

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ANNELL WALECH,

11 Plaintiff,

12 v.

13 TARGET CORPORATION, et al.,

14 Defendants.  
15

CASE NO. C11-254 RAJ

ORDER GRANTING IN PART  
DEFENDANTS' MOTION FOR  
PROTECTIVE ORDER

16 **I. INTRODUCTION**

17 This matter comes before the court on defendants Target Corporation's and Target  
18 Stores, Inc.'s ("Target") motion for protective order. Dkt. # 14. Target argues that it  
19 requires a protective order because plaintiff Annell Walech's discovery requests are  
20 exceedingly overbroad and unduly burdensome. Target requests an order limiting the  
21 scope of discovery by (1) limiting the interrogatories to which Target must answer to  
22 Number 14 because the various subparts of the interrogatories exhausted the twenty-five  
23 available interrogatories; (2) limiting the geographic scope of discovery to the Target  
24 store where plaintiff worked; (3) limiting the type of employee defendant is required to  
25 identify to those who held the same position as plaintiff for the last five (5) years, and to  
26 produce documents relating to the discipline, evaluation, and termination of those  
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1 employees; (4) limiting the production of documents to those from the personnel files of  
2 plaintiff's supervisor, store manager, store HR manager, and the district HR manager  
3 related to unfair treatment based on medical leave, disability, or retaliation; (5) limiting  
4 the production of documents to those from the personnel file of employees who held the  
5 same job position as plaintiff from May 2003 to May 2008 regarding discipline,  
6 evaluation, and termination; (6) limiting information regarding other complaints against  
7 Target to claims arising out of the Burlington store involving (a) a request for medical  
8 leave of absence or reasonable accommodation, and (b) discrimination and retaliation  
9 relating to medical leave or disability; and (7) limiting discovery in accordance with  
10 Target's other objections.

11 Target filed this motion without actually conferring with opposing counsel,  
12 although Target's counsel made several attempts from November 14, 2011 through  
13 November 29, 2011 to meet and confer. *See* Dkt. # 15 at 1, 8-12 (Griffin Decl.) ¶ 2, Ex.  
14 A. Counsel for the parties here are the same as counsel appearing in *Acton v. Target*  
15 *Corporation, et al.*, Case No. C08-1149RAJ (The Blankenship Law Firm P.S. and  
16 Jackson Lewis LLP). The court remembers the parties' conduct in the *Acton* case well,  
17 and notes at this early stage that it will not tolerate discovery abuses or procedurally  
18 improper or premature motions in this case.<sup>1</sup> The court understands Target's concern  
19 regarding the discovery requests, but believes the motion for protective order was filed  
20 prematurely. A meaningful discussion between the parties could have narrowed the  
21 issues presented. Nevertheless, given that the parties were unable to agree as to the  
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24 <sup>1</sup> The court has already stricken a procedurally improper and premature motion to strike  
25 filed by Target. Dkt. # 34 (Minute Order striking Dkt. # 31). The court has disregarded  
26 plaintiff's procedurally improper surreply. Dkt. # 24; *see* Local Civ. R. 7(g). The court expects  
27 the parties to read and abide by the Federal Rules of Civil Procedure and Local Civil Rules.  
Failure to abide by court rules may result in sanctions, including, but not limited to, striking  
procedurally improper filings.

1 proper scope of discovery after Target’s premature filing of this motion, the court will  
2 address the proper scope of discovery to provide guidance to the parties.<sup>2</sup>

3 Having reviewed the memoranda, exhibits, and the record herein, the court  
4 GRANTS in part and DENIES in part Target’s motion for protective order.

