

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 10/05/2020 EVENT TIME: 08:20:00 AM DEPT.: 20
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2019-00524426-CU-OE-VTA
CASE TITLE: VAGHAR VS. COSTCO WHOLESALE CORPORATION

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion to Compel - Defendant to Provide Further Responses to Request for Production of Documents Set
CAUSAL DOCUMENT/DATE FILED: Motion to Compel, 09/04/2020

Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Lori Jacques at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

COVID-19 NOTICE: Pursuant to the administrative orders of the Presiding Judge and the Civil Reopening Plan, effective June 10, 2020, and until further notice, all attorneys and self-represented parties in law and motion hearings must appear telephonically via Court Call; there shall be no personal appearances in the courtroom without the prior express approval of Judge Guasco. You may contact Court Call as follows: www.courtcall.com or call 888-882-6878.

The following is the Court's tentative decision concerning the motion of plaintiff, Niloofar Vaghar ("Vaghar"), to compel the further responses of defendants, Costco Wholesale Corporation ("Costco"), Barry Meizel ("Meizel"), and Rudy Garcia ("Garcia") (alternatively and collectively, "defendants")), to Request for Production of Documents, Set One:

Meet & Confer

The Court is satisfied that Vaghar satisfied the requirement of meeting and conferring in good faith with defendants in an effort to resolve the discovery dispute which is the subject of this motion.

Request for Judicial Notice

The Court DENIES Vaghar's request for judicial notice of the complaints in two other actions against Costco. With rare exceptions not present here, a party may not submit new evidentiary material in a reply to an opposition to the motion. The Court does not consider this new evidentiary material in deciding this motion.

Ruling on Motion

The Court DENIES the motion WITHOUT PREJUDICE for the following reasons:

(1) The discovery dispute here involves Vaghar's right to obtain discovery of "me too" evidence in this employment discrimination case (See *Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 129 Cal.Rptr.3d 384; *Johnson v. United Cerebral Palsy/Spastic Children's Foundation of Los Angeles and Ventura Counties*, *supra*, 173 Cal.App.4th 740, 93 Cal.Rptr.3d 198.), on the one hand, and the privacy interests of Costco employees who may have made discrimination complaints, on the other (See Cal. Const., art. I, § 1; 84 *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35, 26

Cal.Rptr.2d 834, 865 P.2d 633.).

(2) The requests at issue here – numbers 24-28 – target other employee discrimination and retaliation complaints against Costco. As a general matter, such complaints have discovery relevance – it is reasonably calculated to lead to the discovery of admissible evidence, and it would aid in case evaluation.

(3) The Court OVERRULES defendants' objections on the ground that some of the information sought – that pertaining to complaining employees Krivitsky and Erem – is reasonably accessible to Vaghar. Costco's internal documentation of employee complaints of discrimination and retaliation are not public records equally available to Vaghar for the simple reason put forward by defendants: it is employee information subject to the right to privacy. To the extent that employee complaints are subject to a confidential internal reporting and investigation protocol – as is the case in virtually all large business organizations – that privacy interest is compounded. Such information can only be obtained from Costco in the manner employed by Vaghar.

(4) The Court OVERRULES defendants' objections on the grounds of overbreadth. This is not a favored objection. There is no showing by defendants of undue burden or expense in providing relevant "me too" evidence here, if any exists.

(5) The Court DENIES the motion to compel further responses to request numbers 24-25 WITHOUT PREJUDICE. These requests for any and all employee complaints of gender, age, national origin/ancestry, religion, and retaliation involving any and all supervisors and employees (not exclusively those involved in this action), for the entire period of Vaghar's employee are not supported by a showing of good cause. Good cause is something more than potential discovery relevance, especially to overcome the privacy rights of Costco's many employees. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 554-55, 220 Cal.Rptr.3d 472, 398 P.3d 69.) Here, the sweep of these two requests is far wider than the information reasonably necessary to produce admissible "me too" evidence in this case. Vaghar has not demonstrated good cause for employee complaint information involving supervisors other than Meizel and Garcia. This ruling is without prejudice to a more narrowly tailored document demand which imposes less of an impact on the privacy rights of Costco employees.

(6) The Court DENIES the motion to compel further responses to request numbers 26-28 WITHOUT PREJUDICE. The Court OVERRULES all of Costco's objections to these requests, except for vagueness and ambiguity. Clearly, any and all employee complaints against Meizel and Garcia for conduct similar to that being alleged by Vaghar here, for the period of time Vaghar was employed by Costco, would be relevant and necessary "me too" evidence which overcomes an employee privacy objection. Unfortunately, each of these requests is limited in time to "the period of January 1, 2009." The Court believes this must be a clerical error. Neither party submitted a copy of the actual Request for Production of Documents, Set One. Instead, this temporal limitation is contained in both parties' Separate Statements. As presented to the Court, the time limitation for production of documents covering "the period of January 1, 2009" makes no sense and invites reasonable disputes about its scope. Thus, the Court finds these requests are vague and ambiguous. Accordingly, the Court's ruling is without prejudice to amended requests which provide a clear and unambiguous beginning and ending time definition of responsive documents.

(7) To avoid discovery disputes going forward, the Court wishes to make it clear that a plaintiff in an employment discrimination and retaliation case is entitled to reasonable discovery of "me too" evidence embracing the entire period of time the plaintiff was employed by the defendant. To the extent that a document demand embraces attorney/client privilege or work product material, it can be withheld and identified in a privilege log. Employee documents subject to the privacy privilege may be produced subject to a protective order. The parties can stipulate to a protective order or seek one from the Court.

Counsel for Vaghar shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached to and incorporated by reference in any such proposed order in lieu of copying same verbatim in the body of the document.