IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Complex Law and Motion Calendar
Judge: HONORABLE V. RAYMOND SWOPE
Department 23
400 County Center, Redwood City
Courtroom 8A

Monday, May 20, 2024

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. **EMAIL Dept23@Sanmateocourt.org BEFORE 4:00 P.M.** CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.

2. **YOU MUST CALL (650) 261-5123 BEFORE 4:00 P.M.** with the case name, number and the name of the party contesting.

AND

3. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

Appearances by Zoom are highly encouraged.

Zoom Video/Computer Audio Information:

https://sanmateocourt.zoomgov.com/

Meeting ID: 160 045 1177
Password: 654598

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case

3:00
LINE:1

21-CIV-06029 JOHN SCHOLZ, III VS UNITED AIRLINES, INC.

JOHN R. SCHOLZ	JANE C. MARANI
UNITED AIRLINES, INC.	AMANDA C. SOMMERFELD

MOTION TO COMPEL FURTHER DISCOVERY RESPONSES, FURTHER PRODUCTION OF DOCUMENTS, RELIEF FROM THE STAY ON THIRD-PARTY SUBPOENAS, AND FOR SANCTIONS BY PLAINTIFFS JOHN R. SCHOLZ, III AND KEVIN E. BYBEE
TENTATIVE RULING:

Plaintiffs John R. Scholz and Kevin E. Bybee's Motion to Compel is GRANTED in part and DENIED in part.

A. Scope of Phase 1 discovery

Because United Airlines alleges that Plaintiffs' state-law claims are preempted by federal law, Phase 1 of discovery in this case has been accordingly tailored to answer the following three questions: (1) whether United Airlines' sick leave plan was governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), and does not fit into any ERISA exemption; (2) whether the sick leave plan is an ERISA-exempted payroll practice; and (3) whether the sick leave plan is funded by a sick leave trust separate from United Airlines' general assets.

1. Legislative purpose of ERISA

United Airlines cites Supreme Court case law in support of the proposition that ERISA was primarily designed to streamline the administration of benefits. (Ingersoll-Rand Co. v. McClendon (1990) 498 U.S. 133, 142.) First, this is true insofar as it is designed to benefit employees. The worry of the Supreme Court was that "inefficiencies created could work to the detriment of plan beneficiaries," not necessarily employers. (Ibid.) Second, the Supreme Court has repeatedly reiterated that the legislative purpose of ERISA is to promote the interests of employees and their beneficiaries by protecting welfare benefit plans. (Id. at 137 (quoting Shaw v. Delta Air Lines, Inc. (1983) 463 U.S. 85, 90); see also Massachusetts v. Morash (1989) 490 U.S. 107, 112; Fort Halifax Packing Co. v. Coyne (1987) 483 U.S. 1, 15.)

2. Relevant statutory provisions of ERISA

ERISA protects "employee benefit plans," which is defined as an "employee welfare benefit plan," or "employee pension benefit plan," or both. 29 U.S.C. § 1002(3). To elaborate, an "employee welfare benefit plan" is defined as any "plan, fund, or program … established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, … medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, [or] disability…." (29 U.S.C. § 1002(1).)

"Employee organizations" include labor unions and "employees' beneficiary associations." 29 U.S.C. § 1002, subd. (4). While ERISA does not define what an employees' beneficiary association is, the Department of Labor has clarified this term by way of issuing advisory opinions. Using a definition of "employees' beneficiary association" identical to the one found in the Welfare and Pension Plans Disclosure Act, an "employees' beneficiary association" must meet four criteria: "(1) membership is conditioned on employment status—for example, membership is limited to employees of a certain employer or members of one union; (2) the association has a formal organization, with officers, by-laws or other indications of formality; (3) the association generally does not deal with employers (as distinguished from organizations described in the first part of the definition of 'employee organization'); and, (4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.") Dept. of Labor Advisory Opinion 2015-01A (Oct. 19, 2015); see also Dept. of Labor Advisory Opinion 1992-19A (Sept. 30, 1992).)

However, employee welfare benefit plans do not encompass the "[p]ayment of compensation, out of the employer's general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons," or the "[p]ayment of compensation, out of the employer's general assets, on account of periods of time during which the employee, although physically and mentally able to perform his or her duties and not absent for medical reasons … performs no duties …." (29 C.F.R. § 2510.3-1, subd. (b)(2)-(3); see also Massachusetts v. Morash (1989) 490 U.S. 107, 117-118.) In addition to creating a separate fund, that separate fund must also be liable for paying the benefits. (Alaska Airlines, Inc. v. Oregon Bureau of Labor (9th Cir. 1997) 122 F.3d 812, 813.) In a situation where the employer paid sick leave benefits directly to employees and then sought reimbursement from the trust, the Ninth Circuit held that such an arrangement was not ERISA-compliant. (Id. at 813-814.) Furthermore, the court also found that in such situations, employees were depending on the financial solvency of the employer as

opposed to the fund, and therefore the reimbursement scheme more closely resembled an unfunded payment as opposed to ERISA trust fund payment. (Id. at 814.)