## 5 II. BACKGROUND

6 Ms. Walech worked at a Target retail store from February 14, 1990 to May 14,  
7 2008. Dkt. # 19 at 13 (Ex. A to Woods Decl., Walech Decl. from Case No. 08-1149 RAJ  
8 ¶ 2). She spent most of her tenure, from June 1992 to May 2008, with Target’s  
9 Burlington store. Dkt. # 16 (Dever Decl.) ¶ 3. During the term of her employment, Ms.  
10 Walech held positions for Cashier Price Change Team, Price Change Team Supervisor,  
11 Price Change Team Leader, Price and Pres [sic] Team Leader, Sales Floor Team Leader  
12 and Cashier Team Leader. *Id.* ¶ 5. The basic hierarchy for a Target store from top to  
13 bottom is store manager (called Store Team Leader (“STL”)), assistant store managers  
14 (called Executive Team Leaders (“ETL”), supervisors (called Team Leaders), and hourly  
15 employees (called Team Members). *Id.* ¶ 4. In early 2007, Ms. Walech developed  
16 bursitis in her left arm. Dkt. # 19 at 13 (Ex. A to Woods Decl., Walech Decl. from Case  
17 No. 08-1149 RAJ ¶ 2). Plaintiff’s supervisors during this time were Jessica McClure  
18 (ETL) and Jeff Tomlinson (STL). *Id.* ¶¶ 2-3. Kimberly Smith was the human resources  
19 manager assigned to the Burlington store. *Id.* ¶ 2.

20 Ms. Walech contends that she informed Mr. Tomlinson about the pain in her  
21 elbow and how it affected her ability to do her job, but that he provided no support or  
22 solutions. *Id.* ¶ 3. Following her request, she contends that she received a negative write-

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24 <sup>2</sup> For purposes of this action, the court orders the parties to meet and confer before filing  
25 any other discovery motion. The court also notes that a busy case load does not excuse any  
26 counsel from his or her obligations in this case. To that end, the court warns that a party’s failure  
27 to comply with its discovery obligations may be construed as a violation of this order, subjecting  
that party to the possibility of monetary sanctions, including attorney’s fees and costs. Fed. R.  
Civ. P. 37.

1 up. *Id.* ¶ 4. Ms. Walech’s elbow injury required surgery on February 4, 2008. *Id.* ¶ 5.  
2 Ms. Smith provided Ms. Walech with relevant paperwork for obtaining leave through the  
3 Federal and Medical Leave Act (“FMLA”). *Id.* Upon return, Ms. Walech’s doctor  
4 placed her on light duty and recommended a lifting restriction. *Id.* ¶ 6. Ms. Walech  
5 contends that she asked her “supervisor” and Ms. Smith for accommodation, but “there  
6 never seemed to be any Target personnel available to help her load or unload or stock  
7 merchandise when the weight exceeded [her] restriction. *Id.* ¶ 6. Ms. Walech received  
8 another negative review from her supervisor for performance issues within weeks of  
9 returning to work. *Id.* ¶ 7.

10 Ms. Walech contends that after not receiving a response from Ms. Smith, she  
11 called the Target ethics hotline and complained. *Id.* ¶ 8. She contends that the Target  
12 ethics hotline informed her that they could not do anything until she contacted her district  
13 human resources. *Id.* Ms. Walech contends that she called Nikki Solace, the Human  
14 Resources Manager for her district, and one of Ms. Solace’s “associates” informed her  
15 that they could not do anything for her. *Id.* Ms. Walech contends that she was forced to  
16 resign in May 2008 because Target did not accommodate her work restrictions, or  
17 otherwise investigate or take her complaints seriously.<sup>3</sup> *Id.* ¶¶ 8-9.

### 18 III. ANALYSIS

19 The court has broad discretion to control discovery. *Avila v. Willits Envtl.*  
20 *Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011). That discretion is guided by  
21 several principles. Most importantly, the scope of discovery is broad. A party must  
22 respond to any discovery request that is “reasonably calculated to lead to the discovery of  
23 admissible evidence.” Fed. R. Civ. P. 26(b)(1). The court, however, must limit  
24 discovery where its “burden or expense . . . outweighs its likely benefit, considering the  
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26  
27 <sup>3</sup> The court notes that Target disputes whether Ms. Walech called the ethics hotline or  
Ms. Solace’s office. The court need not resolve this disputed issue of fact at this time.

1 needs of the case, the amount in controversy, the parties' resources, the importance of the  
2 issues at stake in the action, and the importance of the discovery in resolving these  
3 issues." Fed. R. Civ. P. 26(b)(2)(C)(iii). A party may move the court for a protective  
4 order from "annoyance, embarrassment, oppression or undue burden or expense,  
5 including . . . forbidding the disclosure or discovery . . . [and] forbidding inquiry into  
6 certain matters, or limiting the scope of disclosure or discovery to certain matters[.]"  
7 Fed. R. Civ. P. 26(c)(1)(A) & (D). "If a motion for a protective order is wholly or partly  
8 denied, the court may, on just terms, order that any party or person provide or permit  
9 discovery." Fed. R. Civ. P. 26(c)(2).

