UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SA CV 19-01203-JVS (DFMx)	Date:	January 22, 2021
Title	Kaupelis v. Harbor Freight Tools USA, Inc.		

Present: The Honorable	Douglas F. McCormick, United States Magistrate Judge
Nancy Boehme	Not Present
Deputy Clerk	Court Reporter
Attorney(s) for Plaintiff(s):	Attorney(s) for Defendant(s):
Not Present	Not Present
Proceedings:	**(IN CHAMBERS) Further Order re: Plaintiffs' Motion to Compel (Dkt. 65)**

Plaintiffs moved to compel the production of documents and supplemental interrogatory responses from Defendant Harbor Freight Tools USA, Inc. ("HFT"). See Dkt. 65. On August 19, 2020, I granted Plaintiffs' motion and ordered HFT to produce unredacted copies of certain documents and provide supplemental responses to Interrogatory Nos. 13 and 14 within 14 days. See Dkt. 95. In so doing, I rejected HFT's argument that California's Consumer Privacy Act ("CCPA") or third-party privacy concerns precluded Plaintiffs from getting the discovery they sought. See id. at 1-2. I also concluded that the discovery sought was permissible pre-class certification discovery. See id. at 2-3.

HFT sought review of my order. Judge Selna dismissed HFT's privacy arguments, rejecting HFT's argument that the CCPA and the California Constitution required the use of Belaire-West notices. See Dkt. 139 at 3-5. But Judge Selna found persuasive HFT's argument that my conclusion that the discovery was relevant to class certification was no longer valid considering his recent order granting class certification in part. See id. at 5-6. Judge Selna accordingly vacated the August 19 order and remanded the motion to me for reconsideration in light of his class certification order. See id. at 6.

On October 19, 2020, I ordered the parties to meet-and-confer about Judge Selna's order, determine whether any dispute continued to exist, and if so, submit additional supplemental briefs of no more than 10 pages. See Dkt. 143. The case was subsequently stayed briefly while HFT filed a Rule 23(f) petition. See Dkt. 145. After the stay was lifted, I held a telephone conference with the parties at which we discussed the remaining issues, and I asked the parties to submit supplemental briefs by no later than January 20, 2021. The

parties did so. See Dkt. 154, 155. I held a brief hearing with counsel on January 21, 2021, and I now rule as follows:

The remaining dispute involves whether HFT should be required to provide supplemental responses to Interrogatory Nos. 13 and 14, which Plaintiffs describe as asking for "who complained about the chainsaw defect at issue here, and when." Dkt. 154 at 2. HFT makes three arguments. First, HFT argues that the information sought is "irrelevant and . . . duplicative." Second, HFT argues that producing information about non-class members would violate their right to privacy. And third, HFT argues that Plaintiffs have documents in their possession that provide the information and that under Rule 33(d) it's their burden to compile the information they seek.

The second and third arguments can be quickly dismissed. As an initial matter, neither argument appears to be within the scope of why my August 19 decision was remanded to me, which was "for consideration in light of the Court's grant of class certification." HFT's privacy arguments have already been rejected twice, first by me and then by Judge Selna. It's hard to fathom why they continue to be made.[1] And HFT's Rule 33(d) argument is misplaced. If HFT wants to identify under Rule 33(d) documents that contain responsive information to Interrogatory Nos. 13 and 14 it may do so. It has not. Identifying that its document production is only 4,500 pages or so does not comply with Rule 33(d), which requires a party to identify specific records, not just point to its document production in general and say, "it's in there."[2]

That leaves HFT's relevance argument. My prior order focused on class certification issues because the pre-certification discovery requires a showing that the discovery is likely to produce substantiation of the class allegations. But now a class has been certified, so if anything, the scope of discovery is less proscribed. Nevertheless, HFT argues that answering Interrogatory Nos. 13 and 14 would require it to provide information about non-class members. In response, Plaintiffs argue that non-class members (such as consumers in Florida or New York, states not included in the class definition) may have information about HFT's knowledge of the defect, an issue made relevant by various of HFT's

[1] At the hearing on January 21, HFT's counsel expressly asked that I state in my order that complying with the Court's order would not be a basis for liability under the CCPA. I decline to do so.

[2] "[U]nder Rule 33(d), the responding party chooses to produce business records in answer to the interrogatories—not to avoid answering them. To answer an interrogatory, 'a responding party has the duty to specify, by category and location, the records from which answers to interrogatories can be derived.'" O'Connor v. Boeing N. Am., Inc., 185 F.R.D. 272, 277 (C.D. Cal. 1999) (quoting Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Investment Corp., 711 F.2d 902, 906 (9th Cir. 1983)).

affirmative defenses. Plaintiffs also argue that such non-class members may have information that rebuts HFT's attack on Plaintiffs' credibility and their expert witness's opinions. I agree with Plaintiffs. I am satisfied that these non-class members may have information that is relevant to the claims and defenses at issue.

Accordingly, HFT is ORDERED to provide supplemental responses to Interrogatory Nos. 13 and 14 within 14 days of the date of this order.