IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

Derrick Thomas, *On behalf of himself and those similarly situated*, Plaintiff, v. Papa John's International, Inc., *et al.*, Defendants.	Case No. 1:17-cv-411 Judge Michael R. Barrett

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF DEFENDANTS' PAYROLL RECORDS

Defendants make many dilatory arguments on matters irrelevant to *this* dispute. This is a straightforward discovery dispute about balancing the burden of producing records with the records' relevancy.

To start, Defendants do not dispute that the records are relevant. In fact, Defendants' request to wait to produce these records until after class certification appears to concede that they are relevant to all drivers in the lawsuit. Doc. 151 at PageID 2742. As explained in Plaintiffs' Motion,[1] and as commonsense dictates, payroll records in a case about wages are not just somewhat relevant, they are *the most relevant* pieces of evidence in this case.

In the face of the records' obvious relevancy, Defendants raise arguments that the Court should easily and swiftly reject.

[1] Doc. 149 at PageID at 6–8.

First, Defendants again claim that the records are burdensome to produce. Defendants provide no support for their argument that providing basic payroll records that they are legally required to keep presents a "substantial" burden. They just say it is.[2] *Id.*

For purposes of withholding discovery, this unsupported and unexplained statement is insufficient to block production of relevant documents. *See, e.g., A.H. v. Knowledge Learning Corp.*, Civil Action No. 09-2517-DJW, 2010 U.S. Dist. LEXIS 111242, at *17–18 (D. Kan. Oct. 19, 2010) (proving undue burden "typically requires providing a detailed explanation or an affidavit or other evidentiary proof of the expense or time involved in responding to the discovery request," but where "Defendant makes no genuine attempt to provide any explanation," "Merely stating that it would be difficult for Defendant to 'sift through boxes' and 'track down' the documents is insufficient to meet its burden."). Even if Defendants had explained what the burden actually was, Defendants do not even attempt to argue why the alleged burden is so great as to warrant their withholding of the discovery. This, too, is fatal to this argument.

Second, Defendants argue that they can hold hostage their payroll records because Plaintiff properly objected[3] to Defendants' requests. Contrary to the footnote cited by Defendants, "[t]he rules governing discovery do not permit one party to condition his discovery obligations on the other party's discovery responses." *Grant v. Target Corp.*, 281 F.R.D. 299, 313 (S.D. Ohio 2012); *see also Lopez v. Don Herring Ltd.*, 327 F.R.D. 567, 581 (N.D. Tex. 2018) (collecting cases). The idea that a defendant's obligation to respond to discovery in an FLSA lawsuit should be conditioned on the plaintiff's responses runs against reason and Supreme

[2] Defendants also claim that their burden of asking their payroll company to pull they payroll records they are required to keep by law is somehow comparable to Defendants' demand that approximately 117 opt-is and 600 non-party class members each respond to detailed discovery. The absurdity of this position is difficult to understate.

[3] Note that Plaintiff's objections here are based, in part, on the issue that this Court certified to the Sixth Circuit in *Bradford v. Team Pizza*, No. 1:20-cv-00060, 2022 U.S. Dist. LEXIS 43382, at *1-2 (S.D. Ohio Mar. 7, 2022).

Court precedent. The Supreme Court has recognized that FLSA cases turn on the employer's records because of "the fact that it is the employer who has the duty under [the FLSA] to keep proper records… and who is in position to know and to produce the most probative facts." *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 686–87 (1946); *contra* Doc. 151 at PageID 2741–42.

Third, Defendants inexplicably claim that the records need not be produced because they contain information about class members, not party plaintiffs. Defendants were unable to find a citation to support the proposition that "confidential information of non-parties" should prohibit discovery—probably because there is none. Such an argument is contrary to fundamental principles of American jurisprudence favoring the public resolution of disputes, and *especially* FLSA disputes. *See Dees v. Hydradry, Inc.*, 706 F. Supp. 2d 1227, 1245-46 (M.D. Fla. 2010) (citing *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984)); *contra* Doc. 151 at PageID 2741–43.

Fourth, Defendants feign shock that Plaintiff would wish to supplement his motion for class certification with Defendants' payroll records. Plaintiff, in his Motions for Class Certification, has said he intended to do so. Doc. 108 at PageID 2028 n.10; Doc. 127 at PageID 2337 n.9. Whether Plaintiff wishes to supplement his Motion or not, however, is irrelevant to whether Defendants need to produce their payroll records.

* * *

Ultimately, Defendants fail to address Plaintiff's arguments and, instead, engage in whataboutisms. Doc. 151 at PageID 2743–45. The records are relevant, the burden to produce them is unexplained and, if it exists at all, it is of Defendants' making.

Plaintiff respectfully asks that the Court order Defendants to respond in full to Plaintiff's requests payroll records by ordering Defendants to produce the weekly payroll records for the entire putative class for the entire relevant time period, June 16, 2014, to present.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that the above document was filed on March 25, 2022, using the Court's ECF system, which will provide notice to all parties.

/s/ *Riley Kane*
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