Superior Court of California
County of Los Angeles

HARTWELL HARRIS,

Plaintiff,

vs.

BINGHAM MCCUTCHEN, LLP, ET AL.,

Defendants.

Case No.: BC474009

DEPARTMENT 45

[~~TENTATIVE~~] ORDER

Complaint Filed: 11/21/11
Trial Date: 9/8/14

Hearing date: November 20, 2013
Moving Party: Plaintiff Hartwell Harris
Responding Party: Defendant Bingham McCutchen, LLP

Motion to Compel Responses to the First Set of Form Interrogatories—Employment Litigation

The Court considered the moving papers, opposition, and reply.

The motion is GRANTED as to nos. 201.1, 201.2, 201.4, 201.6, 204.6, 204.7, 211.1, and 215.2, DENIED as moot as to 206.1 and 206.2, and DENIED as to 204.3. Sanctions are awarded in favor of plaintiff in the amount of $ 2430.

Plaintiff is asserting causes of action for (1) employment discrimination (disability), (2) interference with FEHA/CFRA, (3) failure to accommodate disability, (4) failure to engage in interactive process, (5) retaliation for exercising rights under FEHA, (6) retaliation for exercising rights under CFRA, (7) termination in violation of public policy, (8) violation of Bus. and Prof.

Code 17200, and (9) defamation. She alleges that she commenced her employment with Bingham's predecessor firm Alschuler, Grossman on 10/17/05. On 5/1/07, Bingham hired plaintiff as a third-year litigation associate at a starting annual salary of $155,000. Complaint, 16. Sometime in March 2008, she had to take a short-term leave of absence. She was experiencing ongoing and serious problems with her back and related issues, which limited her ability to work. Id., 18. After a brief return to work, plaintiff's medical condition again forced her to take another leave of absence on 7/18/08. Id., 20. Her medical condition again worsened and she underwent major spinal surgery receiving titanium implants in her spine. She was forced to stay on her medical leave until 12/1/09. Id., 21. Throughout 2009 and while she was working, plaintiff attended physical therapy at least three times per week during the work week. 22. In May 2009, plaintiff was suddenly informed that she would have to undergo a mid-year review based on "performance problems" outlined in her 2008 annual review. Plaintiff's mid-year review was positive. Id., 24. Sometime in the summer of 2009, plaintiff received another mid-year review, which was prepared by individual defendant partners. The review was mostly positive but accused her of being unprofessional. Id., 25. In January 2010, for the first time, plaintiff received a negative review. Bingham did not promote her to a 5th year associate, placed her on an interim review, and informed her that she would be paid at the rate of a 3rd year associate. Id., 26. On 4/14/10, she was forced to take another short-term medical leave of absence due to Delayed Sleep Phase Syndrome. Id., 28. On 9/28/10, defendant placed plaintiff on unpaid leave status beginning 9/13/10. Defendant sent a letter to plaintiff on 10/28/10 informing her that MetLife had only approved her short-term disability claim through 9/12/13 and that her FMLA/CFRA had been exhausted as of 7/7/10. Id., 30. On 11/22/10, HR sent a letter to plaintiff, which stated that if plaintiff was unable to return to work now, or if her doctor was not able to provide reasonable accommodations by 11/30/10, plaintiff's employment would be terminated. Id., 33. On 12/2/10, HR informed plaintiff that defendant was willing to discuss

possible accommodations with plaintiff and directly with her doctor. HR noted that possible accommodations could be an extension of plaintiff's unpaid leave or a reduced schedule, depending on her medical condition. Id., 34. On 12/31/10, HR informed plaintiff that she had spoken with her doctor and that Bingham could not accommodate plaintiff's disability. HR rejected plaintiff's doctor's suggested accommodations to allow flexible start times for plaintiff, ability to work from home, and project-based work. Defendant did not propose any alternative accommodations and would not even extend the leave of absence for plaintiff. Plaintiff received a termination letter dated 2/24/11. Id., 35.

Plaintiff re-served its discovery requests on 7/11/13 (after having served them on 1/19/12 before defendant appealed the court's decision denying the motion to compel arbitration). The discovery responses were due on 8/12/13. Defendant requested extensions of time to serve its responses and served its responses on 10/7/13. On 10/15/13, plaintiff's counsel sent a meet and confer letter asking that defendant supplement its responses by 10/21/13. On 10/23/13, defense counsel sent a letter agreeing to supplement some of the responses. On 10/23/13, plaintiff's counsel called defense counsel to meet and confer and left a message and sent an email asking for supplemental responses by 10/24/13. In a phone conversation, plaintiff's counsel asked how soon she could get the responses from defendant, and defense counsel responded that she was very busy and that her client was also very busy. Plaintiff waited until 10/28/13 to file the motion to compel. Plaintiff sufficiently met and conferred.

Plaintiff requests that the court compel defendant to provide further, full and complete supplemental responses to the First Set of Form Interrogatories—Employment Law Nos. 201.1, 201.2, 201.4, 201.6, 204.3, 204.6, 204.7, 206.1, 206.2, 211.1, and 215.2. Plaintiff also requests sanctions in the amount of $6255.

