

THE SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA BARBARA

TENTATIVE RULING

Judge Colleen Sterne
Department 5 SB-Anacapa
1100 Anacapa Street P.O. Box 21107 Santa Barbara, CA 93121-1107

CIVIL LAW & MOTION

Rosalva Carachure v. O'Reilly auto enterprises LLC et al.	
Case No:	19CV006708
Hearing Date:	Mon Jun 15, 2020 10:00
Nature of Proceedings: Motions to Compel <i>Rosalva Carachure v. O'Reilly Auto Enterprises, LLC, et al., #19CV06708, Judge Sterne</i>	
Hearing Date:	June 15, 2020
Matters: Motion to Compel Further Interrogatory Responses from Defendant Motion to Compel Further Written Responses and Production of Records from Defendant	
Attorneys: <i>For Plaintiff:</i> T. Joshua Ritz, Laleh B. Shokohi (T. Joshua Ritz & Assoc. – Sherman Oaks) <i>For Defendant:</i> James M. Peterson, Geoffrey M. Thorne (Higgs Fletcher & Mack – San Diego)	
Tentative Rulings: 1. The court grants plaintiff Rosalva Carachure's motion to compel further responses to special interrogatories and orders defendant O'Reilly Auto Enterprises, LLC, to provide further responses to special interrogatories ## 20, 21, 40, 41, 44, and 45, on or before June 25, 2020. Defendant O'Reilly Auto Enterprises, LLC, shall pay a monetary sanction to plaintiff Rosalva Carachure in the amount of \$3,673.65 on or before June 25, 2020.	

2. The court grants plaintiff Rosalva Carachure's motion to compel further responses to demands for production of documents and orders defendant O'Reilly Auto Enterprises, LLC, to, on or before June 25, 2020: 1) provide a further response to Demand for Production ("DFP") #37 stating that it will produce, in their entirety, all employee or team member handbooks in effect from May 31, 2016, to December 31, 2019, and then shall produce those handbooks; 2) provide further responses to DFP ##74, 75, 76, 77, 79, 80, 81, and 82, and produce all documents described in those demands; 3) provide a further response to DFP #83, as limited to documents specifically pertaining to defendant Diego Silva's termination, performance, disciplinary records, and his job application, and produce the limited personnel file; and 4) provide a further response to DFP #85 and produce all documents described in DFP #85. Defendant O'Reilly Auto Enterprises, LLC, shall pay a monetary sanction to plaintiff Rosalva Carachure in the amount of \$2,323.65 on or before June 25, 2020.

Background: This action arises out of plaintiff Rosalva Carachure's employment with defendant O'Reilly Auto Enterprises, LLC, dba O'Reilly Auto Parts ("O'Reilly"). Plaintiff alleges that her supervisor, defendant Diego Silva, sexually harassed, discriminated against, retaliated against, and assaulted her and the employer failed to prevent the discrimination, harassment, and retaliation. Plaintiff alleges that she began working at O'Reilly on May 31, 2016; Silva was assigned to manage her store in November 2018; and plaintiff was constructively terminated on April 24, 2019.

Defendant Silva has not been served and has not appeared in the case. A CMC is scheduled concurrently with the present discovery motions.

Motion to Compel Further Interrogatory Responses: Plaintiff moves to compel defendant O'Reilly to provide further responses to six special interrogatories and requests a monetary sanction of \$ 8,873.65. O'Reilly opposes the motion. At issue are six interrogatories related to complaints against Silva, investigations of Silva's conduct while employed at O'Reilly, and termination of Silva's employment.

1. The Special Interrogatories:

In Special Interrogatories ("SI") ##20 and 21, plaintiff asks O'Reilly to identify any employee who made a written or oral complaint against Silva. O'Reilly objected that these interrogatories invade Silva's right to privacy; are not calculated to lead to the discovery of admissible evidence. Then O'Reilly states that no complaints were made against Silva for harassment, discrimination, retaliation, assault, or battery during plaintiff's employment, other than plaintiff's claims.

