 (describing “substantially justified” as satisfied if there is a “genuine dispute” or “if
16 reasonable people could differ as to the appropriateness of the contested action” (citations
17 omitted)); *Reygo Pac. Corp. v Johnston Pump Co.*, 680 F.2d 647, 649 (9th Cir. 1982),
18 abrogated on other grounds by *Cunningham v. Hamilton Cty., Ohio*, 527 U.S. 198, 210
19 (1999); *Shirley v. Allstate Ins. Co.*, No. 18cv994-AJB-BGS, 2019 WL 3208000, at *9 (S.D.
20 Cal. July 16, 2019).

21 The Court finds that Defendant’s objection that the requested information was overly
22 broad in seeking contact information outside of the location where Plaintiff worked was
23 sufficient to be considered “substantially justified,” even though it was overruled. The
24 Court finds it possible that reasonable people could differ on the appropriate scope of the
25 requested information, in light of the discretion Courts have to manage discovery in the
26 class certification process. *See Laub v. U.S. Dep't of Interior*, 342 F.3d at 1093;
27 *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d at 942. Therefore, the Court **DENIES**
28 Plaintiff’s request for monetary sanctions. *See Pierce v. Underwood*, 487 U.S. at 565;

1 Reygo Pac. Corp. v Johnston Pump Co., 680 F.2d at 649.

2 **V. CONCLUSION**

3 For the reasons set forth above, the Court **GRANTS** Plaintiff's Motion to Compel
4 as follows:

5 1. The Court notes that it vacated the deadline to complete class discovery while
6 Defendant's motion to compel arbitration and stay the case is pending. ECF No. 54. The
7 parties are nonetheless **ORDERED** to submit on or before **May 6, 2021** a joint motion for
8 entry of a stipulated protective order that will govern the handling of confidential material,
9 including protecting the privacy interests of putative class members in their contact
10 information. A protective order will aid the parties whether they proceed to arbitration or
11 continue in federal court.

12 2. The Court **ORDERS** Defendant to produce the name, job title, hire date,
13 home address, last known telephone number, last known cell phone number, and email
14 address of the non-exempt employees of Defendant who worked as maintenance
15 technicians in California from November 5, 2015 through the present and who did not enter
16 into an arbitration agreement no later than **fourteen calendar days following the district**
17 **judge's ruling** on Defendant's motion to compel arbitration and stay the case.⁹

18 3. The Court **DENIES** Plaintiff's request for monetary sanctions.

19 **IT IS SO ORDERED.**

20 Dated: April 15, 2021



21
22 _____
23 Honorable Linda Lopez
24 United States Magistrate Judge
25

26
27 _____
28 ⁹ However, if the motion to stay the case is granted, then the production of discovery for
the purposes of the federal litigation—including the discovery ordered here—is also
stayed, unless the Court orders otherwise.