10 Target's motion for protective order covers dozens of interrogatories and requests  
11 for production of documents. Rather than address each request individually, the court  
12 will make a series of orders about the proper scope of discovery and categories of  
13 discoverable information, as well as address whether plaintiff's interrogatories exceed the  
14 twenty-five limit.

#### 15 **A. Plaintiff's Interrogatories**

16 A party may not serve more than twenty-five interrogatories on any other party  
17 without leave of court. Fed. R. Civ. P. 33(a)(1). "Parties cannot evade this presumptive  
18 limitation through the device of joining as 'subparts' questions that seek information  
19 about discrete separate subjects. However, a question asking about communications of a  
20 particular type should be treated as a single interrogatory even though it requests the  
21 time, place, persons present, and contents to be stated separately for each  
22 communication." Fed. R. Civ. P. 33(a)(1), Advisory Comm. Notes, 1993 Amend. Where  
23 an interrogatory contains multiple subparts, the subparts are counted as one interrogatory  
24 if "they are logically or factually subsumed within and necessarily related to the primary  
25 question." *Paananen v. Cellco P'ship*, Case No. C08-1042 RSM, 2009 WL 3327227, \*2  
26 (W.D. Wash. 2009) (quoting *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal.  
27 1998)). "Subparts relating to a 'common theme' should generally be considered a single

1 interrogatory. *Id.* “But ‘if the first question can be answered fully and completely  
2 without answering the second question’ then the questions are distinct.” *Id.*

3 Target moves this court for a determination that Ms. Walech has exceeded the  
4 interrogatory limit under Fed. R. Civ. P. 33. Ms. Walech served 23 numbered  
5 interrogatories in her first interrogatories and requests for production. Dkt. # 19 at 18-66  
6 (Ex. B to Woods Decl.). Target contends that the following interrogatories contain  
7 discrete subparts that put plaintiff’s interrogatories over the limit of twenty-five: 4, 5, 7,  
8 8, 10, 11, 13, 14, 15, 22, and 23. Dkt. # 15 at 3-5 (Griffin Decl.).

9 1. Interrogatory 4

10 Interrogatory 4 states:

11 Identify with particularity each and every formal or informal request, claim,  
12 or complaint made by Plaintiff or on Plaintiff’s behalf to Defendant and its  
13 employees regarding paid or unpaid medical or sick leave (including leave  
14 under the FMLA), Workers’ compensation, or discrimination, harassment  
15 or retaliation. Your answer should include to whom the request, claim, or  
16 complaint was made, the date it was made, the factual allegations alleged in  
17 the request, claim, or complaint, and the subsequent action that was taken  
18 to accommodate, investigate or remediate the request, claim, or complaint,  
19 including the identity of each and every person who was contacted or  
20 notified regarding the request, claim or complaint at any of Target’s  
21 locations, facilities or offices.

22 Dkt. # 19 at 31 (Ex. B to Woods Decl., emphasis omitted).

23 This interrogatory presents two lines of inquiry and should be counted as two.  
24 The first inquiry asks Target to identify all claims/complaints made by Ms. Walech  
25 against Target. The second line of inquiry asks Target to describe its own conduct and  
26 the procedural steps it took in conducting an investigation or otherwise responding to Ms.  
27 Walech’s claims/complaints.

2. Interrogatory 5

Interrogatory 5 states:

1 If Defendant or anyone acting on Defendant's behalf has interviewed any  
2 individual concerning any of the matters alleged in Plaintiff's Complaint or  
3 relating to Plaintiff's employment at any Target store, identify each  
4 individual, state the date of the interview, identify the person who  
5 conducted the interview, state where the interview took place, identify  
6 every person present during the interview, identify the substance of the  
7 interview, identify each and every document which refers or relates to the  
8 interview, identify how the information was captured or recorded, and  
9 identify each individual acting as a custodian for all of the documents or  
10 recordings.