In SI ##40 and 41, asks if O'Reilly conducted any investigation into Silva's conduct in the workplace and, if so, what were O'Reilly's findings. O'Reilly made the same objections and again said no complaints were made against Silva for harassment, discrimination, retaliation, assault, or battery during plaintiff's employment, other than plaintiff's claims. O'Reilly said it investigated plaintiff's claims. As to the investigation

of her claims, O'Reilly exercised its right to produce documents responsive to SI #41.

In SI ##44 and 45, plaintiff asks if O'Reilly terminated Silva and, if so, why. O'Reilly objected that the SIs invade privacy and are not calculated to lead to the discovery of admissible evidence.

“For discovery purposes, information is relevant if it ‘might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.’ [Citation]” *Lipton v. Superior Court*, 48 Cal.App.4th 1599, 1611-1612 (1996). Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. CCP § 2017.010. In light of “the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery.” *Colonial Life & Accident Ins. Co. v. Superior Court*, 31 Cal.3d 785, 790 (1982). Doubts as to relevance should generally be resolved in favor of permitting discovery. *Williams v. Superior Court*, 3 Cal.5th 531, 542 (2017).

Evidence of a person’s character or character trait, in the form of specific instances of conduct, is inadmissible to prove conduct on a specified occasion. Evid. Code § 1101(a). But that does not preclude admission of a wrong to provide a fact other than the disposition to commit the act, such as intent, plan, absence of mistake, or accident. Evid. Code § 1101(b).

So called “me-too” evidence is admissible under Evid Code § 1101(b), to prove a defendant’s discriminatory mental state in both sexual discrimination and harassment cases. *Pantoja v. Anton*, 198 Cal.App.4th 87, 115 (2011). The court in that case addressed the argument that only evidence of complaints of harassment or discrimination during the plaintiff employee’s tenure. “An order allowing questioning about these policies and practices as they existed during Pantoja’s employment but prohibiting it with respect to any other times would have made little sense. There was no reason to believe that Anton suddenly adopted policies or practices during the nine months of Pantoja’s employment and abruptly discontinued them after, or vice versa.” *Id.* at 116.

O'Reilly relies on *Pinter-Brown v. Regents of Univ. of California*, 48 Cal.App.5th 55 (2020). “Where evidence of workplace discrimination is proffered to cast doubt on an employer’s stated justification for an adverse employment action, for example, ‘me too’ evidence can be admissible to show intent or motive, which could establish that the employer’s stated reason was a pretext. The ‘me-too’ doctrine, however, does not permit a plaintiff to present evidence of discrimination against employees outside of the plaintiff’s protected class to show discrimination or harassment against the plaintiff. Although ‘me too’ evidence can be admissible to prove intent, motive, and the like with respect to the plaintiff’s own protected class, it is never admissible to prove an employer’s propensity to harass.” *Id.* at 518-519.

The issue here is not admissibility but what might reasonably lead to admissible evidence. A complaint about or investigation into Silva’s conduct could reveal facts about him relevant to plaintiff’s complaints regardless of the labels attached to the complaint or investigation by the complaining party or by O'Reilly. The same is true

for conduct that resulted in his termination, if he was terminated for cause. (O'Reilly offered to provide a verified response that the termination was unrelated to plaintiff or her allegations. That offered conclusory statement is not sufficient and does not explain what reasons did result in his termination. The real reasons may lead to the discovery of admissible evidence or it may conclude portions of plaintiff's inquiry.) The interrogatories at issue fall within the broad scope of permissible discovery.

Part of O'Reilly's relevancy objection is that the interrogatories cover the period of time Silva was employed after plaintiff was employed at O'Reilly. It is not clear how long that was. Plaintiff says it was 90 days. O'Reilly says it was "much longer" but does not say how long that was. Plaintiff left in April 2019. Assuming Silva does not still work there, the period is less than a year. Neither party discusses Silva's employment prior to plaintiff's tenure starting on May 31, 2016. If Silva was employed before plaintiff, that period does not appear to be in dispute. Based on the discussion above, the court will not limit the time period to which the interrogatories relate.

O'Reilly also raises the issue of Silva's right to privacy with respect to information in his personnel file. "Even if the requested documents in defendants' personnel files are protected by defendants' privacy right, that right may, nevertheless, be invaded for litigation purposes." *Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 604 (C.D. Cal. 1995). The importance of the information to plaintiff's sexual harassment claims outweighs any privacy interest the alleged harasser may have. *Id.* at 605. ("Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes." *Guz v. Bechtel Nat. Inc.*, 24 Cal.4th 317, 354 (2007).)

