

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KRISTOPHER LAWSON,	:	CIVIL ACTION NO. 1:17-CV-1266
VINCENT MCCLEERY, and	:	
SEAN MCMURRAN, individually	:	(Chief Judge Conner)
and on behalf of other persons	:	
similarly situated,	:	
	:	
Plaintiffs	:	
v.	:	
	:	
LOVE'S TRAVEL STOPS &	:	
COUNTRY STORES, INC.,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 5th day of September, 2019, upon consideration of the motion (Doc. 147) to dismiss pursuant to Federal Rule of Civil Procedure 37(b)(2)(A) filed by defendant Love's Travel Stops & Country Stores, Inc. ("Love's"), wherein Love's asks the court to dismiss six opt-in plaintiffs for noncompliance with the court's discovery management order and for their "refus[al] to cooperate with the discovery process," (see Doc. 148 at 1), and the court observing that "issues relating to the scope of discovery ... rest in the sound discretion of the Court," Cartagena v. Serv. Source, Inc., 328 F.R.D. 139, 142 (M.D. Pa. 2018) (citing Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 90 (3d Cir. 1987)), and, similarly, "decisions regarding Rule 37 motions are 'committed to the sound discretion of the district court,'" id. (quoting DiGregorio v. First Rediscount Corp., 506 F.2d 781, 788 (3d Cir. 1974)), and further observing that the court's discovery management order instructs that "[a]ny selected opt-in who fails or refuses to participate in written discovery shall be

replaced by random selection forthwith,” (see Doc. 131 at 1 (emphasis added); see also *id.* at 2)¹, it is hereby ORDERED that:

1. Love’s motion (Doc. 147) to dismiss six opt-in plaintiffs pursuant to Federal Rule of Civil Procedure 37(b)(2)(A) is DENIED.
2. The parties are directed to randomly select six new opt-in plaintiffs to participate in discovery, to the extent they have not already done so.
3. Love’s request for oral argument (Doc. 157) is DENIED.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ We recognize that we invoked Rule 37 to dismiss named plaintiff Zachary Given (“Given”) for similar discovery violations in May 2018. (See Doc. 116). Given’s dismissal was prompted by different circumstances: *first*, Given’s dismissal predated the operative discovery management order, which took effect in June 2018; and *second*, because of his status as a named plaintiff, Given’s failure to participate in discovery had a more substantial prejudicial effect than the opt-in plaintiffs’ failure to participate.