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ALVIN K. HELLERSTEIN
U.S.D.J.

December 5, 2011

By Hand Delivery

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Cooke/Rodino v. DB 85 Gym Corp. et al.
Civil Action No.: 11 Civ. 0201 (AKH) (RLE)

Dear Judge Hellerstein:

We are the respective counsel for Plaintiffs and Defendants in the above-referenced matter. We write regarding a discovery dispute concerning Defendants' application of Local Civil Rule 33.3 ("Rule 33.3") to Plaintiffs' First Set of Interrogatories.

On November 4, 2011, Plaintiffs' attorney Corey Stark wrote to Defendants' attorney Sarir Zandi in a good faith effort to resolve this dispute.¹ On November 11, 2011, Sarir Zandi responded to the November 4, 2011 letter on behalf of Defendants.² On November 17, 2011, Corey Stark telephoned Sarir Zandi in a final attempt to resolve this dispute absent judicial intervention. Despite the above-referenced correspondence and brief telephone call, we were not able to resolve this fundamental disagreement over Defendants' application of Rule 33.3.

I have reviewed Requests 1-16. All objections to the requests are over-ruled, and those answered must be answered, and those answered must be answered, fully and responsibly. The senior (noted) counsel responsible for the case on each side shall meet for 2 hours at pl's counsel's office, face to face, to discuss the remaining requests and interrogatories with a view to compliance.

12-5-11
Pat [Signature]

¹ Corey Stark's November 4, 2011 letter is enclosed.

² Sarir Zandi's November 11, 2011 letter is enclosed.

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Plaintiffs' Position

This is an employment discrimination case. Briefly stated, this matter is based upon shocking and repeated harassment, and disparate treatment/discipline, which eventually culminated in the illegal termination of Plaintiffs' employment. Defendants harassed and discriminated against Plaintiffs because they are both homosexual females.

Defendants have improperly attempted to use Rule 33.3 to avoid discovery obligations. Rule 33.3 provides, in pertinent part, that "interrogatories will be restricted to those seeking names of witnesses with knowledge of information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location and general description of relevant documents." Despite Plaintiffs' compliance with Rule 33.3, Defendants chose to object to 19 of the 21 interrogatories as outside the scope of Rule 33.3 and fail to provide substantive responses to any of the 19 interrogatories. Defendants' attempt to utilize Rule 33.3 to avoid discovery obligations should not be permitted.

Approximately half of the 19 interrogatories to which Defendants have refused to provide a substantive response (Interrogatory Nos. 2, 3, 4, 5, 6, 10, 11, 12, and 21) are tailored to obtain the names of witnesses.³ Specifically, Plaintiffs' interrogatories call for Defendants to identify: individuals who made decisions or participated in the decision-making process concerning the termination of Cooke's and/or Rodino's employment by DB Gym (Interrogatory No. 2); each individual who was aware or notified that either Plaintiff would be terminated by DB Gym (Interrogatory No. 3); each individual who participated in the decision to hire either Plaintiff (Interrogatory No. 4); each replacement of Cooke (Interrogatory No. 5); each replacement of Rodino (Interrogatory No. 6); each Pilates Instructor and Trainer employed by DB Gym at the relevant locations (Interrogatories Nos. 10, 11 and 12); and each employee of DB Gym whose employment was terminated during the relevant time period (Interrogatory No. 21). Each individual that Plaintiffs seek to have Defendants identify is a witness or potential witnesses to the information relevant to this employment discrimination action. Accordingly, the scope of Plaintiffs' interrogatories is entirely appropriate and Defendants' objections are misplaced.

The remaining interrogatories at issue (Interrogatory Nos. 7, 8, 9, 13, 14, 15, 16, 17, 18 and 19) call for Defendants to identify documents that are relevant to this employment discrimination action. Specifically, Plaintiffs seek for Defendants to identify the following: all documents concerning any discussion held during the relevant time period regarding the termination of the employment of either Plaintiff (Interrogatory No. 7); all documents concerning the termination of the employment of either Plaintiff

³ Plaintiffs' First Set of Interrogatories and Defendants' responses are annexed hereto.

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(Interrogatory No. 8); each of DB Gym's policies or rules that either Plaintiff allegedly violated during the relevant time period (Interrogatory No. 9); all warnings given to any DB Gym employee during the relevant time period for training outside clients (Interrogatory No. 13); all Discipline imposed upon any DB Gym employee during the relevant time period for training outside clients (Interrogatory No. 14); each complaint issued by Cooke to DB Gym during the relevant time period (Interrogatory No. 15); all documents generated as a result of any investigation concerning any complaint identified in response to Interrogatory No. 15 (Interrogatory No. 16); each complaint issued by Rodino to DB Gym during the relevant time period (Interrogatory No. 17); and all documents generated as a result of any investigation concerning any complaint identified in response to Interrogatory No. 15 (Interrogatory No. 18). It is beyond dispute that each of these interrogatories calls for Defendants to identify documents that are relevant to the subject matter of this employment discrimination action. Defendants Rule 33.3 objections are therefore inappropriate.

