

Division of Labor Standards Enforcement v. Save Mart Supermarkets et al. (Case No. 21CV03151)

Hearing Date: July 1, 2026

Nature of Proceeding: Motion: Compel; CMC

Attorneys:

For plaintiff: State of California, Division of Labor Standards Enforcement by Kay Otani

For defendant: Save Mart Supermarkets LLC by Sheppard, Mullin, Richter & Hampton LLP by Brooke Purcell, Keahn N. Morris, Amanda E. Beckwith, Nina Montazeri

Tentative Ruling:

For all the reasons discussed below, the court finds the relief requested in the reply is not properly before the court. The reply is thus stricken without prejudice to it being renewed pursuant to the appropriate procedural mechanism. The motion is otherwise denied.

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](#).)

Background:

Defendant Save Mart Supermarkets does business under fictitious names, including Save Mart Supermarkets and FoodMaxx. 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 an 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 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:

- Motion to Compel Answers to Person-Most-Qualified Deposition re Sick-Leave Grievances, Production of Documents, and Sanctions (filed November 10, 2025)

- Objection and Response to Plaintiff's Improper Reply (filed June 25, 2026)

Procedural Background:

On June 20, 2025, the DLSE sent Save Mart a draft deposition notice to take the deposition of the PMQ re Sick Leave Grievances and requested deposition dates. (Otani Decl. ¶ 4; Ex. 1; Beckwith Decl. ¶ 3.)¹ On July 24, 2025, the DLSE again requested mutually acceptable dates for the PMQ depositions, and Save Mart responded that it expected to provide availability in early August (Otani Decl. ¶ 5; Ex. 6.)

On August 14, 2025, the DLSE asked to meet and confer about acceptable deposition dates (Otani Decl. ¶ 6; Ex. 7), and Save Mart responded with a request to meet and confer regarding the scope of the proposed PMQ topics so it could identify the appropriate witnesses and determine availability. (Beckwith Decl. ¶¶ 4–5.) On August 18, 2025, the DLSE served the PMQ deposition notice, unilaterally scheduling the deposition for September 10, 2025. It offered to reschedule if Save Mart could agree to deposition dates before September 20, 2025. (Otani Decl. ¶ 7; Ex. 7; see Beckwith Decl. ¶ 6.)

Save Mart served objections to the PMQ for Sick Leave Grievances on September 4, 2025. (Beckwith Decl. ¶ 7; Exs. G–J.) On September 6, 2025, DLSE sent meet-and-confer emails regarding the objections. (Otani Decl. ¶ 10; Ex. 20.) On September 7, 2025, Save Mart responded, reiterating that it preserved objections but was not refusing to comply and remained willing to meet and confer. (Beckwith Decl. ¶ 9.) On October 1, 2025, the parties participated in a videoconference meet and confer regarding the PMQ topics. (Otani Decl. ¶ 12; Beckwith Decl. ¶ 10.) On October 8, 2025, Save Mart proposed revised PMQ topics. (Beckwith Decl. ¶ 10-11.) On October 30, 2025, the DLSE responded with its proposed revised PMQ topics. (Otani Decl. ¶ 13; Beckwith Decl. ¶ 10.)

On November 9, 2025, the DLSE served motions to compel the PMQ deposition re Sick-Leave Grievances. (Beckwith Decl. ¶ 11.) On November 11, 2025, Save Mart asked the DLSE to withdraw the motions as premature, since the parties were working to narrow the topics and identify their PMQ. (Beckwith Decl. ¶ 12.) DLSE responded on December 10, 2025. (Beckwith Decl. ¶ 12.) On January 20, 2026, Save Mart provided further revised PMQ topics to the DLSE. (Beckwith Decl. ¶ 13.)

This motion was initially set for hearing on February 2, 2026. The parties stipulated to its continuance to April 1, 2026, and again stipulated to its continuance to April 29, 2026. On April 2, 2026, the deposition of the designated PMQ re Sick-Leave Grievances, Kevin Sears, was taken. At the deposition, he testified that Save Mart is keeping track of which of the settlements with Local 8 and Local 770 employees have been executed and which have not.