However, even if the funds to pay employee benefits are held in an entirely separate trust, that does not necessarily mean that the scheme should necessarily be deemed to be ERISA-compliant. The Department of Labor has held that a scheme whereby an employer regularly made irreversible contributions of funds to a non-interest-bearing account to pay vacation leave, and that trust made direct payments to employees as vacation pay became due, was not necessarily covered by ERISA. (Dept. of Labor Advisory Opinion 2004-08A (Jul. 2, 2004).) While the creation of a separate account to pay benefits subjects a single employer to ERISA's regulatory provisions, it does not necessarily mean that the scheme itself would receive ERISA preemption. (Ibid. (citing Massachusetts v. Morash (1989) 490 U.S. 107, 114).) Instead, the Department of Labor put forth a test to evaluate whether such an arrangement was an ERISA employee benefit plan: (1) whether the trust has the direct legal obligation to pay benefits under the plan; (2) whether there is a contribution obligation enforceable against the employer; and (3) whether contributions are actuarially determined, established through collective bargaining, or otherwise bear a relationship to the plans accruing liability. Ibid. Lastly, the Department of Labor stated that the fact that the trust documents may be read to impose a legal obligation upon the employer to make contributions does not serve to change the fundamental nature of the trust as "mere pass-through vehicle" or result in the trust "constituting a separate fund that provides genuine protections for the … benefits that accrue under the plan each year." Ibid.

3. How United Airlines disburses sick leave pay

According to the Department of Labor, this Court ought to examine the schematics of United Airlines' sick leave plan to determine whether it is an ERISA employee benefit plan. As stated by both parties, United Airlines disburses sick leave pay through a voluntary employees' beneficiary association ("VEBA") trust. Plaintiffs contend that United Airlines' VEBA trust may not comport with all provisions of the Internal Revenue Code section 501(c)(9), and therefore it is entitled to discovery on this matter. They cite a portion of section 501(c)(9) that states an employee beneficiary association is no longer voluntary if "employees do not incur a detriment (for example, in the form of deductions from pay) as the result of membership in the association." (26 C.F.R. § 1.501(c)(9)-2, subd. (c)(2).) Meanwhile, United Airlines contends that the propounded discovery thus far contains a letter from the Internal Revenue Service stating that its trust satisfies the provisions of section 501(c)(9), and therefore its tax status proves the validity of its ERISA preemption arguments.

Neither argument is availing. "The term voluntary employees' beneficiary association in section 501(c)(9) of the Internal Revenue Code is not necessarily coextensive with the term employees' beneficiary association as used in section 3(4) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. [§] 1002(4), and the requirements which an organization must meet to be an employees' beneficiary association within the meaning of section 3(4) of ERISA are not necessarily identical to the requirements that an organization must meet in order to be a voluntary employees' beneficiary association within the meaning of section 501(c)(9) of the Code." 26 C.F.R. § 1.501(c)(9)-7. As such, inquiry into the VEBA trust's tax status is irrelevant insofar as it goes to proving whether the VEBA trust comports with section 501(c)(9). If the VEBA trust does not comport with section 501(c)(9), that means that the trust should not be tax-exempt, not that it disqualifies the entire sick leave plan from ERISA protections. What is relevant is whether the VEBA trust comports with the test that the Department of Labor set forth.

B. Legal standard for motion to compel

The Code of Civil Procedure sets forth liberal standards allowing for discovery regarding any nonprivileged matter that is relevant to the "subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Code Civ. Proc., § 2017.010. The scope of discovery is broad in order to remove surprises at trial. (Puerto v. Superior Ct. (2008) 158 Cal.App.4th 1242, 1249.) Consequently, discovery statutes are meant to be construed liberally to uphold the right to discovery wherever possible. (Ibid. (citing Greyhound Corp. v. Superior Ct. (1961) 56 Cal.2d 355, 377–378; Emerson Electric Co. v. Superior Ct. (1997) 16 Cal.4th 1101, 1107–1108).) For the purposes of evaluating the claims made in the instant motions before the Court, this liberal standard will be narrowed down to subject matter that is relevant to Phase 1 discovery.

