Tentative Rulings for July 24, 2024
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Ruling

Re: ***Ka Moua v. The Permanente Medical Group, Inc.***
Superior Court Case No. 23CECG03246

Hearing Date: July 24, 2024 (Dept. 502)

Motion: by Plaintiff Ka Youa Moua to Compel Further Responses to Request for Production of Documents

Tentative Ruling:

To grant as to Requests for Production, No. 16, 17, 18, 30, 31, 32, 33, 34, and 35. Defendant The Permanente Medical Group, Inc. is directed to serve verified responses to these requests and produce all relevant documents within 30 days of service of the order by the clerk. To deny as to Request for Production No. 15.

Explanation:

At issue are disputes arising out an employment relationship between plaintiff Ka Youa Moua ("Plaintiff") and defendant The Permanente Medical Group, Inc. ("Defendant"). Plaintiff now seeks an order compelling Defendant to further respond to certain requests for production of documents. The parties generally agree that the requests comprise two categories: (1) Requests No. 15 through 18, regarding email files containing certain key terms; and (2) Requests No. 30 through 35, for documents pertaining informal or formal complaints involving retaliation and discrimination claims, Labor Code violation claims and Health and Safety Code violation claims filed with Defendant.[1]

Requests No. 15 through 18

Plaintiff submits that these requests seek relevant documents of emails housing key terms in the pending matter. Specifically, Request No. 15 seeks emails by Plaintiff that contain any one or more of approximately 38 key terms. (Yoon Decl., ¶ 2, Ex. A.) In response, Defendant answered that all documents that would have been responsive to the request no longer exists due to internal policy. (*Id.*, ¶ 3, Ex. B.) The response was verified. (*Ibid.*) Plaintiff submits that in other cases, documents were produced in contra to the cited internal policy, and therefore the response is not credible. This is not a basis to compel further responses. Defendant's response, verified under penalty of perjury, states that no documents responsive to the request exists and is therefore a complete response. Plaintiff does not suggest that Defendant intentionally destroyed evidence

[1] Defendant objects to the sufficiency of the meet-and-confer efforts prior to filing the instant motion. Defendant suggests only that it was improper for Plaintiff to resubmit the exact same request for a pretrial discovery conference before and after the meet-and-confer efforts. Defendant does not suggest what material issue required amending between the filed requests. Accordingly, the court does not review the implied finding of sufficiency of the meet and confer made in its prior order, and proceeds.

while the present matter was pending. There is nothing further to compel.[2] The motion as to Request No. 15 is denied.

Requests No. 16 through 18 seek emails of others, Juliane Adams, Rachel Pancotti, and Melanie Reno, with the same approximately 38 key term list. The requests are limited to two years prior to Plaintiff's termination. Defendant objected on the grounds of oppression and undue burden, and relevance. Defendant answered that it cannot produce documents responsive to the requests.

The objection of undue burden to an interrogatory requires an evidentiary showing of the quantum of work required. (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417.) The objection of oppression requires a showing of either an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought. (*Ibid.*) Burden alone is not a grounds for objection. (*Ibid.*) Some burden is inherent in all demands for discovery. (*Id.* at p. 418.) Only when the burden is demonstrated to result in injustice is the objection sustained. (*Ibid.*)

Defendant submits that as originally sought, the search terms resulted in excess of 40,000 items across Requests No. 15 through 18. (McNamara Decl., ¶ 6.) Following meet-and-confer efforts on the issue, on February 28, 2024, counsel for Defendant referenced the gross count of results, but concedes that "[t]he ball is in my court on [these] items." (Yoon Decl., ¶ 10, Ex. 1.) In opposition, Defendant describes its efforts to identifying responsive documents to the requests. (McNamara Decl., ¶ 16.) The efforts limited terms to within 10 words between email addresses and the search terms, which reduced the items down to 5,232. (*Ibid.*) Following, review continues of the items in question, which counsel for Defendant estimates to be half complete. (*Id.*, ¶ 19.) From the above, Defendant does not contest that Plaintiff is entitled to a further response. Accordingly, the motion as to Requests No. 16 through 18 is granted. Defendant is directed to provide further responses and produce all documents responsive to the requests.

Requests No. 30 through 35

These requests pertain to "Me Too" discovery, and seeks all complaints in the past three years pertaining to retaliation, discrimination, and other statutory violations. Defendant objected on the grounds of oppression and undue burden, and relevance. However, in opposition, Defendant does not contest Plaintiff's right to seek these documents. Rather, Defendant agrees to produce documents relevant to the requests within the agreed-upon 3-year limitation, and limited to the working facility where Plaintiff was employed. Plaintiff on reply confirms that while she agreed to the time limitation, she did not agree to limit the inquiry to Plaintiff's working facility.

[2] On reply, Plaintiff relies on the depositions of Julie Adams and Esther Lock, submitted improvidently as evidence on reply. Neither deposition transcript lays any foundation as to who these individuals are. Nor do the transcripts cited support a conclusion that there is no policy to destroy former employee's emails. That Julie Adams was unaware of such a policy, or that Esther Lock has participated in litigation that involved Defendant's legal department does not address the existence of the policy in question.

The requests in question share the same general language of "at the same location where Plaintiff worked." Defendant submits that it will produce all document by any employee of the laboratory at the Fresno Medical Center. This is responsive to the request. Accordingly, the court finds that Defendant has agreed to provide further responses and documents responsive to Requests No. 30 through 35. The objections as to oppression and undue burden are in any event overruled due to Defendant's failure to demonstrate how or why the requests are unduly burdensome.

