PARTIES/ATTORNEYS

Plaintiff	Division of Labor Standards Enforcement	Kay Otani DLSE
Defendants	Save Mart Supermarkets LLC fka Save Mart Supermarkets and The Save Mart Companies LLC fka The Save Mart Companies, Inc.	Brooke Purcell Keahn N. Morris Amanda E. Beckwith Nina Montazeri Sheppard, Mullin, Richter & Hampton LLP

TENTATIVE RULING

Before the court makes an order, it directs the parties to be prepared to discuss the following: (1) Save Mart should detail the efforts to retrieve the "snapshot" information and quantify the costs associated with doing so; (2) whether DLSE would be willing or should be required to offset some cost of retrieving the "snapshot" information; and (3) both parties should be prepared to discuss whether there is an alternative, such as production of a more comprehensive and accurate spreadsheet in lieu of productions of all actual "snapshots;" whether a sampling of the "snapshots" can be used to extrapolate data; or whether any stipulations can be reached that fairly reflect the consequence of Save Mart's inability to produce the relevant data.

Defendant Save Mart Supermarkets does business under fictitious names, including Save Mart Supermarkets and FoodMaxx.[1] It operated food stores employing 500 or more employees in multiple locations in California, including multiple locations in Santa Barbara County, California. It was subject to the Healthy Workplaces, Healthy Families Act of 2014 (the Act), Labor Code sections 245, et seq. The Act requires that an employer provide paid sick-days upon request for any specified purpose, including diagnosis, care or treatment of an existing health condition, or preventive care for the employee or an employee's family member. (Lab. Code § 246.5, subd. (a).)

The California Division of Labor Enforcement Standards (DLSE) filed its complaint on July 30, 2021, alleging that from July 1, 2015, to February 26, 2021, defendants routinely and systematically failed to provide paid sick-days for the first

[1] The other named defendants are related entities.

day of a covered absence for employees in Kern County and Santa Barbara County. The complaint alleges three causes of action: (1) violation of paid sick-day rights under Labor Code section 246.5 pursuant to Labor Code section 248.5, subdivision (e); (2) civil penalties for the violation pursuant to Labor Code section 2699, subdivision (f)(2); and (3) waiting-time penalties.

On Calendar

There are three motions on calendar today:

1. DLSE's Motion to Compel Further Responses from Save Mart Supermarkets LLC to Amended Requests for Admission, Set One
2. DLSE's Motion to Compel Further Responses from Save Mart Supermarkets LLC to Amended Form Interrogatory 17.2, Set Two
3. DLSE's Motion to Compel Further Responses from Save Mart Supermarkets LLC to Amended Demands for Inspection, Set Three

All motions were filed on December 26, 2023, and set for hearing on February 14, 2024. The parties continued the matter by stipulation from time to time, most recently from February 14, 2025, to March 12, 2025. Per stipulation, the DLSE filed a status report on February 19, 2025, indicating that the parties have resolved all issues regarding the first two motions listed above and they are withdrawn. The court accordingly orders them off-calendar.

Motion to Compel Further Responses from Save Mart Supermarkets LLC to Amended Demands for Inspection, Set Three

1. Background

The sole remaining issue is DLSE's Demand for Inspection No. 9, which reads as follows:

> For each employee identified by "Blind ID" in spreadsheets produced on behalf of Save Mart Supermarkets by Brooke Purcell and Keahn Morris on May 7 and 13, 2021, all pay statements (sometimes called paystubs) for the period from January 6, 2018, to January 24, 2021. The DLSE requests a spreadsheet DOCUMENT containing the information.