11 Dkt. # 19 at 32-33 (emphasis omitted).

12 This interrogatory involves two distinct inquiries and should be counted as two.  
13 The first is to identify the evidence, both witnesses and documents, relating to interviews  
14 conducted by Target concerning plaintiff's claims or employment. The second is to  
15 identify the substance of the interviews, or, in other words, the facts provided during the  
16 interview. Neither is subsumed in the other because the inquiry into identifying the  
17 documents or witnesses can be answered fully and completely without providing the  
18 facts, and vice versa. *See Paananen*, Case No. C08-1042 RSM, 2009 WL 3327227 at \*3.  
19 The court acknowledges that "communications of a particular type should be treated as a  
20 single interrogatory even though it requests that the time, place, persons present, and  
21 contents be stated separately for each communication." Fed. R. Civ. P. 32, Advisory  
22 Comm. Note, 1993 Amend. However, even if the court construed the main inquiry to be  
23 communications between defendant and others regarding plaintiff's claims or  
24 employment, plaintiff's request that Target identify documents would still be a separate  
25 inquiry.

26 3. Interrogatories 7, 8, 10

27 Interrogatories 7, 8, and 10 require Target to state facts supporting a particular  
contention<sup>4</sup> and to identify individuals who have personal knowledge of those facts or

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<sup>4</sup> The contention in interrogatory 7, if any, is that plaintiff faked or exaggerated her injuries or symptoms. The contention in interrogatory 8, if any, is that plaintiff was not entitled

1 documents supporting those facts. Dkt. # 19 at 39, 41. As stated previously, these are  
2 two separate inquiries: (1) state the relevant facts for a particular contention, and (2)  
3 identify the evidence (either documents or witnesses) that support the facts stated.

4 4. Interrogatory 11

5 Interrogatory 11 states:

6 Identify by full name, title, and dates of employment, all persons who you  
7 contend had immediate or successively higher supervisory authority over  
8 Plaintiff during her employment with Defendant at any Target Store or who  
9 had had any involvement in any way in hiring, supervising, assigning jobs  
10 and duties, evaluating and conducting performance reviews, responding to  
11 Plaintiff's complaints or concerns, approving or disapproving any of  
12 Plaintiff's requested medical or sick leave, promoting, demoting,  
13 disciplining, transferring to different departments or Target stores, and  
14 terminating Plaintiff.

15 Dkt. # 19 at 43 (emphasis omitted).

16 This interrogatory presents one line of inquiry: To identify people who had  
17 immediate or supervisory authority over plaintiff and her complaints.

18 5. Interrogatory 13

19 This interrogatory asks Target to identify all complaints relating to claims of  
20 harassment, discrimination or retaliation from January 1, 2003 to the present against  
21 defendants' employees at any Target in Washington, Oregon or Idaho.<sup>5</sup> Dkt. # 19 at 46.  
22 The interrogatory also asks defendant to "identify the factual allegations relating to all  
23 formal and informal complaints, including but not limited to, when Defendant first  
24 learned of such complaints, all actions Defendant took in response to such complaints,  
25 and identify all witnesses with knowledge or information relating to the allegations." *Id.*

26 to any FMLA or other medical leave or accommodations. The contention in interrogatory 10 is  
27 that Target is not liable to plaintiff.

<sup>5</sup> Ms. Walech has narrowed the geographic scope to "within the geographic districts in  
which Ms. Solace was the HR Representative over the past seven years." Dkt. # 19 at 6 (Woods  
Decl.).



1 It also states: “If legal or administrative action was taken, identify the plaintiff(s), the  
2 defendant(s), the name and address of the court or agency, if any, the substance and  
3 nature of the demand, the disposition of the matter, and documents relating to the  
4 actions.” *Id.* (emphasis added).

5 This interrogatory includes four distinct inquiries and should be counted as four  
6 interrogatories. First, Target is asked to identify all complaints regarding harassment,  
7 discrimination, retaliation, etc. against a Target employee.<sup>6</sup> Second, Target is asked to  
8 state the facts relating to those complaints. This inquiry is not subsumed within the first  
9 inquiry, because Target could identify the complaints without providing the factual basis,  
10 and vice versa. Third, Target is asked to describe its own conduct in responding to the  
11 complaints. This is a distinct inquiry from the first and second inquiries as well. Fourth,  
12 Target is asked to identify evidence (documents and witnesses) relating to the actions.

