



0835763

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

JUL 23 2001

CLERK OF THE SUPERIOR COURT
By Charlotte Marin
Deputy

ANDREA SAVAGLIO, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

WAL-MART STORES, INC., a Delaware
corporation, SAM'S CLUB, an operating
segment of Wal-Mart Stores, Inc., GEORGE
RODRIGUEZ, VINCENT MARTINEZ, and
DOES 1 through 100,

Defendants.

No. 835687-7

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL DISCOVERY

Date: July 18, 2001
Time: 3:45 p.m.
Dept.: 22

The motion by Plaintiffs to compel production of documents came on regularly for hearing on July 18, 2001, in Department 22 of this Court, the Honorable Ronald M. Sabraw presiding. Counsel appeared on behalf of Plaintiff and on behalf of Defendants.

The Court's tentative ruling asked Counsel for Plaintiffs to bring to the hearing exemplars of all categories of documents that Plaintiffs contend have been improperly redacted and counsel brought those documents to the hearing for the Court's review. The exemplars are attached as collective Exhibit A to this order.

After consideration of the moving papers and the opposition thereto, the authorities cited by the parties, as well as the arguments presented at the hearing on this matter, IT IS ORDERED as follows:

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1 Defendant Wal-Mart has already produced redacted copies of the timeclock archive
2 reports, week to date hours and expense summaries, and time clock punch exception reports
3 (management schedules and associate schedules) (collectively the "data reports"). In the data
4 reports each individual employee's name has been redacted and each individual employee is
5 identified by store and the last four numbers of his or her social security number. The unredacted
6 information will permit Plaintiff to perform a statistical analysis of the data. This production was
7 consistent with the reasoning of Davies v. Superior Court (1994) 36 Cal.3d 291, 300, which held
8 that the Department of Motor Vehicles was required to produce information about motor vehicle
9 accidents in its database but not the identity of the reporting person.

10 The Court holds that the names of the individuals who worked at Wal-Mart and in
11 formation regarding when they clocked in and clocked out of work may be private information,
12 but that even if the names and working hours were private information that information is not
13 highly private. See, e.g., Judicial Council Form Interrogatories No. 12 and 16 (asking for name,
14 address, and telephone number of persons who were witnesses to the incident). Any privacy
15 interest in the names of Wal-Mart employees and the hours they worked would be outweighed by
16 the need for discovery. Accordingly, all the information in the data reports would ordinarily be
17 disclosed.

18 Defendant Wal-Mart has already produced redacted copies of the time adjustment sheets.
19 In these documents each individual employee's name has been redacted and each individual
20 employee is identified by the last four numbers of his or her social security number. The time
21 adjustment sheets contain specific information as to why individual employees were absent on
22 particular dates. Based on the exemplars presented to the Court at the hearing, some of this
23 information is private as it concerns medical appointments and similar, personal, information.

24 The difficult issue in this motion is that if the names of the employees are disclosed on
25 the data reports, then the data reports could serve as a "key" that would link individual names
26 with the private information in the time adjustment sheets.

1 The Court holds that Plaintiff's motion to compel Defendant Wal-Mart to produce
2 unredacted copies of the timeclock archive reports, week to date hours and expense summaries,
3 and time clock punch exception reports is DENIED. Although the names on the documents
4 would ordinarily be discoverable, the names are private in the context of this action because they
5 are be linked to other information and together could serve as a "key" to unlock the private
6 information in the time adjustment sheets.

7 The Court holds that Plaintiff's motion to compel Defendant Wal-Mart to produce
8 unredacted copies of the time adjustment sheets is DENIED. The time adjustment sheets contain
9 narrative information about why individual employees were absent for discrete time periods, and
10 this is private information.

11 Plaintiffs may obtain unredacted documents by obtaining a written waiver from any
12 putative class member. Upon submission of a written waiver from a class member, Defendant
13 Wal-Mart must produce unredacted documents related to that class member within 21 days.

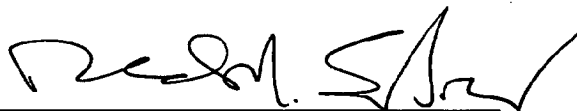
14 Plaintiffs may obtain unredacted documents relating to an additional 300 of Wal-Mart's
15 current or former employees under the procedure described in Olympic Club v. Superior Court
16 (1991) 229 Cal.App.3d 358, 364-365. The Court decides that an "opt-out" procedure such as
17 that used in Olympic Club is preferable to an "opt in" procedure such as that used in Colonial
18 Life & Accident Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 789, because (1) this action is
19 to enforce California's laws regarding wages, hours, and working conditions, Labor Code 1171 et
20 seq., and the California Legislature has demonstrated that these laws reflect important California
21 public policies by affording employees greater protection than under the parallel federal statutes,
22 see Morillion v. Royal Packing Co. (2000) 22 Cal.4th 575, 592, and (2) this is a putative class
23 action brought on behalf of the current and former employees so they have an interest in the
24 litigation, in contrast to Colonial Life where the persons to be contacted were strangers to the
25 litigation.

1 Any mailing should state that objections should be transmitted to counsel for Plaintiffs
2 and Defendants by a specific date and that the objectors should (1) identify themselves only by
3 store and the last four numbers of their social security number and (2) state specific grounds why
4 Wal-Mart should not produce the unredacted documents. Thereafter the procedure will be
5 comparable to that for nonparty consumers and nonparty employees under C.C.P. 1983.5(g) and
6 1985.6(f), with the burden on the parties to bring a motion to compel production of the
7 unredacted documents. The details of the letter and mailing will be left to counsel.

8 The Court issues no orders regarding communications with the putative class members.
9 The Court notes, however, that (1) Plaintiff's apparent purpose in obtaining unredacted
10 documents is to communicate with putative class members and the parties appear to be
11 proceeding on the assumption that communications will follow the disclosure of any names; and
12 (2) absent a showing of good cause, the Court generally adheres to the principle that both sides
13 should have equal access to the members of the putative class, Atari, Inc. v. Superior Court
14 (1985) 166 Cal.App.3d 867, 873.

15 Plaintiff's requests for sanctions are denied. The discovery at issue relates to the rights of
16 Wal-Mart's current and former employees, not the rights of Wal-Mart itself, and Wal-Mart
17 cannot be faulted for requiring a Court order before it releases arguably private information.

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20 Dated: July 20, 2001



21 Judge Ronald M. Sabraw
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(RCD-11/00)

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Order Granting In Part and Denying In Part Plaintiff's Motion to Compel Discovery by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

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Dated: July 23, 2001

ARTHUR SIMS
Executive Officer/Clerk of the Superior Court

By Charlotte Marin
Charlotte Marin, Clerk of Dept. 22