Plaintiff protests Defendant's location limitation, arguing that administration is located outside of the laboratory at the Fresno Medical Center. Plaintiff contends that administration is necessarily involved with any lodged complaints. In effect, Plaintiff appears to seek any complaint lodged by anyone employed by Defendant in any department. It is unclear why those claims outside of Plaintiff's department are relevant to her claims, which places her manager's actions at issue. While the reply brief suggests a United States Supreme Court opinion in support of why she is entitled to broadly all complaints across all non-decision makers at other facilities, there is no citation provided. Plaintiff otherwise relies on a federal opinion out of the Sixth Circuit Court of Appeals that appears to have had federal Title VII issues as well as the Ohio Civil Rights Act, neither of which are relevant to the present matter. (*Griffin v. Finkbeiner* (6th Cir. 2012) 689 F.3d 584, 590.) Moreover, the analysis was of the Federal Rules of Civil Procedure and Evidence. (*Id.* at p. 592.) It is unclear how or why these cited authorities stand for the proposition that Plaintiff is entitled to every complaint lodged by any individual across every department of the entire company.

Neither do the cases cited in the moving papers suggest why the requests should be broadly construed as Plaintiff seeks. In every case cited by Plaintiff, the issue was the conduct of a specific supervisor. (*E.g., Johnson v. United Cerebral Palsy/Spastic Children's Foundation* (2009) 173 Cal.App.4th 740, 759-760 [noting that the evidence comprised employees who worked at the same facility where the plaintiff worked, and were supervised by the same people who supervised the plaintiff, who were subject to termination allegedly related to pregnancy].) If Plaintiff seeks documents of written complaints by the same employer, at the same facility, but with different supervisors, those complaints will be captured by Defendant's proffered response. As propounded, the requests will additionally capture all documents evidencing those complaints, including what appears to be Plaintiff's objective, the investigation of those complaints by administration.[3] Plaintiff however does not demonstrate that the relevance of every complaint lodged by any individual across every department of the entire company.

[3] The right to discovery is broad. Any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action if the matter itself is admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.) "For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.' Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. The phrase 'reasonably calculated to lead to the discovery of admissible evidence' makes it clear that the scope of discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial. 'Thus, the scope of permissible discovery is one of reason, logic and common sense.' These rules are applied liberally in favor of discovery." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611–1612, internal citations and italics omitted.)

(*See Johnson v. United Cerebral Palsy/Spastic Children's Foundation*, *supra*, 173 Cal.App.4th at pp. 766-767 [concluding that evidence of nonparties alleging discrimination at the hands of people not involved in the adverse employment decisions against the plaintiff is neither per se admissible nor relevant].)

Based on the above, the motion as to Requests No. 30 through 35 is granted. Defendant is directed to provide further responses and produce all documents responsive to the requests as to all documents evidencing written complaints filed against Defendant in the past three years in laboratory where Plaintiff worked in the Fresno Medical Center.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 07/23/24.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Sue-Anne Seeser v. The Basslake Corp.***
Superior Court Case No. 24CECG01136

Hearing Date: July 24, 2024 (Dept. 502)

Motions: by Jana Williams for Substitution of Plaintiff and to Extend Time to Respond to Demurrer

Tentative Ruling:

To continue the motion for substitution of plaintiff to Wednesday, August 28, 2024, at 3:30 p.m., in Department 502, to allow time for the moving party to properly serve the moving papers to defendants, by service to each defendants' respective counsel of record, in conformance with Code of Civil Procedure section 1005, subdivision (b), and to file an updated proof of service. The updated proof of service must be filed no later than on Wednesday, August 21, 2024.

Defendant The Basslake Corp 401K Plan's demurrer scheduled to be heard on July 30, 2024, is continued to Wednesday, September 25, 2024, at 3:30 p.m., in Department 502. All paperwork pertaining this demurrer must be filed in conformance with Code of Civil Procedure section 1005, subdivision (b).

The motion to extend time to respond to The Basslake Corp 401K Plan's demurrer is rendered moot by the court's continuance of the demurrer.

Explanation:

Non-party Jana Williams indicates that plaintiff passed away on April 13, 2024. She is the daughter of plaintiff and moves to substitute as the successor-in-interest for plaintiff to pursue this action. She also seeks to extend the time for her to respond to the demurrer on calendar for July 30, 2024.

"On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." (Code Civ. Proc., § 377.31.)

Code of Civil Procedure, section 377.32 outlines the requisite procedure for such continuation of the decedent's action, as follows:

> (a) The person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest under this article, shall execute and file an affidavit or a declaration under penalty of perjury under the laws of this state stating all of the following:

(1) The decedent's name.
(2) The date and place of the decedent's death.
(3) "No proceeding is now pending in California for administration of the decedent's estate."
(4) If the decedent's estate was administered, a copy of the final order showing the distribution of the decedent's cause of action to the successor in interest.
(5) Either of the following, as appropriate, with facts in support thereof:
(A) "The affiant or declarant is the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the decedent's interest in the action or proceeding."
(B) "The affiant or declarant is authorized to act on behalf of the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) with respect to the decedent's interest in the action or proceeding."
(6) "No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding."
(7) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."
(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.
(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

Ms. Williams' affidavit includes all of this information and attaches a copy of plaintiff's death certificate. Accordingly, the motion meets the requirements set forth in Code of Civil Procedure section 377.32.

However, the motions cannot be granted at this time, because the service of the motions are defective. The proofs of service accompanying the moving papers indicate that Ms. Williams has served one or more of the defendants directly, instead of serving the papers to each defendants' counsel of record. Service to defendants is improper, because when a party is represented, the service must be made on the party's attorney. (Code Civ. Proc., § 1015; Cal. Rules of Court, rule 1.21(a).)

Rather than deny the motions for faulty service, the court finds it appropriate to continue the matters to allow time for additional notice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 07/23/24.
(Judge's initials) (Date)