



By Order of the Court, Associate Judge JOSEPH N. CAMACHO

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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

FRANCES CASTRO MAFNAS,)	CIVIL CASE NO. 12-0104
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING IN PART AND
)	DENYING IN PART PLAINTIFF’S
PAYLESS SHOESOURCE SAIPAN, INC.)	MOTION TO COMPEL DISCOVERY
and D.Y. CORPORATION,)	
)	
Defendants.)	
)	

I. INTRODUCTION

This matter came before the Court on August 2, 2013 at 9:00 a.m. on Plaintiff’s motion to compel discovery. Jennifer Dockter appeared on behalf of Plaintiff Frances Castro Mafnas (“Mafnas”). Nadeah I. Vali appeared on behalf of Defendant Payless Shoesource Saipan (“Payless”). Based on a careful review of the filings, oral argument and applicable law Mafnas’ motion to compel is granted in part and denied in part.

Mafnas filed a complaint in this case on April 30, 2012, seeking damages for bodily injury, pain and suffering, emotional distress, mental anguish, lost wages, medical expenses and punitive damages. The incident underlying Mafnas’ claim occurred in July 2011 when she visited Payless’ store, and as she exited, her second toe of her left foot was caught in the door. Discovery in this case has required substantial Court oversight. Before the instant motion, the Court ruled on another

1 motion to compel filed by Mafnas, Mafnas’ request for sanctions, and Payless’ request for a
2 protective order.

3 On June 25, 2013, Mafnas filed a Motion for an Order Compelling Discovery with ten
4 different requests. Payless filed its Opposition to Plaintiff’s Second Motion to Compel Discovery
5 on July 10, 2013. Mafnas filed a Reply to Payless’s Opposition to Mafnas’s Motion to Compel on
6 July 17, 2013. The Court addresses each of Mafnas’ requests below.

7 **II. LEGAL STANDARD**

8 Discovery matters are within the sound discretion of the trial court. *Muna ex rel. Lacy v.*
9 *Commonwealth*, 2007 MP 16 ¶6 (citing *Reyes v. Ebetuer*, 2 NMI 418, 423 (1992)). The scope of
10 discovery includes all non-privileged information relevant to the subject matter of the pending
11 action. NMI R. Civ. Pro. 26(b)(1). The materials and information discovered need not be
12 admissible at trial but need only “appear[] reasonably calculated to lead to the discovery of
13 admissible evidence.” *Id.* The court may limit the use and methods of discovery if “the discovery
14 is unduly burdensome or expensive, taking into account the needs of the case, the amount in
15 controversy, limitations on the parties’ resources, and the importance of the issues at stake in the
16 litigation.” *Id.*

17 A motion to compel is appropriate when a party fails to produce relevant, non-privileged
18 documents requested pursuant to Rule 34 of the Commonwealth Rules of Civil Procedure. An
19 evasive or incomplete response to a discovery request is a failure to respond. NMI R. Civ. Pro.
20 37(a)(3). The moving party has the burden of showing that the non-moving party’s responses are
21 evasive or incomplete and that the requested discovery is relevant.¹ *See, e.g., Continental Ins. Co. v.*
22 *McGraw*, 110 F.R.D. 679, 682 (D. Colo. 1986); *and Soto v. City of Concord*, 162 F.R.D. 603, 610

23 ¹ Because the Commonwealth Rules of Civil Procedure are similar to the Federal Rules of Civil Procedure, federal
24 cases interpreting the counterpart Federal Rules are helpful in interpreting the Commonwealth Rules of Civil Procedure.
Cepeda v. Hefner, 3 NMI 121, 126 n.6 (1992).

1 (N.D. Cal. 1995). Once these initial burdens are satisfied by the moving party, the opposing party
2 has the burden of showing that the requested discovery should be prohibited. *See DIRECTV, Inc. v.*
3 *Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002). The opposing party also has the burden of explaining
4 and supporting its objections. *Id.*

5 **III. MOTION TO COMPEL ANALYSIS**

6 *1. Financial information—Request 11 from Second Request for Production*

7 Plaintiff Mafnas argues that information about Payless’ net worth and financial condition is
8 relevant because she is seeking punitive damages. Other courts have found such information to be
9 relevant when punitive damages are at issue, and this Court agrees. *See, e.g., Cruce v.*
10 *Schuchmann*, No. 91-1431, 1993 U.S. Dist. LEXIS 5608, at *1 (D. Kan. Mar. 30, 1993). In
11 response to this request, Payless has offered to produce financial balance sheets from 2011 and
12 2012 but has not produced any of those documents. Mafnas argues that this response is incomplete
13 because she requested “Financial statements, financial reports, annual financial reports, tax
14 documents, and 1120 CM Tax filings and declaration[s] for the past five (5) years for Payless
15 Shoesource Saipan, Inc. and for its corporate shareholder.” The Court finds that Mafnas meets her
16 initial burdens of showing that her request is relevant and the Payless’ response is incomplete.