The DLSE filed a reply brief on April 21, 2026, asserting that this list of employees who had signed or not signed settlements and were paid or unpaid is directly responsive to the agreed upon document request 25: “All WRITINGS regarding settlements related to the

¹ Four such notices were sent, identifying differing PMQ topics. This motion involves only the deposition of the PMQ re Sick-Leave Grievances and with therefore the facts and procedure will focus on that motion.

ONE-DAY-WAITING-PERIOD POLICY for the period from January 1, 2015, to the date of production.” (Otani Decl., attached as Exh. 255.) It now moves for an order compelling response to that document request.

The court reset the April 29, 2026, hearing to July 1, 2026. On June 25, 2026, Save Mart filed an objection to DLSE’s reply brief, arguing it should be stricken because it raises new issues not raised in the motion. On June 29, 2026, DLSE filed an objection to Save Mart’s reply.

The court overrules the objection filed by DLSE to Save Mart’s reply. The case law cited by DLSE does not help its position.² The court agrees with Save Mart’s reply for several reasons.

The notice of motion defines the relief sought. Here, DLSE’s motion, as filed on November 10, 2025, asks “for an order compelling answers and production of documents from defendant Save Mart to the DLSE’s Person-Most-Qualified Deposition re Sick-Leave Grievances (“PMQ re Sick-Leave Grievances”), as set forth in the Statement of Disputed Questions and Answers re PMQ Deposition re Sick-Leave Grievances (“Separate Statement”) filed with this motion.” (Notice of Motion filed November 1, 2026.) The deposition occurred. That issue is now moot.

The notice also requested production of documents “as set forth in the . . . Separate Statement” filed with this motion. The separate statement must identify the disputed requests. (Calif. Rules of Court, rule 3.1345.) Here, the filed separate statement identifies the document requests as proposed by the DLSE before any meet and confer occurred. In its reply, the DLSE has identified an entirely new category, which it asserts was negotiated

² The first case cited by DLSE, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, does not help its argument. In *Sinaiko*, the trial court considered the interplay between motions to compel initial responses and motions to compel further responses. In that case, the responding party served untimely interrogatory responses *after* the propounding party had served the motion to compel. The trial court granted the motion to compel initial responses and the responding party appealed, arguing that once it served its responses the trial court had no authority to grant the motion. The appellate court held that “once a party has failed to serve timely interrogatory responses, the trial court has the authority to hear a propounding party’s motion to compel [initial] responses under section 2030.290, subdivision (b), regardless of whether a party serves an untimely response. If a party fails to serve a timely response to interrogatories, then by operation of law, all objections that it could assert to those interrogatories are waived. (§ 2030.290, subd. (a).) Unless that party obtains relief from its waiver, the propounding party is entitled to move under subdivision (b) for an order compelling the response to which the propounding party is entitled—that is, a response without objection, and that substantially complies with the provisions governing the form (§ 2030.210) and completeness (§ 2030.220) of interrogatory responses.” (*Sinaiko*, *supra*, 148 Cal.App.4th at 408.) *Sinaiko* is distinguishable, as it discusses the failure to produce initial responses at all. It does not address a motion that identifies one category of documents which then morphed into something different after the parties met and conferred.

Likewise, *County of San Benito v. Superior Court* (2023) 96 Cal.App.5th 243, 256 is likewise inapposite. The issue here is not whether piecemeal supplementation of responses divests the court of jurisdiction, but whether the moving party can create a moving target for its motion. In this case, DLSE moved to compel production of categories of documents that no longer existed in their original form when the motion was filed.

during the meet and confer process *following* the filing of the motion.³ Thus, the disputed request was necessarily not identified in the separate statement.

Most critically, reply papers are not the place to raise new issues. The general rule of motion practice is that new evidence is not permitted with reply papers. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537.) This rule is based on the same solid logic applied in the appellate courts, specifically, that “[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.” (*Id.* at 1538, quoting *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453; see also *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.) Where a document category is first defined in a reply, the opposing party has no meaningful opportunity to respond to it, which is precisely the harm this rule is designed to prevent.

The relief requested in the reply is not properly before the court. The reply is thus stricken without prejudice to the issue being renewed pursuant to the appropriate procedural mechanism. The motion is otherwise moot.

³ It is not clear to the court whether the document requests proposed by the DLSE pursuant to the meet and confer were agreed to by Save Mart. (See Beckwith Decl., ¶ 5.)