A simple review of the interrogatories in question reflects that they are restricted to requests for the identification of witnesses and documents. Since Plaintiffs have complied with the letter and spirit of Rule 33.3, Defendants should not be permitted to use it as a shield to avoid discovery obligations. Accordingly, Plaintiffs respectfully request that Your Honor resolve this discovery dispute by directing Defendants to provide a substantive response to each of the foregoing interrogatories without any further delay.

Defendants' Position

This is a sexual orientation, gender discrimination and hostile work environment action brought by plaintiffs Deborah Cooke ("Cooke") and Christina Rodino ("Rodino") (together "Plaintiffs") against David Baron Gym (the "Gym") and two of its employees, Kevin Kavanaugh ("Kavanaugh") and Carl Helmle ("Helmle") (together "Defendants"). Defendants adamantly deny the baseless allegations asserted against them in Plaintiffs' Complaint. Upon a review of the facts of this case, it is clearly evident that Plaintiffs were legitimately terminated because they violated company policy by training outside of the Gym, without permission.

This letter arises out of a disagreement between counsel for the parties regarding the scope of Local Civil Rule 33.3. Local Civil Rule 33.3 states that "interrogatories will be restricted to those seeking names of witnesses with knowledge of information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature." *See L.Civ. R. 33.3(a)*. Interrogatories that go beyond these topics "may only be served (1) if they are a more practical method of obtaining the information

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sought than a request for production or a deposition, or (2) if ordered by the court.” *See L.Civ. R. 33.3(b)*.

Plaintiffs’ Interrogatory numbers 2, 3, 4, 5, 6, 10, 11, 12 and 21 are in direct contravention of Local Civil Rule 33.3(a) given that they do not request the names of witnesses with knowledge of information as evidenced by the plain wording of the Interrogatories themselves. It is Defendants’ position that since the aforementioned Interrogatories are clearly far broader than contemplated by this rule, they do not require responses. Additionally, the more practical method of obtaining the information sought in these requests would be at a deposition, or at the conclusion of other discovery, not through preliminary interrogatories.

Furthermore, Plaintiffs’ Interrogatory numbers 7, 8, 9, 13, 14, 15, 16, 17 and 19, are in violation of Rule 33.3 in that document requests are a decidedly more practical method of obtaining the information they seek and, thus, they do not require responses. *See Madanes v. Madanes, 186 F.R.D. 279, 290 (S.D.N.Y. 1999)* (“A document request is a far more practical means of obtaining such information than is an interrogatory. Therefore, these interrogatories violate *local rule 33.3* and need not be answered”). In fact, where appropriate, the information sought by these Interrogatories was provided in Defendants’ responses to Plaintiffs’ First Request for the Production of Documents. (*See Defendants’ responses to Plaintiffs’ First Request for the Production of Documents attached hereto.*)

Lastly, without reason, Plaintiffs have failed to respond to Defendants’ Interrogatory number 24 which requests information relating to the damages Plaintiffs are claiming. (*See Defendants’ First Set of Interrogatories to Plaintiffs attached hereto.*) Therefore, Defendants respectfully request that Plaintiffs be directed by the Court to respond to Defendants’ Interrogatory number 24. Further, based on the above, Defendants respectfully request that the Court orders that Plaintiffs’ Interrogatories need not be answered by Defendants given that said Interrogatories violate Local Civil Rule 33.3.

Plaintiffs’ Position Concerning Defendants’ Interrogatory No. 24

Defendants are attempting to mislead this Court. It is argued above that Plaintiffs failed to respond to Defendants’ Interrogatory No. 24 “without reason.” Contrary to Defendants’ claim, Plaintiff objected to Interrogatory No. 24 because it is vague, confusing, overbroad, and fails to identify the information sought with reasonable specificity.⁴ Despite Plaintiffs’ specific objection, Defendants have made no attempt to

⁴ Plaintiffs’ response to Defendants’ First Set of Interrogatories is annexed hereto.

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clarify or amplify the interrogatory and have not provided a factual or legal basis to overcome Plaintiffs' objection. In addition, Defendants have not engaged in a good faith effort to resolve this dispute before raising the issue with this Court. Accordingly, Defendants' request should be denied.

We thank Your Honor for considering the foregoing.

Respectfully,

THE DWECK LAW FIRM, LLP

GORDON & REES LLP

/s/

/s/

Corey Stark (CS-3897)

Sarir Zandi (SZ-0094)

Enclosures

Judge Hellerstein wrote:

“I have reviewed Requests 1-16. All objections to the requests are over-ruled, and those answered must be answered fully and responsively. The senior counsel responsible for the case on each side shall meet for 2 hours at plaintiff’s counsel’s office, face to face, to discuss the remaining requests and interrogatories with a view to compliance.

12-5-11

Alvin K. Hellerstein”