Defendant's original response was as follows:

> Defendant objects to this request on the grounds that it is vague and ambiguous generally, and as to the terms "spreadsheets," "pay statements," and "spreadsheet." Defendant additionally objects to this request on the grounds that it is overly broad and unduly burdensome, particularly given it

> requests documents in a format inconsistent with the paystub documents requested. Defendant further objects that this request is unduly burdensome and harassing to the extent that this request is duplicative because Defendant has already produced such information to the DLSE. Moreover, Defendant objects to this request on the grounds that it calls for the production of information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant additionally objects to this request on the grounds that it invades the right to financial privacy, and the privacy rights of third parties and privacy rights of Defendant's current and former employees. Defendant objects that this request seeks confidential, proprietary, trade secret, or other sensitive business data or information.

The parties met and conferred about No. 9, as well as other discovery matters. With respect to No. 9, Save Mart told DLSE that its payroll provider, ADP, does not maintain copies of the wage statements provided for longer than three years and Save Mart therefore no longer has copies of the wage statements/paystubs that were provided to employees. (Montazeri Decl., ¶ 3.) However, Save Mart was able to find "snapshot" files of information saved to its network for 2019 and 2020 that reflected the information contained in the wage statements. Using this snapshot data, on September 16, 2024, it provided the DLSE with a sample of 16 wage statements for the relevant period (SAVEMART000257-269). (See Status Report, Exh. 7; see Elliott Declaration, ¶ 7.) On October 29, 2024, Mr. Otani, attorney with the DLSE, informed Save Mart's counsel that the produced "snapshot" wage statement data was "very helpful" but that he "want[s] to see what the employees actually see on their paystubs." (Montazeri Decl., Exh. C.)

On January 9, 2025, the DLSE informed Save Mart that it "expects full production of all requested wage statements, sometimes called "pay stubs," by February 14, 2025." (Montazeri Decl., ¶ 10, Exh. D.) This highlighted a disagreement between the parties. Save Mart had understood the "snapshot" files were sufficient to satisfy production while DLSE appeared to want paper copies. On January 14, 2025, the parties met and conferred and the DLSE confirmed it wanted paper copies of the pay stubs/wage statements. (Montazeri Decl., Exh. E [pursuant to DLSE attorney Otani notes of the meet and confer].)

On February 14, 2025, Save Mart filed its supplemental response, as follows:

> Subject to and without waiving the foregoing objections, Defendant responds as follows: During the Parties' extensive meet and confer discussions, Defendant explained that its payroll provider, ADP, does not maintain copies of the wage statements provided for longer than three years. The plaintiff narrowed this request to a specific identified sample of particular pay periods for particular employees of wage statement data (obtained by retrieving

> screenshots of archived pay statement data), which Defendant produced on September 16, 2024 (SAVEMART000257-269). In response, on September 16, 2024, Plaintiff agreed that this production was consistent with Plaintiff's narrowed request. Defendant has also produced all pay data and sick leave accrual data in spreadsheet format for the period from January 6, 2018, to January 24, 2021, for the employees identified by "Blind ID" in spreadsheets produced on behalf of Defendant (SAVEMART000253; SAVEMART000255-256). Accordingly, Defendant has complied with this request.

On February 19, 2025, the DLSE filed its Status Report confirming it wished to proceed with the motion to compel. On February 26, 2025, attorneys for the DLSE and Save Mart discussed No. 9 and the DLSE confirmed it wanted paper copies of the wage statements. (Montazeri Decl., ¶ 17.) In light of this, on February 26, 2025, Save Mart served yet *another* supplemental response, as follows:

> Subject to and without waiving the foregoing objections, Defendant responds as follows: During the Parties' extensive meet and confer discussions, defendant understands Plaintiff's definition of "pay statements (sometimes called paystubs)" to mean the wage statements that are provided directly to employees with their check or the employee-facing wage statements. After a diligent search and reasonable inquiry, Save Mart is unable to comply with this request because the employee-facing wage statements are not in its possession, custody or control. The employee-facing wage statements may be in the possession of Save Mart's former payroll processor, ADP. However, ADP informed Save Mart that it does not have copies of the requested employee-facing wage statements because it does not maintain copies of the wage statements provided for longer than three years.[2]

On February 26, 2025, the DLSE advised Save Mart that the "snapshots" qualify as a "wage statement" under Labor Code section 226, subdivision (a), and therefore seeks to have them compelled. (DLSE Reply, p. 3.)

