

At this stage of the pleadings, the Court finds that Plaintiff's allegations are sufficient. The authorities on which Defendants rely do not stand for the proposition that in the complaint, Plaintiff must identify the method by which the notice was provided. Accordingly, the motion is DENIED.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

The notice of motion does not provide notice of the Court's tentative ruling system, as required by Local Rule 1.06(A). Defendants' counsel is directed to contact Plaintiff's counsel forthwith and advise counsel of Local Rule 1.06 and the Court's tentative ruling procedure. If Defendants' counsel is unable to contact Plaintiff's counsel prior to hearing, Defendants' counsel shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(A).

The court notes that moving party has indicated the incorrect address in its notice of motion. The correct address for Department 54 of the Sacramento County Superior Court is 800 9<sup>th</sup> Street, Sacramento California 95814. Moving party shall notify responding party(ies) immediately.

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Item 11

2012-00134195-CU-OE

**Gilbert W Arrington vs. Capital Express Lines Inc**

Nature of Proceeding: Motion to Compel Special Interrogatories

Filed By: Shimoda, Galen T.

Plaintiffs' motion to compel Defendant Capital Express Lines, Inc. to provide further responses to Special Interrogatory No. 1 is ruled upon as follows.

Plaintiffs' request for judicial notice is granted.

Plaintiffs, on behalf of themselves and others similarly situated, allege that Defendant required them to perform work other than driving, for which Defendant failed to compensate.

Plaintiffs propounded Special Interrogatories on Defendant. Special Interrogatory No. 1 states "IDENTIFY each and every COVERED EMPLOYEE who worked for YOU during the COVERED PERIOD." "COVERED EMPLOYEE" is defined as "all individuals currently or formerly employed by Defendants within four (4) years prior to the filing of this complaint, up to and including the present date, who performed any work for YOU as a driver."

Defendant objected to the interrogatory on a number of grounds, including that it "seeks confidential personnel information pertaining to non-parties which is protected by the privacy privilege set forth in Article I, Section 1 of the California Constitution. (*Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4<sup>th</sup> 554.)"

The parties met and conferred. Defendant stated that it would not provide the information absent following the notice and opt-out procedure provided in *Belaire*. Plaintiffs offered to enter into a protective order, which Defendants rejected.

Plaintiffs move to compel the information, without the need for a notice and opt-out procedure, on the grounds that the putative class members retain only a minimal privacy interest in the information, there is no serious invasion of privacy given the proposed protective order, and that the balancing of the competing interests weighs heavily in Plaintiffs' favor. Plaintiffs argue that providing the information will enable them to contact percipient witnesses, which is necessary for them to marshal facts in support of class certification and presenting the case for trial.

In opposition, Defendant argues that putative class members have a reasonable expectation of privacy in their personal contact information when provided as a condition of employment. Defendant argues that in order to prevent the invasion of their privacy interest, advanced notice and an opportunity to opt-out is required. Defendant further argues that Plaintiffs' characterization that they seek information on "percipient witnesses" is not at issue because Special Interrogatory No. 1 seeks the identity of putative class members, not percipient witnesses.

Defendant relies on two cases, *Pioneer Electronics v. Superior Court* (2007) 40 Cal.4th 360 and *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554. In *Belaire*, plaintiffs sought "the names and contact information of all current and former" employees. (*Belaire, supra*, 149 Cal.App.4th 556.) The trial court granted the motion to compel, ordered disclosure of the employees' names "and adopted a proposed notice to those individuals that would have required them to object in writing in order to prevent information about them from being disclosed to the real parties in interest." (*Id.*) The court of appeal "conclude[d] that the trial court properly evaluated the rights and interest at stake, considered the alternative, balanced the competing interests, and permitted the disclosure of contact information . . . unless, following proper notice, they objected in writing to the disclosure." (*Id.* at 562.)

The Court agrees that the *Belaire* procedures are appropriate here. Plaintiffs' authorities do not require a different result. For example, in *Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242 where an opt-out notice was not required, plaintiff was seeking the identity of percipient witnesses pursuant to form interrogatory no. 12.1, not as is the case here with Plaintiffs' Special Interrogatory No. 1, where Plaintiffs seeks contact information specifically related to those employees that worked as "drivers" during the relevant time period (i.e. potential members of the class). As the court explained, distinguishing the use of an opt-out notice in *Pioneer* (and by inference, *Belaire-West Landscape*), "in *Pioneer*, the plaintiffs were looking for people who would want to participate in the lawsuit. As pursuing litigation is a voluntary activity, an opt-out letter that offered recipients the option of participating or declining to participate was appropriate. In contrast, a percipient witness's willingness to participate in civil discovery has never been considered relevant - witnesses may be compelled to appear and testify whether they want to or not." (*Id.* at 1251-1252.) And in *Crab Addison, Inc. v. Superior Court* (2008) 169 Cal.App.4th 958, the issue on appeal did not concern an opt-out notice but whether an "employee release . . . requir[ed] that the contact information be given greater protection and making an 'opt in' notice procedure proper." (*Id.* at 97.) Moreover, *Crab Addison* has recently been criticized in *In re Insurance Installment Fee Cases* (2012) 211 Cal.App.4th 1395, 1428 fn. 23 ["we decline to follow *Crab* to the extent it conflicts with our conclusion that the discovery of identifying information for potential class members in a putative class action requires notice to the potential class members and an opportunity to object to the disclosure."].) Moreover, the proposed protective order does not offer the protections outlined in

*Belaire.*

The motion to compel is GRANTED to the extent the *Belaire* notice procedures are followed. The Court need not address Defendant's remaining objections as these were not addressed in Defendant's opposition.

The Court declines Plaintiffs' request to order Defendant to pay the full cost of the opt-out procedure.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Although the notice of motion provided notice of the Court's tentative ruling system as required by Local Rule 1.06, the notice does not comply with the current rule. Moving counsel is directed to review the Local Rules, effective January 1, 2013.

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Item 12 **2012-00136272-CU-PN**

**Michael P Duncan vs. Law Office of Frans Wiete Ter Haar**

Nature of Proceeding: Motion to Strike Complaint

Filed By: Martucci, Michael L.

This matter is continued to 7/29/2013 at 09:00AM in this department.

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Item 13 **2012-00137472-CU-PA**

**Donald A Silva vs. Gabrielli Family LLC**

Nature of Proceeding: Motion for Attorney Fees

Filed By: Miller, Michael S.

Petitioners Donald A. Silva and Ana M. Silva's motion for award of attorneys' fees and costs pursuant to Civil Code 1717 and Civil Code 1033.5(a)(10) is UNOPPOSED and is GRANTED.

This is an action involving the correct method of calculating Common Area Maintenance Charges in the Vista Del Mar Village Shopping Center.

On March 25, 2013, the Court entered judgment confirming the Arbitrator's award in which Petitioners were the prevailing party. Paragraph 24 of the Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Vista Del Mar Village Shopping Center that the non-prevailing party shall reimburse the prevailing party for the "reasonable expenses of attorney fees and all costs and reimbursements incurred therein by the prevailing, including without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding."

Petitioner is entitled to \$10,032.02 in attorneys' fees and costs (\$8970.00 in attorneys' fees plus \$1062.02 in costs.)