13 6. Interrogatory 14

14 Interrogatory 14 asks Target to identify all lawsuits and administrative complaints  
15 or charges that have been filed against Target or its employees from January 1, 2000 to  
16 the present relating to harassment, discrimination or retaliation. Dkt. # 19 at 48. The  
17 interrogatory also requires Target’s answer to “include the name(s) of the parties thereto,  
18 the nature of the case, the core agency or court to which the case was filed, the date the  
19 case was filed, the case or cause number, and the disposition of the case.” *Id.*

20 This interrogatory presents one line of inquiry and should be counted as one  
21 interrogatory. The inquiry is to identify lawsuits filed against Target relating to the  
22 claims alleged by plaintiff.<sup>7</sup> As stated above, identifying parties, nature of case, agency  
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25 <sup>6</sup> This inquiry would include legal action, and the identity of the parties, court or agency,  
26 the nature of the demand, etc. are logically subsumed within and necessarily relate to the primary  
question of identifying complaints.

27 <sup>7</sup> Ms. Walech has narrowed this interrogatory to only include claims similar to those  
claims alleged by plaintiff.

1 or court, etc. are logically subsumed within and necessarily relate to the primary question  
2 of identifying lawsuits against Target with similar claims.

3 7. Interrogatory 15

4 Interrogatory 15 states:

5 Identify with particularity all of Defendant's or government guidelines,  
6 rules, workplace regulations, and policies relating to paid or unpaid medical  
7 leave, sick leave, and vacation, accommodation of disabilities and filing of  
8 workers' compensation claims. Your answer should include how these  
9 policies applied to Plaintiff, should specify in detail how the policies were  
made known and available to Plaintiff and by whom, and describe the  
subject matter of any communication relating to that policy.

10 Dkt. # 19 at 49.

11 This interrogatory presents three lines of inquiry, and should be counted as three  
12 interrogatories. The first line of inquiry is to identify workplace policies regarding leave,  
13 vacation, accommodation, and workers' compensation. The second line of inquiry is  
14 how these policies applied to plaintiff. Neither is subsumed within the other because  
15 identifying a particular policy can be answered fully and completely without identifying  
16 how the policy applied to plaintiff. The third line of inquiry is the communication of  
17 these policies to plaintiff. The content of the communication is subsumed within this line  
18 of inquiry.

19 8. Total Interrogatories

20 After adding the distinct interrogatory subparts, the third line of inquiry on  
21 interrogatory 15 is number twenty-five. Target has responded up to the first inquiry in  
22 interrogatory 14. However, the court's analysis of the number of distinct subparts that  
23 count as separate interrogatories differs from Target's analysis. According to the court's  
24 analysis, Target has responded to nineteen of the twenty-five interrogatories. For the  
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1 remaining 6 interrogatories, the court orders the parties to meet and confer regarding  
2 which interrogatories plaintiff would like answered.<sup>8</sup>

3 **B. Proper Scope of Discovery**

4 1. Geographic, Complaint, Workgroup, and Temporal Scope

5 Plaintiff seeks a nationwide scope with respect to several discovery requests, but  
6 has narrowed some of the requests to the “region” in which Ms. Solace operates.<sup>9</sup> Ms.  
7 Walech asserts that she is seeking “pattern and practice” evidence. However, Ms.  
8 Walech’s complaint does not assert a pattern-or-practice claim. Rather, she alleges  
9 discrete acts of discrimination, retaliation, or failure to grant requested medical leave  
10 based on her disability. Dkt. # 1 ¶¶ 20-26. *See Robinson v. Metro-North Commuter R.R.*  
11 *Co.*, 267 F.3d 147, 158 n.3 (2d Cir. 2001) (“Disparate treatment claims under Title VII  
12 generally are of two types: (1) individual disparate treatment claims, which primarily  
13 follow the burden-shifting framework set out in *McDonnell Douglas Corp. v. Green*, 411  
14 U.S. 792 (1973); and (2) pattern-or-practice disparate treatment claims that center on  
15 group-wide allegations of intentional discrimination.”). Circuit courts have consistently  
16 concluded that pattern-or-practice method of proof of discrimination under Title VII is  
17 not available in private, non-class action lawsuits. *Davis v. Coca-Cola Bottling Co.*  
18 *Consol.*, 516 F.3d 955, 969 n.30 (11th Cir. 2008); *Bacon v. Honda of Am. Mfg., Inc.*, 370  
19 F.3d 565, 575 (6th Cir. 2004); *Celestine v. Petroleos de Venezuela SA*, 266 F.3d 343,  
20 355-56 (5th Cir. 2001); *Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742, 761 (4th Cir.  
21 1998), *vacated on other grounds*, 527 U.S. 1031 (1999); *Brown v. Coach Stores, Inc.*,  
22 163 F.3d 706, 711 (2d Cir. 1998); *Babrocky v. Jewel Food Co.*, 773 F.2d 857, 866 n.6  
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24  
25 <sup>8</sup> The court notes that the remaining interrogatories at issue, 22 and 23, are substantially  
26 similar to interrogatories 13 and 14, and the court would use the same reasoning and analysis.