A party may move for an order compelling further disclosure if it finds that the extant responses are evasive, incomplete, or inadequate. (Code Civ. Proc., § 2030.300.) A party may also move for an order compelling further disclosure if an objection is without merit or too general. Ibid. The party opposing the motion to compel bears the burden of showing that discovery should be prohibited and explaining its objections. (Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants (2007) 148 Cal.App.4th 360, 403–404.)

If the responding party objects to a written discovery request, then the responding party must set forth the specific grounds for that objection. (Code Civ. Proc., §§ 2030.240; 2031.240.) If the written discovery request that is being objected to is a request for production, then the

responding party must: (1) identify with particularity the item that is being withheld; (2) set for the extent of and the specific basis for making that objection; and (3) provide sufficient factual information for other parties to evaluate the merits of that claim if an objection is made based on privilege or protected work product, including a privilege log if necessary. (Code Civ. Proc., § 2031.240(b).) Otherwise, responses to a request for production must contain a statement asserting whether the responding party is complying in part or whole to the request, and that all documents in possession or control of the responding party will be included in that production. (Code Civ. Proc., § 2031.220.) If the responding party is unable to produce responsive documents after a diligent search and reasonable inquiry, then the responding party must state the basis for their inability to respond with the requested documents, including but not limited to: (1) destruction; (2) nonexistence; (3) misplacement; (4) theft; and/or (5) loss of custody. (Code Civ. Proc., § 2031.230.) In addition, the responding party must set forth the name and address of any person or organization who is believed to have custody or control over the requested documents. (Ibid.)

C. Analysis

Plaintiffs seek additional responses from United Airlines to the following discovery requests: (1) Special Interrogatories, Set One ("SROGs, Set One"), Nos. 4 through 12, 14 through 20, and 22; (2) Request for Production of Documents, Set One ("RFPs, Set One"), Nos. 1 through 3, 6, and 8 through 24; and (3) Request for Production of Documents, Set Two ("RFPs, Set Two"), Nos. 1 through 3, 5 through 24, and 26 through 37.

United Airlines' arguments that such production is beyond the scope of Phase 1 discovery is unavailing, because the production of such documents is required to prove whether United Airlines' ERISA defense has any merit. Neither Plaintiffs nor this Court are obliged to accept United Airlines' self-serving statements that further production is unnecessary because the ERISA defense is valid. On the contrary, United Airlines is obliged to produce documents to prove the validity of their ERISA preemption defense, and claiming otherwise suggests that the preemption defense is not actually valid. Furthermore, United Airlines' arguments that Plaintiffs cite no relevant case law or statutes in their motion to compel is clearly unavailing, as Plaintiffs cite a wealth of authority in their moving papers and reply. Such arguments make it appear as if United Airlines' briefs are, in the words of William Shakespeare, replete with arguments "full of sound and fury, signifying nothing."

The test set forth by the Department of Labor to determine whether a certain benefit scheme is an ERISA employee welfare benefit plan is: (1) whether the trust has the direct legal obligation to pay benefits under the plan; (2) whether there is a contribution obligation enforceable

against the employer; and (3) whether contributions are actuarially determined, established through collective bargaining, or otherwise bear a relationship to the plans accruing liability. (Dept. of Labor Advisory Opinion 2004-08A (Jul. 2, 2004).) Accordingly, this Court should evaluate the discovery requests on the basis of whether the request is calculated to provide either admissible evidence or lead to admissible evidence that can answer the aforementioned questions.

Plaintiffs contend that information connected to an investigation as to whether United Airlines' sick leave plan comports with San Francisco's minimum compensation ordinance is relevant because United Airlines had attempted to insert an ERISA preemption defense is relevant. However, it is unclear how having such information will contribute to this Court's ruling using the Department of Labor test set forth above. As such, this Court holds that those requests are irrelevant for the purposes of Phase 1 discovery. A number of Plaintiffs' discovery requests to the Union contain a combination of permissible requests and impermissible requests, e.g., "ALL DOCUMENTS RELATING TO UNITED AIRLINES' policies, procedures, OR practices regarding paid sick leave for TECHNICIAN employees during the RELEVANT INJUNCTION PERIOD, including but not limited to employee handbooks, policy manuals, policy updates, memoranda, OR other items including those bearing a title in whole OR in part of 'California Kin Care Policy.'" Plaintiffs' counsel shall review and revise the subpoenas to conform with this Order.

