Motion to Compel Production of Documents (Judge Deborah C. Servino)

MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Defendant and Cross-Complainant Integrated Process Control Engineering, Inc.'s ("IPCE") Motion to compel compliance with responses to IPCE's request for production of documents, set one, is denied.

Here, IPCE seeks payroll records of Plaintiff and Cross-Defendant Ozuna Electric Company Inc. ("Ozuna"). In weighing the privacy rights of employees, the appropriate balancing test to employ is that under *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal. 4th 1, 35 and *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal. 4th 360, 370-74. (*Williams v. Superior Court (July 13, 2017, S227228) 2017 WL 2980258, at* *11-12.) Under the test established by those cases, the party asserting a privacy right must establish: (1) a legally protected privacy interest; (2) an objectively reasonable expectation of privacy in the given circumstances; and (3) a threatened intrusion of that interest that is serious. (*Id.* at p. *11.) Assuming these threshold requirements are met, the party seeking the information must establish countervailing interests served by disclosure sufficient to overcome the proffered privacy interest. The court must then balance the competing considerations. (*Ibid*.)

"Personal financial information comes within the zone of privacy protected by article I, section 1 of the California Constitution. . . . The constitutional right of privacy is not absolute; it may be abridged to accommodate a compelling public interest. . . . One such interest, evidenced by California's broad discovery statutes, is ' "the historically important state interest of facilitating the ascertainment of truth in connection with legal proceedings." ' . . . When an individual's right of privacy in his financial affairs conflicts with the public need for discovery in litigation, the competing interests must be carefully balanced. . . . Even where the balance weighs in favor of disclosure

of private information, the scope of the disclosure will be narrowly circumscribed; such an invasion of the right of privacy ' "must be drawn with narrow specificity" ' and is permitted only to the extent necessary for a fair resolution of the lawsuit." (*Moskowitz v. Superior Court*(1982) 137 Cal.App.3d 313, 315–316 [fn. and citations omitted].) Moreover, the threatened disclosure of the employee's payroll records is serious. Payroll information is personal. (See *Braun v. City of Taft*(1984) 154 Cal.App.3d 332, 343 [job classification and salary are deemed " 'personal and capable of causing embarrassment' "].)

Here, Ozuna has established a legally protected privacy interest and an objectively reasonable expectation of privacy given the circumstances. Because Ozuna has established the threshold requirements, IPCE must demonstrate that the interests served by disclosure of the information is sufficient to overcome the privacy interests. IPCE has not done so here. The payroll records may bear some relevance as to the hours worked and the amount paid for those hours. IPCE, however, has not established that the information it seeks regarding the hours worked and the amount paid, is not available from other sources or less intrusive means. For example, IPCE could propound an interrogatory requesting the names and contact information of the individuals who worked on the Project, as well as the number of hours they worked. (*Allen v. Superior Court* (1984) 151 Cal.App.3d 447, 453 [discovery should not be ordered if the information sought is available from other sources or through less intrusive means]; Britt v. Superior Court (1978) 20 Cal.3d 844, 856 [discovery "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved"].) Accordingly, the balance favors privacy for the information in the payroll records, particularly since the employees have not had an opportunity to opt out from disclosure.

The Court declines to award any sanctions.

Plaintiffs shall give notice of the ruling.

MOTION TO COMPEL THIRD PARTY RICH PRODUCTS CORPORATION TO PRODUCE DOCUMENTS RESPONSIVE TO THE DEPOSITION SUBPOENA

Defendant and Cross-Complainant Integrated Process Control Engineering, Inc.'s ("IPCE") Motion to compel third party Rich Products Corporation ("Rich Products") to produce documents responsive to the deposition subpoena, is denied.

Third-Party Rich Products' objection to the Exhibit N of the Declaration of Clifford L. White is sustained.

"Discovery procedures are generally less onerous for strangers to the litigation." (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1289.) " 'While all discovery devices are available against a party, only deposition subpoenas can be directed to a nonparty…. [¶] The distinction between parties and nonparties reflects the notion that, by engaging in litigation, the parties should be subject to the full panoply of discovery devices, *while nonparty witnesses should be somewhat protected from the burdensome demands of litigation.*' " (*Id.* at p. 1290.) "[W]hen dealing with an entity which is not even a party to the litigation, the court should attempt to structure discovery in a manner which is least burdensome to such an entity." (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 222.)

Rich Products has produced approximately 566 pages of documents and asserts that all responsive documents in its possession, custody, and control have been produced. IPCE contends Rich Products' response to the Requests at issue are evasive and non-responsive because: (1) Scott Bolan, a former employee, testified that Rich Products should be able to recover and produce every email sent by Mr. Bolan during his time at Rich Products; (2) Rich Products' 90-day retention policy states that emails are archived and preserved "as retrievable functioning documents;" (3) IPCE has emails in its possession form and to Rich Products employees that should have been produced and that indicate other

responsive documents may exist; (4) Rich Products only searched two of its employees' computers for responsive emails; (5) Rich Products has refused to explain how its searches for emails and texts were conducted; and (6) Rich Products has failed to produce all relevant SAP documents instead of only producing documents form a limited time period.

Rich Products submitted the Declarations of Jason VanEtten and John R. Tate. Rich Products has sufficiently complied.

IPCE also contends that Rich Products has failed to comply with the Requests at issue because it produced SAP documents only for a short period rather than for the period of January 1, 2010 through August 1, 2015. Rich Products correctly contends that the SAP documents are outside the scope of the subpoena. Mr. Tate declares that Rich Products' SAP system maintains records of when each production line is out of service and the daily activities of non-salaried employees for payroll purposes. (Tate Decl., ¶ 6, Exh. 3 [SAP entries for Tran Ochoa], Ex. 4 [SAP log for production line down time].)

These documents do not contain communications. Rather, they are a record of events. And thus, the SAP documents are beyond the scope of the Requests at issue. A specific description is needed to ensure the "great burden" of determining whether responsive documents exist is "borne by the party seeking the discovery." (*Calcor Space Facility, Inc. v. Superior Court, supra,* 53 Cal.App.4th at p. 222.) The requesting party cannot conscript the nonparty "to search its extensive files, at many locations, to see what it can find to fit [the requesting party's] definitions, instructions and categories." (*Ibid.*) "The 'reasonably' in the statute implies a requirement such categories be reasonably particularized from the standpoint of the party who is subjected to the burden of producing the materials. Any other interpretation places too great a burden on the party on whom the demand is made." (*Ibid.*) Accordingly, the Motion is denied.

The Court declines to award sanctions.

Third-party Rich Products Corporation shall give notice of the ruling.