27 <sup>9</sup> Target asserts (and Ms. Walech does not question) that it employs approximately  
355,000 employees in 1,750 stores nationwide. Dkt. # 16 (Dever Decl.) ¶ 2. Target employs  
thousands of people in Washington alone. *Id.*

1 (7th Cir. 1985). Accordingly, in a private, non-class action claim, pattern-or-practice  
2 evidence is generally only collaterally relevant to individual claims. *See Gilty v. Village*  
3 *of Oak Park*, 919 F.2d 1247, 1252 (7th Cir. 1990).

4 Nevertheless, evidence of systemic discrimination may be discoverable in limited  
5 circumstances where a plaintiff can make some showing to connect it to his or her claims.  
6 *Acton v. Target Corp.*, Case No. C08-1149RAJ, 2009 WL 3380645, \*2 (W.D. Wash.  
7 2009). *See also Van Antwerp v. City of Peoria*, 627 F.3d 295, 298 (7th Cir. 2010)  
8 (circumstantial evidence of discrimination may include behavior toward other employees  
9 in the protected group); *Bell v. E.P.A.*, 232 F.3d 546, 555 (7th Cir. 2000) (“evidence of  
10 systemic disparate treatment is relevant to and probative of the issue of pretext even when  
11 it is insufficient to support a pattern and practice disparate treatment case.”); *Heyne v.*  
12 *Caruso*, 69 F.3d 1475, 1480 (9th Cir. 1995) (evidence of sexual harassment of other  
13 employees relevant to pretext and motive); *Sweat v. Miller Brewing Co.*, 708 F.2d 655,  
14 658 (11th Cir. 1983) (“Statistical information concerning an employer’s general policy  
15 and practice concerning minority employment may be relevant to a showing of pretext,  
16 even in a case alleging an individual instance of discrimination rather than a ‘pattern and  
17 practice’ of discrimination.”).

18 Plaintiff also seeks comparator evidence, which is most relevant when other  
19 employees work at the same part of the company as plaintiff, have the same performance,  
20 qualifications, and conduct, and have a common supervisor. *Paananen*, 2009 WL  
21 3327227 at \*6 (citing *Balderston v. Fairbanks Morse Engine Div. of Coltec Indus.*, 328  
22 F.3d 309, 320 (7th Cir. 2003)). “Typically, this means that discovery in employment  
23 cases is limited to the employing unit absent a particularized need for information from  
24 other divisions.” *Id.*

25 Here, there is a single plaintiff who worked at the Burlington Store. Mr.  
26 Tomlinson, Ms. Smith and Ms. McClure, three of the four alleged decision-makers,  
27 worked at the Burlington store during the timeframe of Ms. Walech’s elbow injury. Dkt.