After reviewing the discovery requests, this Court finds that there is good cause to compel United Airlines to respond to many of Plaintiffs' discovery requests. From SROGs, Set One, United Airlines is ordered to respond to interrogatories numbered 4 through 9, and 14 through 20. From RFPs, Set One, United Airlines is ordered to respond to requests for production numbered 1 through 3, 6, 8 through 9, 11 through 14, 16, and 20 through 24. From RFPs, Set Two, United Airlines is ordered to respond to requests for production numbered 1 through 3, 5 through 24, and 26 through 36. This court finds that the other discovery requests not described above do not appear on their face to be sufficiently calculated to lead to admissible evidence that is relevant to determine whether United Airlines' ERISA preemption defense has merit.

The privilege log accompanying United Airlines' current discovery production identifies documents based on whether they are training materials, correspondence, draft pleadings or discovery responses, grievance documents, employee inquiries, or other documents, as well as the sending and receiving parties. However, for some of these documents, it is not clear whether the document is privileged or not. For example, document no. 52 is described as "Sick Leave Trust document included as attachment to correspondence between United legal counsel L. Lounsbury, B. Coleman, and S. Pulcanio and United HR employee C. Marashlian regarding legal advice relating to kin care policy" and covered by attorney-client confidentiality. While the correspondence and legal

advice clearly appears to be non-discoverable, it is not clear whether the attached document to such legal advice in and of itself constitutes an attorney-client communication. (Mariani Decl., filed Feb. 6, 2024, Ex. 7.) This Court holds that United Airlines must provide a detailed privilege log for its responses compelled by this Court and must take care to specify the reason as to why any withheld documents are privileged or otherwise protected.

D. Request for monetary sanctions

The Court must impose a monetary sanction against a party who unsuccessfully makes or opposes a motion to compel further disclosure, unless the Court finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. Code Civ. Proc., § 2031.310. Substantial justification is defined as "well-grounded in both law and fact." (City of Los Angeles v. Superior Ct. (2017) 9 Cal.App.5th 272, 291 (quoting Doe v. United States Swimming, Inc. (2011) 200 Cal.App.4th 1424, 1434).)

As stated above, a number of United Airlines' arguments were unavailing because United Airlines argued against compelling production or in favor of quashing discovery requests on the basis that such requests went beyond the scope of Phase 1 discovery. In doing so, United Airlines mischaracterized a number of discovery requests as "requesting confidential employee records," as well as a number of Plaintiffs' legal arguments. While some of United Airlines' arguments regarding the scope of Phase 1 discovery with regard to a few of the discovery requests are not without merit, the large majority of them were indeed without merit. It is United Airlines' burden of proof to show that its sick leave plan does qualify as an ERISA employee welfare benefit plan. Neither the Plaintiffs nor this Court are obliged to accept United Airlines' self-serving statements that the preemption defense is presumptively valid.

All parties are hereby cautioned to adhere to the Code of Civil Procedure and the Rules of Court going forward in this litigation. Furthermore, United Airlines is cautioned that further delay in adhering to the ruling in this Order or any other valid discovery request can and will lead to issue and evidentiary sanctions, including but not limited to striking all the ERISA-related affirmative defenses from United Airlines' answer.

Plaintiffs' counsel requests $7,775 in monetary sanctions. After reviewing the papers and the record, this Court finds that United Airlines was arguing without substantial justification in approximately 80% of these requests. Therefore, this Court in its discretion levies a $6,220 sanction against United Airlines for misusing the discovery process and improperly opposing a motion to compel.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiffs shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

3:00
LINE:2

21-CIV-06029 JOHN SCHOLZ, III VS UNITED AIRLINES, INC.

JOHN R. SCHOLZ	JANE C. MARANI
UNITED AIRLINES, INC.	AMANDA C. SOMMERFELD

MOTION TO QUASH OR MODIFY THIRD-PARTY SUBPOENAS BY DEFENDANT UNITED AIRLINES, INC.
TENTATIVE RULING:

Defendant United Airlines, Inc.'s Motion to Quash is GRANTED in part and DENIED in part.

A. Legal standard to quash discovery request propounded to non-party

Plaintiffs issued subpoenas to produce documents pursuant to Code of Civil Procedure section 2016 et seq. These Code of Civil Procedure provisions govern both party and nonparty discovery and authorizes the imposition of sanctions for noncompliance and discovery abuses. These provisions also specify the process for obtaining discovery from a nonparty within the state through the production of business records, such as the subpoenas at issue here. See Code Civ. Proc., §§ 2020.010, 2020.020.

A trial court has broad authority pursuant to section 1987.1 to "make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders." Code Civ. Proc., § 1987.1. Further, "the court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive." Code Civ. Proc., § 1987.2, subd. (a); see also Code Civ. Proc., §§ 2023.010, 2023.030 (listing misuses of the discovery process and authorizing sanctions).

