

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 15-2124 PA (AJWx) Date April 6, 2015

Title America Unites for Kids, et al. v. Sandra Lyon, et al.

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Stephen Montes Kerr	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiff:		Attorneys Present for Defendants:
None		None

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is an Ex Parte Application for Expedited Discovery filed by plaintiffs America Unites for Kids and Public Employees for Environmental Responsibility (collectively “Plaintiffs”) (Docket No. 18). Because the Ex Parte Application relates to a scheduling matter, this Court, rather than the assigned United States Magistrate Judge, will consider the Ex Parte Application.^{1/} All other discovery matters are referred to the assigned United States Magistrate Judge. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument.

Plaintiffs filed their Complaint on March 23, 2015, and then filed the operative First Amended Complaint (“FAC”) as a matter of right on April 1, 2015. Plaintiffs’ FAC alleges a claim against defendants Sandra Lyon, Jan Maez, Laurie Lieberman, Jose Escarce, Craig Foster, Maria Leon-Vazquez, richard Tahvildaran-Jesswein, Oscar de la Torre, and Ralph Mechur (collectively “Defendants”) pursuant to the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601-2695d. Defendants are administrators and members of the Board of Education of the Santa Monica-Malibu Unified School District (the “District”).

According to the FAC, testing in 2009 and 2010 revealed elevated levels of polychlorinated biphenyls (“PCBs”) in air and soil samples at Malibu Middle and High School (“MHS”) and Juan Cabrillo Elementary School (“JCES”). Additional testing undertaken since then has revealed that caulk and other building materials used at MHS and JCES contain levels of PCBs in excess of standards adopted by the Environmental Protection Agency (“EPA”). The FAC alleges that although the District has, in consultation with the EPA, agreed to remove the PCB-containing materials from certain areas within the schools, Defendants have refused or been slow to test additional areas within MHS and JCES that are also likely to contain building materials with levels of PCBs in excess of those allowed by the EPA.

^{1/} Plaintiffs filed a Reply in support of their Ex Parte Application. The Court does not consider Replies in support of Ex Parte Applications unless it requests additional briefing.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 15-2124 PA (AJWx)	Date	April 6, 2015
Title	America Unites for Kids, et al. v. Sandra Lyon, et al.		

Plaintiffs served Defendants with the FAC, Ex Parte Application, and a Motion for Preliminary Injunction on April 2, 2015. In their Ex Parte Application, Plaintiffs seek leave to begin conducting discovery before the Scheduling Conference, and specifically seek permission to conduct a Federal Rule of Civil Procedure 34(a)(2) site inspection to take physical samples for later laboratory analysis for the presence of PCBs in building materials “in all regularly occupied rooms in buildings constructed prior to 1980” at MHS and JCES. Plaintiffs propose to conduct the inspection beginning at 3:00 p.m. on Friday, April 17, 2015, and continuing through Sunday, April 19, 2015. Plaintiffs additionally request that if they are unable to complete the testing on that weekend, that the testing continue the following weekend beginning on Friday, April 24, 2015, at 3:00 p.m.

This testing does not appear to be necessary for resolution of the pending Motion for Preliminary Injunction. In that Motion, which is set for hearing on May 4, 2015, Plaintiffs seek an order prohibiting Defendants from using certain classrooms and other locations at MHS and JCES until Defendants remove PCB-containing materials from those locations and requiring that this remediation work be completed by July 31, 2015. Plaintiffs’ Motion for Preliminary Injunction relies on testing that Plaintiffs already completed at specific locations and subsequent testing undertaken by the District that apparently establishes the presence of building materials containing PCBs in excess of the levels allowed by the EPA. Although the additional testing requested in Plaintiffs’ Ex Parte Application does not appear to be necessary to support the Motion for Preliminary Injunction, Plaintiffs contend that the additional testing is likely to discover additional areas within the schools that should be remedied during the upcoming summer break.

Federal Rule of Civil Procedure 26(d)(1) provides that a party “may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.” This Court’s Standing Order, issued in this action on March 24, 2015, states:

Unless there is a likelihood that upon motion by a party the Court would order that any or all discovery is premature, it is advisable for counsel to begin to conduct discovery actively before the Scheduling Conference. At the very least, the parties shall comply fully with the letter and spirit of Fed. R. Civ. P. 26(a) and thereby obtain and produce most of what would be produced in the early stage of discovery, because at the Scheduling Conference the Court will impose tight deadlines to complete discovery.

(Standing Order 2:17-22.) “Courts within the Ninth Circuit generally use the ‘good cause’ standard to determine whether to permit discovery prior to a Rule 26(f) conference.” Apple Inc. v. Samsung Elecs. Co., 768 F. Supp. 2d 1040, 1044 (N.D. Cal. 2011). In determining whether good cause justifies expedited discovery, courts commonly consider factors including: “(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 15-2124 PA (AJWx)

Date April 6, 2015

Title America Unites for Kids, et al. v. Sandra Lyon, et al.

the typical discovery process the request was made.” American LegalNet, Inc. v. Davis, 673 F. Supp.2d 1063, 1067 (C.D. Cal. 2009).

Here, although these factors weigh in favor of allowing Plaintiffs to initiate discovery in advance of the Scheduling Conference, Plaintiffs have failed to establish the good cause necessary to justify that conducting the discovery they seek should be accomplished on the expedited schedule they have proposed. The Court therefore orders that the parties may commence discovery in this action prior to the Rule 26(f) Scheduling Conference. However, that discovery should be accomplished according to the normal response times for such discovery. The request to conduct a site inspection from April 17, 2015, through April 19, 2015, is denied. The Court expects the parties to work cooperatively to schedule their discovery and to resolve most if not all disputes without the intervention of the Magistrate Judge or this Court.

IT IS SO ORDERED.