Because the information sought is regarding complaints, investigations, and cause for termination, the special interrogatories do not seek irrelevant information such as financial, medical, family, or insurance information. To the extent that information is deemed confidential, there is already a stipulated protective order in place (entered September 28, 2020) that the parties can utilize.

2. *Monetary Sanctions*: Plaintiff seeks a monetary sanction in the amount of \$8,873.65. CCP § 2030.300(d) provides that the court shall impose a monetary sanction against the party who unsuccessfully opposes a motion to compel further responses to interrogatories, unless it finds that the party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. "The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." CCP § 2023.030(a).

O'Reilly says the request for a monetary sanction is procedurally defective, though it is not clear how O'Reilly thinks the request is defective. O'Reilly does say the party must comply with the notice provisions of CCP § 2030.030. That section only provides that the court may award a sanction "after notice to any affected party, person, or attorney, and after opportunity for hearing." CCP § 2023.040 is more specific: "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of

sanction sought.” The notice adequately identifies the party against whom sanction is sought by seeking recovery of fees and costs because “it is clear there is no substantial justification for defendant to refuse to provide information.” The only defendant identified in the motion is O’Reilly.

O’Reilly unsuccessfully opposed the motion. The court does not find that the opposition was substantially justified or that other circumstances make the imposition of the sanction unjust.

Plaintiff wants to be compensated for the time her counsel spent reviewing discovery responses, meeting and conferring with opposing counsel, reviewing and researching authorities, drafting the motion and separate statement, drafting a reply brief and appearing at the hearing. The meeting and conferring efforts lasted approximately two months. Counsel’s hourly rate is \$300. Counsel says she spent “over ten hours” in meeting and conferring, “over six hours” drafting the motion and separate statement, and “over four hours” drafting the reply and appearing. That is “over 20 hours.” Another lawyer, charging \$700 per hour, says he has and will “spend over 4 hours reviewing the issues presented by this motion, drafting meet and confer emails, reviewing the authorities at issue, finalizing the motions presented to the Court and arguing the motions at the time of hearing.” The two lawyers combine to request \$8,800 in fees. Plaintiff also seeks the \$73.65 in costs incurred for filing the motion.

While the court encourages meeting and conferring, there comes a point when the impasse is clear and further efforts serve only to increase the sanction. Also, the lengthy meet and confer letter addresses SIs that are not the subject of the motion. When meet and confer efforts resolve discovery disputes, neither party is entitled to fees related to the resolved disputes. There is some duplication of effort among the two attorneys and only one need appear at the hearing. The court will award a monetary sanction in the amount of \$3,673.65.

3. Order: The court grants plaintiff Rosalva Carachure’s motion to compel further responses to special interrogatories and orders defendant O’Reilly Auto Enterprises, LLC, to provide further responses to special interrogatories ## 20, 21, 40, 41, 44, and 45, on or before June 25, 2020. Defendant O’Reilly Auto Enterprises, LLC, shall pay a monetary sanction to plaintiff Rosalva Carachure in the amount of \$3,673.65 on or before June 25, 2020.

Motion to Compel Further Responses and Production of Documents:

Plaintiff moves to compel O’Reilly to provide further written responses and produce all responsive records to demands for production (“DFP”) ## 37, 74-83, and 85. Plaintiff requests a monetary sanction in the amount of \$5,573.65. O’Reilly opposes the motion.

1. The Demands for Production:

a. DFP #37: Plaintiff seeks O’Reilly’s employee handbook for the last five years. (O’Reilly calls them “team member handbooks.”) O’Reilly objects that the demand

seeks irrelevant documents. O'Reilly says the demand should be limited to the time of plaintiff's employment. O'Reilly says it has produced portions of the handbook related to plaintiff's claims. O'Reilly considers the handbook proprietary information.

Plaintiff does not respond to the timing objection. It does not seem the employee handbook for periods before plaintiff's employment bear any relationship to admissible evidence. The demand should be limited to the time plaintiff began employment to the time Silva left employment. The court does not know the precise latter date. The demand will be limited to all employee handbooks in effect from May 31, 2016, to December 31, 2019.