1. Relevant statutory provisions of ERISA

ERISA protects "employee benefit plans," which is defined as an "employee welfare benefit plan," or "employee pension benefit plan," or both. 29 U.S.C. § 1002(3). To elaborate, an "employee welfare benefit plan" is

defined as any "plan, fund, or program … established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, … medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, [or] disability…." (29 U.S.C. § 1002(1).)

"Employee organizations" include labor unions and "employees' beneficiary associations." 29 U.S.C. § 1002, subd. (4). While ERISA does not define what an employees' beneficiary association is, the Department of Labor has clarified this term by way of issuing advisory opinions. Using a definition of "employees' beneficiary association" identical to the one found in the Welfare and Pension Plans Disclosure Act, an "employees' beneficiary association" must meet four criteria: "(1) membership is conditioned on employment status—for example, membership is limited to employees of a certain employer or members of one union; (2) the association has a formal organization, with officers, by-laws or other indications of formality; (3) the association generally does not deal with employers (as distinguished from organizations described in the first part of the definition of 'employee organization'); and, (4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.") Dept. of Labor Advisory Opinion 2015-01A (Oct. 19, 2015); see also Dept. of Labor Advisory Opinion 1992-19A (Sept. 30, 1992).)

However, employee welfare benefit plans do not encompass the "[p]ayment of compensation, out of the employer's general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons," or the "[p]ayment of compensation, out of the employer's general assets, on account of periods of time during which the employee, although physically and mentally able to perform his or her duties and not absent for medical reasons … performs no duties …." (29 C.F.R. § 2510.3-1, subd. (b)(2)-(3); see also Massachusetts v. Morash (1989) 490 U.S. 107, 117-118.) In addition to creating a separate fund, that separate fund must also be liable for paying the benefits. (Alaska Airlines, Inc. v. Oregon Bureau of Labor (9th Cir. 1997) 122 F.3d 812, 813.) In a situation where the employer paid sick leave benefits directly to employees and then sought reimbursement from the trust, the Ninth Circuit held that such an arrangement was not ERISA-compliant. (Id. at 813-814.) Furthermore, the court also found that in such situations, employees were depending on the financial solvency of the employer as opposed to the fund, and therefore the reimbursement scheme more closely resembled an unfunded payment as opposed to ERISA trust fund payment. (Id. at 814.)

However, even if the funds to pay employee benefits are held in an entirely separate trust, that does not necessarily mean that the scheme

should necessarily be deemed to be ERISA-compliant. The Department of Labor has held that a scheme whereby an employer regularly made irreversible contributions of funds to a non-interest-bearing account to pay vacation leave, and that trust made direct payments to employees as vacation pay became due, was not necessarily covered by ERISA. (Dept. of Labor Advisory Opinion 2004-08A (Jul. 2, 2004).) While the creation of a separate account to pay benefits subjects a single employer to ERISA's regulatory provisions, it does not necessarily mean that the scheme itself would receive ERISA preemption. (Ibid. (citing Massachusetts v. Morash (1989) 490 U.S. 107, 114).) Instead, the Department of Labor put forth a test to evaluate whether such an arrangement was an ERISA employee benefit plan: (1) whether the trust has the direct legal obligation to pay benefits under the plan; (2) whether there is a contribution obligation enforceable against the employer; and (3) whether contributions are actuarially determined, established through collective bargaining, or otherwise bear a relationship to the plans accruing liability. Ibid. Lastly, the Department of Labor stated that the fact that the trust documents may be read to impose a legal obligation upon the employer to make contributions does not serve to change the fundamental nature of the trust as "mere pass-through vehicle" or result in the trust "constituting a separate fund that provides genuine protections for the … benefits that accrue under the plan each year." Ibid.

B. Analysis

United Airlines seeks to quash the subpoenas issued by Plaintiffs to Teamsters Local Union 856, Teamsters Local Union 986, and the International Brotherhood of Teamsters (collectively, "Union").

As a preliminary matter, reading through Plaintiffs' requests to the Union does not show that Plaintiffs are requesting details about employees' records such that a notice to consumer would be required. The subpoenas are primarily requesting documents pertaining to agreements entered between the Union and United Airlines, not confidential employment records.