17 Payless objects to this discovery request on the grounds that it is “unduly burdensome,
18 overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and
19 protected from disclosure by privacy considerations because it is confidential financial data.” Def.’s
20 Opp’n at 5. Payless provides no support or explanation for its objections.

21 Accordingly, Mafnas’ motion to compel is granted as to the first request.

22 *2. Sales Reports—Request 28 from Second Request for Production*

23 Mafnas asserts that these reports are relevant because they will provide information about
24 how busy Payless’ store was on the day of the accident as compared to other days. Mafnas argues

1 that Payless' response to this request was inadequate because, although Payless allowed inspection
2 of these documents on May 7, 2013, Plaintiff's counsel was informed that Payless had not decided
3 whether to allow copies of such documents. The Court finds that Mafnas meets her initial burdens
4 of showing that her request is relevant, and Payless' response is incomplete.

5 Payless objects to this discovery request on the grounds that it is "overly broad, oppressive,
6 unduly burdensome and seeks information not reasonably calculated to lead to discovery of
7 admissible evidence." Def.'s Opp'n at 6. Payless also indicates that production of these documents
8 would be unnecessarily cumulative because Payless has already provided a document showing the
9 traffic flow on the day of the accident. The Court finds that these objections, without additional
10 support or explanation, are not sufficient to prohibit the requested discovery.

11 Accordingly, Mafnas' motion to compel is granted as to the second request.

12 3. Amy Axelton's Employment Contract—Request 1 from Third Request for Production

13 Mafnas argues that information about Amy Axelton's employment contract or other
14 agreement defining her relationship with Payless and its corporate shareholders is relevant because
15 she verified one set of Payless' answers to interrogatories and her name is found throughout emails
16 provided during discovery. Mafnas reports that Payless has only provided a business card for Ms.
17 Axelton. The Court finds that Mafnas meets her initial burdens of showing that the requested
18 information is relevant, and Payless' response is incomplete.

19 Payless objects to this discovery request on the grounds that it is "overly broad and not
20 reasonably calculated to lead to the discovery of admissible evidence." Def.'s Opp'n at 7. Payless
21 explains that this request is overly broad because it pertains to non-parties. The Court notes that a
22 party is not protected from producing documents simply because they do not have actual possession
23 of those documents. *See Clark v. Vega Wholesale Inc.*, 181 F.R.D. 470, 472 (D. Nev. 1998). A
24 party may be deemed to have control over any documents it has a legal right to obtain. *Id.* Mafnas

1 reports that Payless has represented that it does not know if any employment agreements exist for
2 Ms. Axelton.

3 Payless is ordered to produce any existing contract or other agreement between itself and
4 Ms. Axelton. However, there is no indication that Payless has actual possession or a legal right to
5 information about Ms. Axelton's contracts with Payless Shoesource Worldwide or Collective
6 Brands. Accordingly, Mafnas' motion to compel is denied as to any such agreements.

7 4.-7. Hours of Operation, Accounting Principles and Practices, Promotional Campaigns, and
8 Training Programs—Requests 6-9 from Third Request for Production

9 As a preliminary matter, the Court notes that requests four through nine in the motion to
10 compel differ from the original requests six through ten in the Third Request for Production. The
11 requests in the motion to compel are narrower than those in the Third Request for Production,
12 reflecting the progress made by the parties as they sought a resolution prior to court intervention.
13 The Court encourages such cooperation by the parties, and as such addresses the requests as they
14 are expressed in the motion to compel.

15 Mafnas asserts that these six requests are relevant because they are related to the liability of
16 Payless' corporate shareholder. Mafnas argues that this information is relevant because Payless has
17 asserted third party liability as an affirmative defense. Mafnas argues that documents concerning
18 training and promotional campaigns are also relevant because they may demonstrate that Payless
19 did not act according to company policy concerning dangerous conditions on the premises and that
20 Payless promotes sales over safety. Mafnas reports that Payless has refused to produce these
21 documents. She also contends that there would have been no documents available to inspect had
22 her attorney accepted defense counsel's invitation to review the documents. The Court finds that
23 Plaintiff Mafnas meets her initial burdens of showing that her requests are relevant and Payless'
24 response is incomplete.

1 Payless argues that these discovery requests are “overly broad and not reasonably calculated
2 to lead to the discovery of admissible evidence.” Def.’s Opp’n at 7. Payless focuses its explanation
3 of this objection on the fact that Payless Shoesource Worldwide Inc. and Collective Brands are not
4 parties to this action. However, as Mafnas points out, she seeks only documents in the control of
5 Payless that describe the policies in place at Payless. As such, an in-depth analysis of whether
6 Payless’ corporate shareholder should be required to produce documents is unwarranted.