2. Applicable Law

A motion for order compelling further responses "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc. § 2031.310(b)(1) (emphasis added); *Kirkland v. Sup.Ct. (Guess?, Inc.)* (2002) 95 Cal.App.4th 92, 98.) To establish "good cause," the burden is on the moving party to show both: relevance to the subject matter (e.g., how the information in the documents would tend to prove or disprove some issue in the case); and specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial). (*Glenfed Develop. Corp. v. Sup.Ct.*

[2] An employer is required to keep an itemized statement of deductions for at least three years at the place of employment or at a central location within the State of California. (Lab. Code, § 226, subd. (a).)

(National Union Fire Ins. Co. of Pittsburgh, Penn.) (1997) 53 Cal.App.4th 1113, 1117; see also *Kirkland, supra,* 95 Cal.App.4th 92, 98.) Save Mart does not suggest that plaintiff has failed to show good cause. The court thus finds that good cause exists.

If "good cause" is shown by the moving party, the burden is then on the responding party to justify any objections made to document disclosure. (*Kirkland, supra,* 95 Cal.App.4th 92, 98.) The categories of documents to be produced must be "reasonably" particularized from the standpoint of the party on whom the demand is made. (*Calcor Space Facility, Inc. v. Sup.Ct. (Thiem Indus., Inc.)* (1997) 53 Cal.App.4th 216, 222.)

A trial court "shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.020, subd. (a).) However, the party opposing discovery has an obligation to supply the basis for this determination. An 'objection based upon burden must be sustained by evidence showing the quantum of work required.' " (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 [response to interrogatories]; W*. Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417.) "In considering whether the discovery is unduly burdensome or expensive, the court takes into account 'the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.' " (Code Civ. Proc., § 2019.030, subd. (a)(2).)

In other words, the court is not required to grant an order for document production. It may properly weigh whatever utility the records are likely to have against the cost, time, expenses and disruption of normal business likely to result from an order compelling production. (*Volkswagen of America, Inc. v. Sup.Ct. (Rusk)* (2006) 139 Cal.App.4th 1481, 1497; *Calcor Space Facility, Inc. v. Sup.Ct. (Thiem Indus., Inc.)* (1997) 53 Cal.App.4th 216, 223.)

3. Analysis

Analytically, this dispute hinges on the definition of "pay statements (sometimes called paystubs)" identified in the request, whether defendants' efforts to comply have thus far been sufficient, and whether any efforts to further comply would be unduly burdensome.

No. 9 called for production of "pay statements (sometimes called paystubs)." No definition accompanied this term. It does not appear that any shared understanding of this term was ever reached during the meet and confer. Save Mart understood this request to mean the wage statements that are provided directly to employees with their check (e.g., "employee-facing wage statements"); that it has adequately responded that it cannot provide them; and therefore, further response

should not be compelled. DLSE argues this is an unduly narrow reading of the request and that it never asked for "employee-facing wage statements." Instead, it asserts that the term should be defined by Labor Code section 226 subdivision (a) and that since the "snapshots" fit within that definition, further response should be compelled.

Assuming for the sake of argument that DLSE is correct, the court must nevertheless consider whether further compliance would be unduly burdensome. Save Mart argues that it would be. It conservatively estimates that it will take approximately 10-20 minutes to collect this information for each affected employee. There are approximately 936 employees at issue, meaning that it will take approximately 9,360 to 18,720 minutes or 156 to 312 hours to collect the wage statement information from the "snapshot" files for 2019 and 2020. That works out to between 3.9 weeks and 7.8 weeks of work (assuming 40-hour work weeks). During this time, Save Mart personnel will not be able to attend to their normal job duties. Although Save Mart did not quantify this in terms of financial investment, this indeed appears to be a heavy burden (maybe even a ***very*** heavy burden).