The test set forth by the Department of Labor to determine whether a certain benefit scheme is an ERISA employee welfare benefit plan is: (1) whether the trust has the direct legal obligation to pay benefits under the plan; (2) whether there is a contribution obligation enforceable against the employer; and (3) whether contributions are actuarially determined, established through collective bargaining, or otherwise bear a relationship to the plans accruing liability. Dept. of Labor Advisory Opinion 2004-08A (Jul. 2, 2004). Accordingly, this Court should evaluate the discovery requests on the basis of whether the request is calculated to provide either admissible evidence or lead to admissible evidence that can answer the aforementioned questions.

Plaintiffs contend that information connected to an investigation as to whether United Airlines' sick leave plan comports with San Francisco's minimum compensation ordinance is relevant because United Airlines had attempted to insert an ERISA preemption defense is relevant. However, it is unclear how having such information will contribute to this Court's ruling using the Department of Labor test set forth above. As such, this Court holds that those requests are irrelevant for the purposes of Phase 1 discovery. A number of Plaintiffs' discovery requests to the Union contain a combination of permissible requests and impermissible requests, e.g., "ALL DOCUMENTS AND COMMUNICATIONS between YOU and ALL State of California officials PERTAINING TO YOUR UNION MEMBERS sick leave benefits, including but not limited to California Labor Code Section 233 ('kin care') policies, procedures, and any ERISA qualified plan." Plaintiffs' counsel should review and revise the subpoenas to conform with this Order.

The following requests for documents are allowed because they will likely produce admissible evidence or are reasonably calculated to lead to admissible evidence:

- ALL agreements PERTAINING TO sick leave policies and/or attendance policies entered into between YOU and UNITED.
- ALL Plan Documents, including ALL Summary Plan Descriptions, for YOUR UNION MEMBERS Health Reimbursement Account Plan and Retiree Health Account Plan (HRA/RHA VEBA) plan and trust.
- All DOCUMENTS AND COMMUNICATIONS between YOU and UNITED pertaining to YOUR UNION MEMBERS sick leave benefits.
- ALL DOCUMENTS AND COMMUNICATIONS between YOU and UNITED PERTAINING TO YOUR UNION MEMBERS use of sick leave being controlled by an ERISA qualified plan and trust, including but not limited to ALL DOCUMENTS AND COMMUNICATIONS PERTAINING TO any kin care benefits or rules controlled by an ERISA qualified plan or trust.
- ALL DOCUMENTS AND COMMUNICATIONS PERTAINING TO ALL agreements entered into by YOU PERTAINING TO YOUR UNION MEMBERS' Sick Leave Voluntary Employee Benefit Association ("VEBA"), including but not limited to ALL voting records and ALL membership lists.
- ALL agreements PERTAINING TO sick leave policies and/or attendance policies entered into between YOU and UNITED, including but not limited to those PERTAINING TO use of an ERISA qualified plan and trust to administer sick leave pursuant to Article 11 of YOUR UNION MEMBERS collective bargaining agreement in force during the PERIOD.
- ALL DOCUMENTS AND COMMUNICATIONS between YOU and UNITED PERTAINING TO YOUR UNION MEMBERS use of sick leave being controlled by an ERISA qualified plan and trust, including but not limited to ALL DOCUMENTS AND COMMUNICATIONS PERTAINING TO

any kin care benefits or rules controlled by an ERISA qualified plan or trust.

- ALL DOCUMENTS reports, records, supplementary reports, notes and memoranda, printed and/or otherwise, and/or accountings PERTAINING TO sick leave policies and/or procedures for YOUR UNION MEMBERS.
- All DOCUMENTS AND COMMUNICATIONS between YOU and UNITED pertaining to YOUR UNION MEMBERS use of sick leave for use of sick leave for family members, including but not limited to ALL DOCUMENTS AND COMMUNICATIONS PERTAINING TO any kin care benefits or rules.
- All DOCUMENTS AND COMMUNICATIONS PERTAINING TO ALL audits of YOUR UNION MEMBERS use, and designation, of sick leave, including ALL processes, agreements, and/or results from ALL such audits.

The following requests for documents are not be allowed because they are not reasonably calculated to lead to admissible evidence relevant for a summary determination on United Airlines' ERISA preemption defense:

- ALL DOCUMENTS reports, records, supplementary reports, notes and/or memoranda, printed and/or otherwise, and/or accountings PERTAINING TO attendance policies and/or procedures for YOUR UNON MEMBERS, including Attendance Points that were paused, assigned, reset, and/or removed during the PERIOD.
- All DOCUMENTS PERTAINING TO a complaint PERTAINING TO the use of sick leave for family member illness ("kin care") filed in Alameda County by YOU and/or on behalf of YOUR UNION MEMBERS.
- All DOCUMENTS PERTAINING TO ALL grievances PERTAINING TO designation of sick leave lodged by YOUR UNION MEMBERS against UNITED.
- All DOCUMENTS PERTAINING TO ALL grievances PERTAINING TO discipline for using sick leave lodged by YOUR UNION MEMBERS against UNITED.
- All DOCUMENTS PERTAINING TO the investigation of UNITED's sick leave and/or attendance policy compliance with San Francisco's Minimum Compensation Ordinance filed with the City and County of San Francisco, Office of Labor Standards Enforcement ("OLSE").
- All DOCUMENTS AND COMMUNICATIONS between YOU and UNITED pertaining to discipline of YOUR UNION MEMBERS use of sick leave.
- All DOCUMENTS AND COMMUNICATIONS PERTAINING TO ALL investigation notes, including those between YOU and City and County of San Francisco, Office of Labor Standards Enforcement ("OLSE"), including but not limited to Beverly Popek

PERTAINING TO the investigation of UNITED'S sick leave policy and/or attendance policy.

- o All DOCUMENTS AND COMMUNICATIONS PERTAINING TO ALL investigation notes, including those between YOU and City and County of San Francisco, Office of the City Attorney, including but not limited to the investigation of UNITED'S sick leave policy and/or attendance policy.
- o ALL DOCUMENTS AND COMMUNICATIONS PERTAINING TO ALL investigation notes, including those between YOU and ANY city, county, or other official PERTAINING TO ALL investigations of UNITED’S sick leave policy or attendance policy PERTAINING TO YOUR UNION MEMBERS.

In short, any document that pertains to the collective bargaining and implementation of the VEBA trust as the vehicle for sick leave pay disbursement is highly relevant, as that has direct bearing on whether United Airlines’ contributions towards the VEBA trust are collectively bargained or not. Documents related to the Union’s internal guidelines for sick leave policies and audits to enforce compliance with any collectively bargained benefit are relevant in showing whether United Airlines is complying with any contract that was meant to keep the VEBA trust ERISA-compliant or not. The rest of the requests are more likely to yield information that will be more beneficial to litigating the Plaintiffs’ state law claims rather than the ERISA preemption defense.

This Court GRANTS the motion to quash for the requests that will be unlikely to yield any information relevant to determining the ERISA preemption matters, and DENIES the motion to quash for the requests that are calculated to yield admissible evidence or information that will lead to admissible evidence.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the court's ruling for the court’s signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

3:00
LINE:3

22-CIV-01713 MICHELLE GRAYSON VS. MIDPEN PROPERTY MANAGEMENT, ET AL.

MICHELLE GRAYSON	DOUGLAS HAN
MIDPEN PROPERTY MANAGEMENT CORPORATION	DAVID I. KRONBLUH

MOTION TO BE RELIEVED AS COUNSEL OF DOUGLAS HAN
TENTATIVE RULING:

Matter withdrawn by counsel.

3:00
LINE:4

22-CIV-01713 MICHELLE GRAYSON VS. MIDPEN PROPERTY MANAGEMENT, ET AL.

MICHELLE GRAYSON	DOUGLAS HAN
MIDPEN PROPERTY MANAGEMENT CORPORATION	DAVID I. KRONBLUH

MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT BY PLAINTIFF MICHELLE GRAYSON
TENTATIVE RULING:

For the reasons stated below, Plaintiff Michelle Grayson's motion for leave to file a third amended complaint is GRANTED.

Judicial policy and the California Code of Civil Procedure favor the granting of amendments. (CCP § 473(a)(1); Nestle v. Santa Monica (1972) 6 Cal.3d 920, 939.) However, a judge can use its discretion to deny leave to amend if the party seeking amendment has been dilatory and if the delay has prejudiced the opposing party. "Prejudice exists where the amendment would result in a delay of trial, along with loss of critical evidence, added costs of preparation, increased burden of discovery, etc." (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, June 2023 Update) at § 6:656.)

"[A]mended pleadings may set forth entirely different claims, add new parties, seek a different or greater remedy, etc." (Id. at § 6:640.)

The substitution of Richell Hagy for Michelle Grayson as plaintiff and class representative does not cause prejudice to defendants. Although some of the details of Ms. Hagy's employment are distinct from those of Ms. Grayson, the relevant facts giving rise to the legal action are the same – both plaintiffs allegedly lacked the job duties that would characterize them as "exempt," therefore they were misclassified. (SAC, ¶ 19-20; Dec. ISO Motion, Exh. A, ¶18-20.)