In opposition, defendant contends that the motion was filed prematurely because plaintiff's counsel "short-circuited" the meet and confer process and the parties were "actively

engaged" in the meet and confer process. Defendant contends that it had advised plaintiff several times that it was in the process of supplementing its discovery responses and agreed to extend the deadline for filing a motion to compel. Defendant also argues that its responses and objections properly comply with the Discovery Act.

Defendant also argues that seven of the nine interrogatories seek non-party contact information, which is protected by the right to privacy. Defendant contends that plaintiff has failed to establish a compelling reason to disregard the privacy rights of third parties.

Defendant also argues that it has properly identified documents in response to several of the interrogatories.

In reply, plaintiff states that defendant served unverified supplemental discovery responses on 11/12/13 and that many are still incomplete. Plaintiff contends that counsel extensively met and conferred with defense counsel by mail, email and via telephone; however, defendant refused to give plaintiff a certain date to provide its supplemental responses.

No. 201.1 – Granted as to (b), (c), and (d).

This interrogatory requests whether plaintiff was involved in a termination and if so, to state all the reasons for plaintiff's termination and to identify persons (and provide contact information) who participated in the termination and who provided any information relied upon in the termination and to identify documents relied upon in the termination decision.

Defendant's response refers plaintiff to the personnel and leaves of absence files produced to plaintiff and provides a response that plaintiff went on a leave of absence and when her FMLA/CFRA leave expired, she was provided an unpaid leave of absence and that in December 2010, her doctor failed to identify any accommodations that would enable her to perform the essential functions of her job and she was unable to return to work. Defendant, however, fails to identify the name, address, and phone number of each person who participated

in the termination decision or who provided any information relied upon in the termination decision, claiming attorney-client privilege and right to privacy. Defendant identified documents with a Bates range of 00001-01364. Defendant's objections are without merit.

No. 201.2 – Granted.

Defendant responded "yes" that there are facts that would support the termination that were first discovered after the termination and refers plaintiff to her personnel file. Defendant also responded that plaintiff requesting a subordinate to supply her with prescription drugs violated firm policy and also resulted in Julie Ziegler's termination. Defendant failed to identify any persons who have knowledge of the specific facts and identified documents in a Bates range from BM00001-02207. Further, defendant failed to state when and how employer first learned of each specific fact.

The response is deficient and the objections have no merit.

No. 201.4 – Granted.

Defendant fails to state yes or no when asked whether the termination was based in whole or in part on the employee's job performance. Defendant fails to identify any persons who had responsibility for evaluating the specific job performance of the employee or who had knowledge of the employee's specific job performance that played a role, citing third party privacy concerns. Defendant's response is deficient and the objections are without merit.

No. 201.6 – Granted.

When asked whether any person performed any of the employee's former job duties after her termination and, if so, who, what duties, and the date, defendant objected that the interrogatory is overbroad, vague, and ambiguous, and that it is unduly invasive to third parties' rights of privacy. Defendant also responded that her duties have been reassigned and spread out among other attorneys and that since plaintiff had no duties at the time her employment ended, it is impossible to accurately respond to this interrogatory.

contends that the complaint only identifies opinions which are not defamatory and are qualified privileged and lacks foundation.

On 11/4/13, plaintiff voluntarily dismissed her cause of action for defamation. Thus, this interrogatory is moot.

No. 206.2 – Denied.

This interrogatory requests that defendant state the name and address of each agent or employee of the employer who responded to any inquiries regarding the employee after the employee's termination. Defendant responded: "Melissa Matallana, Regional Director of Human Resources." Defendant failed to provide any contact information.

This request relates solely to defamation, which is no longer at issue.

No. 211.1 – Granted.

This interrogatory requests each type of benefit to which the employee would have been entitled, from the date of termination to the present, if the termination had not happened and the employee remained in the same job position. Defendant responded that to respond would require a compilation of records and referred plaintiff to her personnel files and that such documents are equally available to plaintiff. In a meet and confer, defendant stated that it would supplement its responses but it appears not to have done so with verified responses.

Defendant's response is deficient and the objections lack merit.

No. 215.2 – Granted.

This interrogatory requests whether defendant or anyone acting on its behalf obtained a written or recorded statement from any individual concerning the termination and, if so, identify such persons. Defendant objected on the grounds that it is boilerplate, irrelevant, harassing, and that it seeks information protected by the right of privacy and is potentially violative of the attorney client privilege and attorney work product doctrine. In its opposition, defendant states that it will supplement its response to indicate that it does not have any written statements.

Defendant's objections are without merit and defendant has failed to provide verified supplemental responses.

Sanctions

Plaintiff is entitled to monetary sanctions.

It is so ordered.

DEC 11 2013

Dated: ~~November 20, 2013~~

MEL RED RECANA
Judge of the Superior Court

CERTIFICATE OF MAILING

L.A. Superior Court Central

Civil Division

HARTWELL HARRIS	
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