1 # 16 (Dever Decl.) ¶¶ 14-16. There is no evidence that these individuals worked at any  
2 other Target store other than Burlington. Plaintiff's sole basis for extending the  
3 geographic scope beyond the Burlington Store is her assertion that she called Ms.  
4 Solace's office and left a message asking her to return her call. Dkt. # 19 at 14 (Ex. A to  
5 Woods Decl., Walech Decl. ¶ 8). Plaintiff concedes that she never spoke with Ms.  
6 Solace. *Id.* Rather, she claims that one of Ms. Solace's associates called her back. *Id.*  
7 Ms. Walech claims to have explained her complaint to the associate, who later called her  
8 again and told her that they could not do anything for her. *Id.* Ms. Solace states that she  
9 has no records or recollection that Ms. Walech ever called her office, that she did not  
10 review or evaluate Ms. Walech's performance, and did not issue or sign any corrective  
11 action that Ms. Walech may have received during her employment with Target. Dkt. #  
12 22 (Solace Decl.) ¶¶ 6, 9, 10. Nevertheless, plaintiff has claimed that she attempted to  
13 obtain assistance and accommodation from Ms. Solace's office as a last resort, and was  
14 rejected by somebody in her office. Plaintiff claims that she was constructively  
15 discharged because, among other things, her repeated attempts to obtain accommodation  
16 were met with silence, forcing her to resign. This is a sufficient connection to extend  
17 discovery beyond the Burlington Store with respect to Ms. Solace's conduct or the  
18 conduct of her associates.

19 Ms. Solace was the Human Resources Business Partner responsible for Districts  
20 157, 159, and 166 in 2007 and 2008, during which time there were approximately 24  
21 Target stores, and each district had approximately 1200 employees at any given time.  
22 Dkt. # 22 (Solace Decl.) ¶¶ 2-4. Target has not provided the court information regarding  
23 how many similarly situated individuals worked within those 24 stores.<sup>10</sup> Nevertheless,  
24 plaintiff's discovery requests do not include a request to produce information/documents  
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26 <sup>10</sup> The court notes that Target identified only 13 individuals who held the same position  
27 as plaintiff from May 14, 2003 to May 14, 2008 in the Burlington Store.

1 for employees who requested disability accommodations or medical leave or who were  
2 disabled in any of the 24 stores in Ms. Solace's districts. Rather, plaintiff has requested  
3 information/documents related to her own requests for leave and accommodation. Dkt. #  
4 19 at 31 (Interrogatory ("ROG") 4). Plaintiff has also requested information/documents  
5 related to all complaints relating to discrimination or retaliation based on disability,  
6 medical leave or accommodation made "by or against any of Defendant's current or  
7 former employees at any Target in Washington, Oregon, or Idaho." *Id.* at 46-47 (ROG  
8 13). Plaintiff has also requested information/documents related to lawsuits,  
9 administrative complaints or charges filed with any agency or court. *Id.* at 48-49 (ROG  
10 14); *see also id.* at 60-63 (ROGs 22, 23).

11 To the extent that plaintiff's discovery requests seek all complaints, lawsuits, etc.  
12 without restriction, they are overbroad. The complaints, lawsuits, etc. must be similar to  
13 plaintiff's allegations. Accordingly, the proper scope of the complaints is those involving  
14 FMLA interference, disability discrimination, failure to accommodate, and retaliation.

15 The court finds that the proper geographic scope for complaints, lawsuits, or  
16 charges filed by Target employees relating to FMLA interference, disability  
17 discrimination, failure to accommodate, and retaliation that involve Ms. Solace's conduct  
18 or the conduct of one of her "associates," is the twenty-four Target stores within Ms.  
19 Solace's districts. The court has intentionally incorporated the limitation requiring Ms.  
20 Solace's conduct or the conduct of her associates into this geographic scope. With  
21 respect to discovery requests involving conduct of Mr. Tomlinson, Ms. Smith, and Ms.  
22 McClure, the proper geographic scope is the Burlington Store.

23 The court recognizes that Target would like to limit the scope of discovery to  
24 those individuals who held the same position as plaintiff. However, "individuals are  
25 similarly situated when they have similar jobs and display similar conduct." *Vasquez v.*  
26 *County of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003). The test is not having the  
27 same job title. It is also far narrower than "all employees" as plaintiff contends. The

1 court does not have adequate information before it to determine the group of employees  
2 who would be similarly situated. However, in an effort to provide guidance to the  
3 parties, and with the record before it, the court would surmise that similarly situated  
4 employees would include those who, as part of their responsibilities, were required to  
5 load, unload or stock merchandise, and who sought accommodation or leave based on a  
6 disability or other work restriction imposed by a doctor. The parties are ordered to meet  
7 and confer with respect to this issue.