There has been no loss of critical evidence, nor will there be an increased burden of discovery. Defendants sent initial discovery in the fall of 2023, which Plaintiff had only responded to with objections. (Dec. ISO Opposition, p. 2:15-16; p. 3:20-21.) Defendants had yet to depose Ms. Grayson and no trial date has been set. (Id. at p. 5:8-10.)

Additionally, the facts do not suggest that plaintiff's counsel delayed making this substitution despite knowledge of facts as defendants claim.

Plaintiff's counsel states that they lost contact with plaintiff Grayson in December 2023, and by January 2024, plaintiff's counsel reached out to defendants to inform them that they would be substituting in a new client. (Dec. ISO Motion, p. 3:6-12.) (See Higgins v. Del Faro (1981) 123 Cal.App.3d 558, 564: "A court, at any time before or after commencement of trial, may allow an amendment to a pleading in furtherance of justice. [] Where no prejudice is shown to the adverse party, the liberal rule of allowance prevails.")

As for the new causes of action, these similarly would not prejudice defendants. Five of the seven causes of action were raised as subsections of the primary cause of action in the first amended complaint and maintained in the second amended complaint. (FAC, ¶ 42-53; SAC, ¶ 39-53.) The other two stem from the same "incident," that is, from defendants' alleged mischaracterization of employees as exempt rather than non-exempt, and the associated labor law violations. (Dec. ISO Motion, Exh. A, ¶ 80-92.)

Therefore, defendants have not been prejudiced by an inability to prepare defenses. They have been put on notice as to the facts giving rise to the class action, as well as the causes of action. (See, Hutcheson v. Superior Court (2022) 74 Cal.App.5th 932, 940, holding: "To determine whether an amended complaint rests on the same general set of facts for purposes of the statute of limitations, the most important consideration is whether the original pleading gave the defendant adequate notice of the claim.")

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for plaintiff shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The court alerts the parties to revised Local Rule 3.403 (b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

3:00
LINE:5

22-CIV-03300 BRENNAN LAWSON VS. META PLATFORMS, INC., ET AL.

BRENNAN LAWSON	DUSTIN L. COLLIER
META PLATFORMS, INC.	ASHLEY SIMONSEN

MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT (PAGA) SETTLEMENT AGREEMENT BY PLAINTIFF BRENNAN LAWSON
TENTATIVE RULING:

HEARING REQUIRED.

Before the court is plaintiff Brennan Lawson's unopposed motion to approve the Private Attorney General Act (PAGA) settlement agreement between plaintiff and defendant Meta Platforms, Inc, filed January 3, 2024. Initially, the court notes the underlying action was stayed per this court's May 26, 2023 order. The parties reached settlement on plaintiff's PAGA claims on December 4, 2023. (Declaration of Dustin Collier, filed January 3, 2024. ex. A.) Thus, to properly request this court approve the PAGA settlement, the parties should have stipulated to and filed a formal request to lift the stay. They have not. In addition to this procedural defect, the court notes the moving papers filed are so sparse as to verge on inadequacy. With these observations in mind, the court rules as follows:

The Private Attorney General's Act, Labor Code sections 2698, et seq.

Plaintiff has not provided the court with proof that the requirements for an aggrieved employee to commence a civil action under Labor Code section 2698, et seq. have been satisfied. Although plaintiff asserts he provided written notice of defendant's labor code violations to the LWDA on March 3, 2022 and again on July 7, 2022, no proof of service upon the LWDA of either filing has been provided. (Labor Code § 2699.3, subd. (a); complaint filed August 12, 2022, ¶¶ 20-22.) Nor did counsel timely send a file-endorsed copy of the complaint with the court-assigned case number to the LWDA as is required under Labor Code section 2699, subdivision (l)(1). Upon its own review of the LWDA website the only document the court saw submitted was the proposed settlement agreement to the LWDA, filed by plaintiff's counsel in compliance with Labor Code section 2699, subdivision (l)(2) on or about January 2, 2024. (See LWDA-

CM-871418-22.) Accordingly, plaintiff's motion is DENIED WITHOUT PREJUDICE.

The court would be inclined to grant plaintiff's motion if plaintiff's counsel files a declaration: (1) appending appropriate documentation confirming and demonstrating the requirements of Labor Code section 2699.3, subdivision (a) have been satisfied; (2) provides evidence for the court to determine that the settlement was not collusive and was reached in arms-length negotiations; (3) provides a CV or otherwise describe of counsel's background and expertise in this area of practice; and (4) describe any investigation performed in order for the court to determine the settlement reached was fair, just and reasonable.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for plaintiff shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. When submitting a proposed order, plaintiff should append the Settlement Agreement to the Order. The court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

POSTED: 3:00 PM