This might end the inquiry if Save Mart had indeed "produced all pay data and sick leave accrual data in spreadsheet format for the period from January 6, 2018, to January 24, 2021, for the employees identified by "Blind ID" in spreadsheets produced on behalf of Defendant (SAVEMART000253; SAVEMART000255-256)." But the DLSE compared the spreadsheet information to the "snapshots" for the employee assigned Blind ID SAVEMART00781 and found inconsistences.[3] It also found that the spreadsheet information lacked detail for dates that was found in the "snapshots." Thus, it does not appear that the spreadsheet information is an adequate substitute for the production of the "snapshots."

The court must consider the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation. Here, one need only examine provisions in the Labor Code to realize that proper accrual of sick leave is an important public policy of this state. (See *Gould v. Maryland Sound Industries, Inc*. (1995) 31 Cal.App.4th 1137, 1147--"the prompt payment of wages due an employee is a fundamental public policy of this state.") Employers must display posters to advise employees of their rights related to sick leave (Lab. Code, § 247); employers must keep at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records (Lab. Code, § 247.5); and the Labor Commissioner "shall" enforce the article regulating paid sick days (Lab. Code, § 248.5). There are thus important public issues at stake in this litigation. Save Mart is alleged to be liable for paid sick-leave wages withheld in an amount in excess of $890,000, liquidated damages in an amount in excess of $3,120,000, treble damages

[3] These inconsistencies are described in some detail in DLSE's reply, pp. 4-5.

in excess of $740,000, and interest (Complaint, ¶ 12); civil penalties in excess of $2,210,000 subject to proof (Complaint, ¶ 14); and waiting time penalties in excess of $930,000, subject to proof. (Complaint, ¶ 19.) The total sum at stake, excluding attorney's fees and costs, is $7,890,000. Even a fraction of this amount qualifies as a substantial amount in controversy. Finally, it is indisputable that the DLSE needs this information to make their case. (Compare, *People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1553—needs of the case did not warrant over 5,000 interrogatories because individualized proof of harm was not required for restitution under the UCL.)

Thus, the court finds that Save Mart must bear the burden of production in response to No. 9, in particular, to produce the "snapshot" records responsive to the request. Before the court makes this order, however, it directs the parties to be prepared to discuss the following: (1) Save Mart should detail the efforts to retrieve the "snapshot" information and quantify the costs associated with doing so; (2) whether DLSE would be willing or should be required to offset some cost of retrieving the "snapshot" information; and (3) both parties should be prepared to discuss whether there is an alternative, such as production of a more comprehensive and accurate spreadsheet in lieu of productions of all actual "snapshots;" whether a sampling of the "snapshots" can be used to extrapolate data; or whether any stipulations can be reached that fairly reflect the consequence of Save Mart's inability to produce the relevant data.

4. Sanctions

If the motion to compel is granted and the moving party properly asks for monetary sanctions, the court "shall" order the party to whom the discovery was directed to pay the propounding party's reasonable expenses, including attorney fees, in enforcing discovery "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc. § 2023.030, subd. (a).)

Here, the court finds that Save Mart acted with substantial justification. The scope of the request was unclear and while DLSE "noted it asked if Save Mart could produce wage statements in the ["snapshots"] format as early as September 16, 2024," the Otani emails from DLSE actually said: "Also, if this format is acceptable, could you check if your client would be willing to provide wage statements in this format?" and "The question is if this format is easier to obtain, whether your client would be willing to produce all wage statements in this format." (Status Report, Exh. 8, at 14, 15.) Neither statement is a clear indication that the "snapshots" format *was* acceptable. Based on the correspondence provided, it does not appear that the parties reached any shared conclusion about the phrase "pay statements (sometimes called paystubs)" until February 26, 2025, the DLSE advised Save Mart

that the "snapshots" qualify as a "wage statement" under Labor Code section 226, subdivision (a). Save acted with substantial justification in defending the motion.

The court denies the request for sanctions.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)