

2003 WL 25540544 (Cal.Superior) (Trial Order)
Superior Court of California,
Rene C. Davidson Alameda County Courthouse.
Alameda County

CALIFORNIANS FOR DISABILITY RIG, Plaintiff/Petitioner(s),
v.
MERVYN'S CALIFORNIA, INC., Defendant/Respondent(s).

No. 2002051738.
April 30, 2003.

Motion for Protective Order Granted

Order

Disability Rights Advocates, Attn: Paradise, Laurence W., 449 Fifteenth Street, Suite 303, Oakland, CA 94612.

Morrison & Foerster LLP, Attn: McElhinney, Harold J., 425 Market Street, San Francisco, CA 94105-2482.

Ronald M. Sabraw, Judge.

The Motion for Protective Order filed for Californians For Disability Rights, a non-profit corporation, on behalf of the General Public was set for hearing on 04/29/2003 at 09:00 AM in Department 22 before the Honorable Ronald M. Sabraw. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Motion of Plaintiff Californians for Disability Rights for Protective Order is decided as follows:

Californians for Disability Rights must produce all witness statements in its possession or in the possession of its counsel concerning mobility issues at Mervyn's. The substance of the statements is not protected. *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal. App. 4th 214, 218 ("statements written or recorded independently by witnesses neither reflect an attorney's evaluation of the case nor constitute derivative material, and therefore are neither absolute nor qualified work product.")

Californians for Disability Rights is required to produce the names, addresses, and telephone numbers of the authors of all witness statements in its possession or in the possession of its counsel concerning mobility issues at Mervyn's if the witnesses do not object to such disclosure. The relevant names, addresses, and telephone numbers are private information, but not highly private information. C.C.P. 2017(a) ("Discovery may be obtained of the identity and locations of persons having knowledge of any discoverable matter ..."); C.R.C. 1858(a); Judicial Council Form Interrogatories No. 12 and 16 (asking for name, address, and telephone number of persons who were witnesses to the incident). Moreover, in this case the parties have previously agreed on a list of trial witnesses, so the witnesses cannot be called on to testify at trial (absent a showing of good cause).

Mervyn's may obtain the names, addresses and telephone numbers of the authors of all witness statements in the possession

of Californians for Disability Rights or in the possession of its counsel concerning mobility issues at Mervyn's if the witnesses do not object to such disclosure under an "opt-out" procedure similar to those described in C.C.P. 1985.3(e), Valley Bank of Nevada v. Superior Court of San Joaquin County (1975) 15 Cal. 3d 652, 658, and Olympic Club v. Superior Court (1991) 229 Cal.App.3d 358, 364-365. The Court decides that an "opt-out" procedure is preferable to an "opt in" procedure such as that used in Colonial Life & Accident Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 789, because (1) the privacy interest to be protected is not substantial, (2) this action is to enforce California's laws regarding public access and the Legislature has indicated that these laws reflect important California public policies, and (3) this action is brought on behalf of the general public so the witnesses have an interest in the litigation, in contrast to Colonial Life where the persons to be contacted were strangers to the litigation.

Californians for Disability Rights is not required to produce information about how its counsel tried to locate witnesses. Given the unscientific nature of the attempts to identify witnesses, the communication efforts and response rate are not material information.

Californians for Disability Rights is not required to produce information about the "Retail Access Project" of its counsel. This lawsuit concerns conditions at Mervyn's, not throughout the retail industry, and the legal standard is not set by what other retailers may or may not be doing. There is no indication that the "Retail Access Project" is anything other than an organizational unit at the office of counsel designed to facilitate the sharing of information with the goal of advancing the interests of counsel's clients. The Court finds little distinction between the "Retail Access Project" at DRF and a hypothetical "products liability group" at a law firm.

Californians for Disability Rights must produce the witness statements with names, addresses, and telephone numbers redacted on or before May 9, 2003.

Californians for Disability Rights must send privacy notification letters to the witnesses on or before May 9, 2003. Counsel are to agree on the form of a neutral letter. On or before June 6, 2003, Californians for Disability Rights must produce unredacted witness statements for all witnesses who have not objected to the release of their names, addresses, and telephone numbers and/or that information for the witnesses.

Dated: 04/30/2003

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Judge Ronald M. Sabraw
