

Hearing: Motions to Compel

Date: February 15, 2018

Plaintiff Roslyn M. Caldwell (“Plaintiff”) brings this action against the Board of Trustees of the California State University (“Cal Poly”) alleging eleven causes of action for discrimination, retaliation and harassment in violation of the California Fair Employment and Housing Act. Plaintiff’s complaint was filed on July 19, 2017. On October 17, 2017, before Cal Poly had appeared in the matter, Cal Poly personally served Plaintiff’s counsel with its first set of written discovery: form interrogatories—general (“FIG”), form interrogatories—employment (“FIE”) and requests for production of documents (“RFP”).

Upon receipt of the discovery, on October 19, 2017, Plaintiff’s counsel emailed Cal Poly’s counsel and requested an extension of time to respond. On that same date, counsel for Cal Poly responded and declined to grant an extension. Counsel for Plaintiff immediately responded back, again requesting a one month extension. Counsel for Cal Poly again declined, which she argues was due to a history of delay by Plaintiff in a separate but related arbitration.

On November 3, 2017, counsel for Plaintiff filed and served Plaintiff’s First Amended Complaint (“FAC”), as well as a notice of unavailability to notify counsel for Cal Poly of the dates counsel would be unavailable over the holidays. The notice stated that counsel would be unavailable from December 18, 2017 through January 5, 2018. On November 13, 2017, at a case management conference before this Court, counsel for Plaintiff again requested an extension of time to respond, which counsel for Cal Poly declined to give. The following day, Cal Poly filed its answer to the FAC.

On November 16, 2017, Plaintiff timely served her responses to the discovery. No documents were produced at that time. Plaintiff argues that she responded to the best of her knowledge and information at the time, but the responses state that she would supplement at least some of her responses by December 1, 2017. She says any insufficiencies in the responses were because of the volume of the discovery requested, as well as the fact that after her termination from Cal Poly, she had moved to Texas, and many of her records and files were still boxed up from the move.¹ On November 17, 2017, Plaintiff’s father died unexpectedly, which she says delayed her ability to provide supplemental responses by December 1, 2017.

Counsel for Cal Poly first attempted to meet and confer and inform Plaintiff of Cal Poly’s specific issues with the responses by sending an email to both of Plaintiff’s counsel on December 21, 2017, during the period when counsel for Plaintiff had informed opposing

¹ Cal Poly points out that she moved in July 2017.

counsel and the Court they were unavailable. She gave Plaintiff until December 27, 2017, to correct the responses, two days after the Christmas holiday. Counsel for Cal Poly sent a follow-up email on December 29, 2017, however counsel for Plaintiff was still on vacation with limited access to emails. Counsel for Cal Poly then sent text messages to Lauren Udden, Esq., co-counsel for Plaintiff, still during the period set forth in the notice of unavailability, which were read but not responded to. Mr. Udden states that he did not respond because he was not in his office and had no access to his files. Counsel for Cal Poly requested an extension of time to file the motions to compel, but counsel for Plaintiff did not respond.

On January 4, 2018, Cal Poly filed three motions to compel: 1) motion to compel further responses to FIG; 2) motion to compel further responses to FIE; and 3) motion to compel production of documents. Plaintiff opposes all three motions.

Upon review of Plaintiff's responses to both sets of form interrogatories as set forth in the parties' separate statements and attached as exhibits to the motions, Plaintiff provides some substantive responses, however many responses state that information was "unknown", state that further information would be supplied by December 1, 2017, or fail to respond to certain subsections.

In her separate statement, Plaintiff does not argue that her responses were sufficient. Instead, she explains that she responded with all the information she had at the time, but she was continuing to investigate, and needed a further 45-60 days to go through her boxed-up files and respond more fully. Cal Poly argues that because the parties are involved in a related employment arbitration which has been ongoing for some time and has been repeatedly continued by Plaintiff, that Plaintiff should already have conducted her investigation and have the information she needs. Plaintiff admits she has produced no documents to date.

In terms of the responses that state "unknown", "unknown" is generally an insufficient answer to matters presumably known the responding party. However, the duty to make reasonable efforts to obtain requested information does not apply to information equally available to the propounding party, nor is there a duty to make inquiry from independent witnesses who are not the party's agents or employees. (Code Civ. Proc. § 2030.220(c); Weil & Brown, Cal. Civil Practice Guide: Civil Procedure Before Trial (The Rutter Group 2017) ¶¶ 8:1061-1062.) To the extent that Plaintiff has responded "unknown" to information presumably known to her, her responses are insufficient.

To the extent Plaintiff is withholding any information or documents on grounds of privilege or otherwise, Plaintiff must specifically set forth what is being withheld and grounds.

Cal Poly's motion to compel further responses to form interrogatories is granted as to FIG nos.: 6.4(a), 6.5, 6.7, 7.1, 8.8, 9.1, 12.1, 12.2, 12.3, 12.4, 12.6, 12.7, 13.1, 13.2, 14.1, 14.2, 17.1, 50.1 and 50.2. Cal Poly's motion to compel further responses to form interrogatories – employment is granted as to FIE nos.: 200.2, 200.3, 200.4, 200.5, 201.1,

201.2, 201.3, 201.5, 201.6, 201.7, 202.1, 203.1, 204.3, 204.4, 204.7, 205.1, 207.2, 208.1, 210.3, 212.4, 212.5, 213.1, 215.1, and 215.2. Cal Poly's motion to compel production of documents pursuant to RFP nos. 1-47 is granted.

Cal Poly's motion to compel further responses to form interrogatories is denied as to FIG nos. 4.1, 16.1-16.10², and FIE no. 217.1, as the Court finds that the responses already provided are sufficient.

Plaintiff requests 45-60 days to supplement her responses and provide documents, and Cal Poly requests responses within two weeks. While Plaintiff should be able to respond sooner than 45 days, no trial date is yet set and Cal Poly does not show any prejudice. Plaintiff has 45 days from the date of this order to provide further responses as set forth above, and to produce documents.

While the Court believes counsel for Cal Poly should have reached out to meet and confer promptly after Plaintiff failed to send supplemental responses on December 1, 2017, Plaintiff should have granted an extension to file the motion to compel to allow for a further meet and confer effort. Moreover, while Plaintiff was denied extensions of time to respond, a usual courtesy, Plaintiff submitted responses which she represented at the time were insufficient, and to date has produced no documents. Both parties acted with and without justification and the Court orders no sanctions.

² As argued by Plaintiff in her separate statement, form interrogatory nos. 16.1-16.10 are clearly directed at defendants, not plaintiffs, as made clear by heading 16.0, and do not make sense for Plaintiff to answer.