

4. A U.S. District Court for the Eastern District of California decision granting in part and denying in part a plaintiff's request for precertification discovery of a full data set of electronic timekeeping and payroll information in native format, finding that producing the full set would be disproportional to the needs of the case and ordering the defendant employer to produce a sample of the data instead

In *Tinnin v. Sutter Valley Medical Foundation*, 2021 WL 1315435 (E.D. Cal. April 7, 2021), Magistrate Judge Erica P. Grosjean granted in part the Plaintiff's request for precertification discovery of a full data set of electronic timekeeping and payroll information in native format, ordering the Defendant employer to produce a sample of the data.

In this Fair Labor Standards Act case, Plaintiff sought classwide discovery in support of her claim, which Defendant opposed in light of its pending motion to dismiss, stay, or strike the operative complaint. *Id.* at *1. The court had granted Plaintiff permission to file a motion to compel classwide discovery, and Plaintiff requested, among other things, a native electronic format production of all payroll records and timecards/sheets for the class. *Id.* at *2. Plaintiff claimed to need this information to compare it to non-native (i.e., paper) time records and ensure that there was overlap from the sampling of paper records and argued that a sampling of the native electronic data would not permit her to do this.

Defendant opposed production of this material primarily on the ground that production would be "extremely burdensome." The court initially found Defendant's burden argument insufficiently particularized by this assertion, but permitted Defendant to file a declaration supporting its objection. Defendant later filed a declaration from its director of payroll, who explained, among other things, that there were limitations on the number of entries that could be output in a single data file and would likely require production of more than 500 separate data files. Defendant argued that would increase the burden on it to produce the files because it would require a crew of people to monitor and oversee production of each file, consisting of approximately half a dozen employees or contractors at significant expense, and would take several months. *Id.* at *2-3. The declaration also noted that the payroll department was "stretched thin due to 'extraordinary demands' in dealing with pandemic issues and administering special COVID-related pay rules" and could not "easily spare a team of people to devote the many dozens of hours that would be needed to produce the class-wide discovery." *Id.* at *3.

Magistrate Judge Grosjean began her analysis with a discussion of the standards for precertification discovery: "In determining whether to grant precertification class discovery, a court should consider its need, the time required, and the probability of discovery resolving any factual issue necessary for the determination." In this context, she noted that the parties did not dispute the relevance of the requested discovery but only whether it would be unduly burdensome for Defendant to produce the full set of responsive payroll and timekeeping electronic records in native Excel format as Plaintiff requested. *Id.* at *4.

Magistrate Judge Grosjean stated that Defendant, as the party opposing discovery, had the burden of supporting its objections to the Plaintiff's requests. She found that Defendant had not initially provided sufficient support for its assertion of undue burden by arguing that it would be "extremely burdensome" but had later provided sufficient evidence of burden in the form of the declaration by the payroll director. In particular, Magistrate Judge Grosjean found that Defendant had

supported its argument that producing the records Plaintiff sought in the requested Excel format for a class of 7,400 employees would be time consuming and require significant manual labor to retrieve, format, process, and manage.

Magistrate Judge Grosjean then found that producing the requested data on a sampling basis was appropriate. She noted that courts have discretion in controlling the scope of precertification discovery and routinely order sampling of classwide records when production is unduly burdensome. *Id.* at 5 (citing cases). Magistrate Judge Grosjean found that “at this early stage of the proceedings, when a scheduling order has not yet issued and a motion to dismiss is pending, the broad discovery Plaintiff seeks is unduly burdensome and is not proportional to the needs of the case. Sampling is an appropriate method to relieve the burden on Defendant in light of the number of employees involved and the limitations of Defendant’s systems.”

Magistrate Judge Grosjean next addressed the format of production. Plaintiff requested the files in native Excel format, but Defendant argued that extracting the files in Excel format would result in “severe readability problems” and preferred to produce the files in PDF format (which Plaintiff found less useful). Ultimately, Magistrate Judge Grosjean decided that Plaintiff could select its preferred format in light of the advantages and disadvantages of the various production formats.

Finally, Magistrate Judge Grosjean addressed the appropriate sample size. Defendant had proposed a sample size of 10%, whereas Plaintiff had proposed sampling at a rate of 75%. In light of the circumstances of the case, and balancing the relevance of the information with the burden on Defendant, Magistrate Judge Grosjean found that a sample size of 20% was reasonable given the estimated putative class size of approximately 7,400 employees. *Id.* (surveying cases).