8 Finally, the court finds that 7 years is reasonable for the temporal scope. *See*  
9 *Acton*, 2009 WL 3380645 at \*4; *Paananen*, 2009 WL 3327227 at \*9 (“Courts typically  
10 strike a balance in the range of three to eight years” for the temporal scope of discovery  
11 in employment discrimination cases involving similarly situated employees).  
12 Accordingly, the appropriate time frame is from May 2002 to May 2009, one year after  
13 Ms. Walech’s employment ended.

14 2. Personnel files

15 In her discovery requests, plaintiff seeks full personnel files from a number of  
16 individuals. *See* Dkt. # 19, Requests for Prod. (“RFP”) B-D, G, K-Q, X, BB, WW, XX.

17 Target argues that the court should limit Target’s production of personnel files to:

- 18 • Documents from the personnel file of Tomlinson, Solace, Smith, and  
19 McClure that also relate to plaintiff; documents related to another  
20 employee’s (as opposed to Tomlinson, Smith, or McClure) taking of  
21 medical leave; any documents relating to claims of retaliation; and  
22 documents regarding accusations of unfair treatment by Tomlinson, Solace,  
23 Smith, or McClure in connection with medical leave, disability, or  
24 retaliation (the basis of Plaintiff’s claims in this case)[, and]
- 25 • Documents from personnel files of those employees who held the  
26 same job position as plaintiff from May 14, 2003, to May 14, 2008,  
27 regarding discipline, evaluation, and termination (these personnel actions  
are the basis of Plaintiff’s constructive discharge claim).

25 Dkt. # 14 (Mot.) at 11.

1 The court has already identified the proper geographic and temporal scope, as well  
2 as the proper scope of complaints. The court has also indicated that defendant's  
3 definition of similarly situated is too narrow, and has ordered the parties to further meet  
4 and confer. It appears to the court that the only personnel files plaintiff seeks are those of  
5 the alleged four decision-makers. Dkt. # 18 at 11. In addition to documents Target  
6 seemingly agrees to provide, plaintiff seeks documents related to the decision-makers'  
7 own use of medical leave or their own requests for accommodation, and documents  
8 related to hiring, evaluation, discipline and compensation for the four alleged decision-  
9 makers. *Id.* at 11-12. Target has not addressed these categories, and plaintiff has not  
10 provided the court sufficient justification of relevance. The court declines to rule on  
11 these categories of documents that may be within the alleged decision-makers' personnel  
12 file at this time. The parties are to meet and confer with respect to these categories of  
13 documents if plaintiff intends to pursue them. Finally, the court notes that Target  
14 seemingly concedes that plaintiff is entitled to documents from personnel files of  
15 similarly situated employees regarding discipline, evaluation, and termination, which are  
16 the bases of plaintiff's constructive discharge claims. *See* Dkt. # 14 at 1:16-19.

17 3. Target's Other Objections

18 The court declines Target's invitation to sustain its other objections at this time  
19 without the benefit of further briefing.

20 **IV. CONCLUSION**

21 For all the foregoing reasons, Target's motion for protective order is GRANTED  
22 in part and DENIED in part. The parties are ORDERED to meet and confer within  
23 fifteen (15) days of the date of this order with respect to any outstanding issues on these  
24 discovery requests. Target is ORDERED to provide supplemental responses to plaintiff's  
25 discovery request within thirty (30) days of this order in accordance with this order and  
26  
27



1 Fed. R. Civ. P. 33(b), 34(b)(2), 26(e).<sup>11</sup> To the extent Target has partially or completely  
2 provided the written response or documents, it shall so state in its supplemental  
3 responses. If outstanding issues remain after the parties have conferred, plaintiff may file  
4 a motion to compel pursuant to the Federal Rules of Civil Procedure and Local Civil  
5 Rules identifying with particularity the unresolved discovery disputes, the attempts made  
6 to resolve the discovery disputes, and the reasons plaintiff is entitled to the information or  
7 category of documents.

8  
9 Dated this 28<sup>th</sup> day of March, 2012.

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13 The Honorable Richard A. Jones  
14 United States District Judge  
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26 <sup>11</sup> The court notes that to the extent Target requires additional time to search for and  
27 produce relevant documents, the parties are to work together to agree to a reasonable schedule  
for production of documents.