O'Reilly says it has provided excerpts from the handbook that it deems relevant to plaintiff's claims. It has also provided a table of contents so plaintiff can determine if anything relevant was left out. A party cannot unilaterally decide what is relevant. The table of contents may or may not adequately describe all that is in a book. Plaintiff need not simply accept O'Reilly's determination of relevance. She should be able to look for herself. Plaintiff and Silva were employees and were bound by the terms of the handbook, as was O'Reilly. The court finds the entire handbook is discoverable.

O'Reilly objects that the handbook is proprietary. But its contents were presumably already disclosed to plaintiff and Silva. And there is a stipulated protective order in effect in this case that O'Reilly can invoke to protect any proprietary information beyond the parties, their counsel, and others designated in the protective order.

The court will order O'Reilly to provide a further response to DFP #37 stating that it will produce, in their entirety, all employee or team member handbooks in effect from May 31, 2016, to December 31, 2019, and then shall produce those handbooks.

b. DFP ##74, 75, 76, 77, 81, and 82: Plaintiff seeks all documents related to complaints about Silva.

DFP ##79 and 80: Plaintiff seeks all documents related to investigations of Silva.

O'Reilly objected on grounds of relevance and privacy and responded that there were no complaints during plaintiff's tenure with the company. The relevance and privacy objections to these demands are the same as for the interrogatories discussed above and the analysis of those objections is applicable here as well. For the same reasons, the court overrules the objections and orders O'Reilly to provide further responses to DFP ##74, 75, 76, 77, 79, 80, 81, and 82, and produce all documents described in the demands.

c. DFP #83: Plaintiff seeks Silva's personnel file. Plaintiff agreed to narrow the scope of the demand to documents specifically pertaining to Silva's termination, performance, disciplinary records, and his job application. O'Reilly did produce the job application, redacted as agreed between counsel.

DFP #85: Plaintiff seeks all disciplinary records concerning Silva. This request presumably covers disciplinary records that, for some reason, are not in Silva's personnel file.

O'Reilly objected on relevancy and privacy grounds. For the same reasons discussed above, the court orders O'Reilly to provide a further response to DFP #83, as limited to documents specifically pertaining to defendant Silva's termination, performance, disciplinary records, and his job application, and produce the limited personnel file; and provide a further response to DFP #85 and produce all documents described in DFP #85.

3. *Monetary Sanction*: The provisions of CCP § 2031.310(h) relating to monetary sanctions with respect to inspection demands is substantively identical to CCP § 2030.300(d) with respect to interrogatories. O'Reilly unsuccessfully opposed the motion. The court does not find that the opposition was substantially justified or that other circumstances make the imposition of the sanction unjust.

The same two lawyers purport to have spent only one less hour making essentially the same arguments and preparing the single meet and confer letter that covers both SIs and DFPs. The lengthy meet and confer letter addresses DFPs that are not the subject of the motion. When meet and confer efforts resolve discovery disputes, neither party is entitled to fees related to the resolved disputes. There is some duplication of effort among the two attorneys and only one need appear at the hearing. The court will award a monetary sanction in the amount of \$2,323.65.

4. *Order*: The court grants plaintiff Rosalva Carachure's motion to compel further responses to demands for production of documents and orders defendant O'Reilly Auto Enterprises, LLC, to, on or before June 25, 2020: 1) provide a further response to Demand for Production ("DFP") #37 stating that it will produce, in their entirety, all employee or team member handbooks in effect from May 31, 2016, to December 31, 2019, and then shall produce those handbooks; 2) provide further responses to DFP ##74, 75, 76, 77, 79, 80, 81, and 82, and produce all documents described in those demands; 3) provide a further response to DFP #83, as limited to documents specifically pertaining to defendant Diego Silva's termination, performance, disciplinary records, and his job application, and produce the limited personnel file; and 4) provide a further response to DFP #85 and produce all documents described in DFP #85. Defendant O'Reilly Auto Enterprises, LLC, shall pay a monetary sanction to plaintiff Rosalva Carachure in the amount of \$2,323.65 on or before June 25, 2020.