7 Accordingly, Mafnas’ motion to compel is granted as to requests four through seven.

8 8. 2011 Payments to Payless Shoesource Worldwide, Inc. or Collective Brands—Request 10 from
9 Third Request for Production

10 Mafnas requests production of “[d]ocuments which show payments made by Defendant to
11 Payless Shoesource Worldwide, Inc. or Collective Brands for products, floormats, supplies,
12 services, franchise fees, royalties, training fees, or sale of products during 2011.” Pl.’s Mot. to
13 Compel at 3. Mafnas asserts that this information is relevant to demonstrate the corporate
14 shareholder’s potential liability and that Payless has not produced any documents to satisfy this
15 request.

16 Payless counters that this request is overly broad and reports that the request would require
17 Payless to go through every document and email related to purchasing. Payless reports that there
18 are hundreds of such documents.

19 The Court finds that this discovery request is unduly burdensome given the nature of this
20 claim and amount in controversy. The claim in this case is that Payless failed to inspect and correct
21 an unsafe condition on its store premises. Unlike the policies discussed above, which may result in
22 the discovery of information related to the character of Payless’ response to an allegedly dangerous
23 condition, the purchase of products and supplies from non-parties has no bearing on this claim.

24 Accordingly, Mafnas’ motion to compel is denied as to request eight.

1 9. Door tracking documents—Request 1 from Fourth Request for Production

2 As a preliminary matter, Payless argues that this request should not even be considered by
3 the Court because the parties did not meet and confer on this topic. Mafnas responds that this issue
4 was thoroughly discussed on May 31, 2013. The Court is satisfied that Mafnas attempted to resolve
5 this issue prior to bringing this motion and will address it.

6 Mafnas requests production of documents that track the number of times Payless’ front door
7 opens. Mafnas points out that this information is relevant because evidence of the number of times
8 the door has opened could support a finding that the door had worn out and was broken at the time
9 of the accident. Payless has only produced the tracking numbers for the day of the accident.
10 Mafnas points out that this is incomplete and inadequate because information about one day does
11 not provide information about the wear and tear of the door. The Court finds that Mafnas has met
12 the burden of demonstrating the relevance of the request and that Payless’ response was inadequate.

13 Payless argues that this request is “extraordinarily broad.” However Payless provides no
14 support or explanation for why it would be difficult or time-consuming for it to produce this
15 information.

16 Accordingly, Mafnas’ motion to compel is granted as to request nine.

17 10. Maintenance and Inspection of Video Cameras—Court Order issued Feb. 28, 2013

18 In the Motion to Compel filed June 25, 2013, Mafnas requests “Quarterly reports governing
19 maintenance and inspection of video cameras. (Order issued February 28, 2013).” The Order
20 issued on February 28, 2013 (“Discovery Order”) compelled Payless to produce:

21 Any and all documents (as defined in Plaintiff’s Request for Production of
22 Documents) related to Payless’s or Corporate Payless Shoesource’s standards,
23 policies, advisements, or procedures regarding the use, location, placement,
positioning, maintenance, or inspection of video surveillance equipment and footage
at Payless and/or Corporate Payless Shoesource.

24 Discovery Order at 1.

1 The language of the Discovery Order requires Payless to produce documents related to
2 video surveillance “standards, policies, advisements or procedures.” The documents required by
3 the Discovery Order were those that described the policies regulating Payless’ video surveillance
4 system. Technical reports testing the remote connection between Payless and a non-party are not
5 the type of document that the Court ordered to be produced. Because there was no discovery
6 request that required Payless to produce the quarterly reports, it is premature for the Court to grant
7 the motion to compel. A motion to compel is only appropriate when a party fails to produce
8 materials that have been requested pursuant to the Commonwealth Rules of Civil Procedure. As
9 such, Mafnas’ motion to compel is denied as to request ten.

10 **IV. EXPENSES**

11 Pursuant to Rule 37(a)(4)(A), Mafnas requests that she be awarded reasonable expenses,
12 including attorneys’ fees, that she incurred in bringing this motion. Because Mafnas’ motion was
13 granted in part and denied in part, Rule 37(a)(4)(C) applies. There shall be a hearing on the
14 apportionment of expenses on September 30, 2013 at 1:30 p.m. in Courtroom 220A.

15 **V. CONCLUSION**

- 16 I. Mafnas’ motion to compel is **GRANTED** as to requests 1, 2, 4, 5, 6, 7 and 9.
- 17 II. Mafnas’ motion to compel is **GRANTED IN PART AND DENIED IN PART** as to
18 request 3. To the extent that there is a contract or other agreement between Payless and Ms.
19 Axelton, Payless is ordered to produce such documents. However, Payless is not required
20 to produce Ms. Axelton’s contracts with other entities.
- 21 III. Mafnas’ motion to compel is **DENIED** as to requests 8 and 10.
- 22 IV. A hearing on the apportionment of expenses shall be held on September 30, 2013 at 1:30
23 p.m. in Courtroom 220A.
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IT IS SO ORDERED this 30th day of August, 2013.

/s/
JOSEPH N. CAMACHO
Associate Judge