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1230 Rosecrans Avenue, Suite 400
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515 S. Figueroa St., Suite 1250
7 Los Angeles, CA 90071
8 (213) 488-6555
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9 Attorneys for Proposed Intervenors
10 Mack Ricks, Marlena Barr, and Christina Moore

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

13 SIMONE N. ROGERS, in a Representative
14 capacity only, and on behalf of other members
of the general public similarly situated,

15 Plaintiff,

16 vs.

17 CONAM MANAGEMENT
18 CORPORATION, a California corporation;
and DOES 1 through 10, inclusive,

19 Defendants.

Case No. 37-2020-00013563-CU-OE-CTL

Related to 37-2020-00001430-CU-OE-CTL

[Assigned to the Hon. Richard S. Whitney,
Dept. 68]

**DECLARATION OF MAJED DAKAK
IN SUPPORT OF PROPOSED
INTERVENORS' OPPOSITION TO
PLAINTIFF'S EX PARTE
APPLICATION FOR (1) REQUEST
FOR PAGA APPROVAL, AND (2)
ORDER SHORTENING TIME**

Date: July 27, 2021
Time: 8:45 a.m.
Dept.: C-68

1 I, Majed Dakak, hereby declare and state as follows:

2 1. I am an attorney at law duly admitted to practice before all courts in the State of
3 California and am a shareholder of the law firm of the Kesselman, Brantly Stockinger LLP, one of the
4 attorneys of record for Proposed Intervenor Mack Ricks, Marlena Barr, and Christina Moore
5 (collectively, "Proposed Intervenor") in the above-entitled action. I have personal knowledge of the
6 matters set forth herein, and if called upon as a witness to testify thereto, I could and would
7 competently do so.

8 2. Attached hereto as **Exhibit A** is a true and correct copy of an emailed meet and confer
9 letter outlining the type of discovery Proposed Intervenor were seeking from Settling Parties.

10 3. Attached hereto as **Exhibit B** is a true and correct copy of an email from, Adam
11 KohSweeney, counsel for the Defendant. To date, Mr. KohSweeney has not provided his client's
12 response to Proposed Intervenor's July 9, 2021 meet and confer letter.

13 4. Attached hereto as **Exhibit C** is a true and correct copy of an email from, Counsel for
14 Rogers, Eric Yaeckel.

15 5. Attached hereto as **Exhibit D** is a true and correct copy of an email from counsel of
16 Proposed Intervenor to Mr. Yaeckel.

17 6. Proposed Intervenor have reserved an *ex parte* hearing date of July 28, 2021, in order to
18 seek discovery from Settling Parties.

19 I declare under penalty of perjury under the laws of the State of California and the United States
20 that the foregoing is true and correct.

21 Executed on July 26, 2021, at Manhattan Beach, California.

22
23 

24 Majed Dakak

EXHIBIT A



KESSELMAN BRANTLY STOCKINGER LLP

1230 Rosecrans Avenue, Suite 400
Manhattan Beach, California 90266

Telephone: (310) 307-4555
www.kbslaw.com

Writer's Direct: (310) 307-4559
mdakak@kbslaw.com

July 9, 2021

Re: *Rogers v. ConAm Mgmt. Corp.*
San Diego County Superior Court Case No. 37-2020-00013563-CU-OE-CTL
Ricks v. ConAm Mgmt. Corp.
San Diego County Superior Court Case No. 37-2020-00001430-CU-OE-CTL
Meet and Confer re Discovery Requests Rising from the Roger's Settlement

Dear Counsel,

The purpose of this letter is to initiate the meet and confer process regarding the discovery we need to oppose and/or object to the settlement between Plaintiff Simone Rogers ("Rogers") and Defendant ConAm Management Corporation ("Defendant") (Rogers and Defendant collectively, the "Settling Parties").

At the Case Management Conference held on June 25, 2021, Judge Whitney stated that Plaintiffs Mack Ricks, Christina Moore, and Marleena Barr (collectively, "Ricks Plaintiffs") can conduct discovery regarding the settlement between the Settling Parties. The Court further instructed the Parties to meet and confer about the discovery needed and to reach an informal resolution. And, only if the Parties could not reach a formal agreement, that Ricks Plaintiffs can then seek *ex parte* relief to resolve the issues.

NATURE OF DISCOVERY REQUESTS

Pursuant to the Court's instructions, Ricks Plaintiffs request the following discovery:

1. All discovery conducted and/or served by the Settling Parties, including without limitation, special interrogatories, requests for admissions, form interrogatories, requests for production of documents, responses thereto, all documents produced, deposition transcripts, and/or aggrieved employee contact information.
2. All data and documents produced, reviewed, and/or analyzed by Rogers and/or her counsel in connection with the settlement, including without limitation, policies, deposition testimony, time and payroll data, aggrieved employee data, and pay period data.
3. All exposure analyses, reports, and/or opinions conducted and/or completed by Rogers, her counsel and/or any expert.
4. All documents reflecting oral and/or written communications between Rogers and Defendant and/or their counsel, including without limitation, texts, emails, letters.
5. All documents reflecting any and all settlement agreements between Rogers and Defendant, including without limitation, any drafts of settlement agreements, communications



July 9, 2021

Page 2

regarding any settlement agreements, and/or any individual settlement agreements for release of any claims, including without limitation, waivers for violation of the Fair Employment and Housing Act, Title VII, retaliation, discrimination, wrongful termination in violation of public policy, infliction of emotional distress, and Civil Code § 1542.

6. All documents reflecting any and all settlement agreements between Esther Lisa Shelley (“Shelley”) and Defendant, including without limitation, any drafts of settlement agreements, communications regarding any settlement agreements, and/or any individual settlement agreements for release of any claims, including without limitation, waivers for violation of the Fair Employment and Housing Act, Title VII, retaliation, discrimination, wrongful termination in violation of public policy, infliction of emotional distress, and Civil Code § 1542.

7. All documents reflecting any agreements between Defendant and Rogers, Shelley and/or their counsel, Sullivan & Yaeckel, which mention and/or reflect any payments to Rogers and/or Shelley which are in addition to the Settling Parties’ settlement agreement for violation of the Private Attorneys General Act (the “PAGA”), for \$550,000.00.

8. All documents reflecting any monetary payments by Defendant to Rogers, Shelley and/or any individual represented by Sullivan & Yaeckel, which are in exchange for any type of release and/or waiver of claims.

As you know the “fact that communications were made during the mediation and writings prepared for use in the mediation that are inadmissible and not subject to compulsory production ***does not mean that the underlying data, not otherwise privileged, is also immune from production.***” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131–32 (2008) (emphasis added). Moreover, this information will clearly aid the Court in making future rulings on its pending motions brought by *Roger* and *Ricks* in this case. *See id.* at 133.

CONCLUSION

Please provide your response by July 16, 2021.

Thank you,

A handwritten signature in blue ink that reads 'Majed Dakak'.

Majed Dakak

cc: Dennis S. Hyun

EXHIBIT B

Majed Dakak

From: KohSweeney, Adam P. <akohsweeney@omm.com>
Sent: Friday, July 16, 2021 4:04 PM
To: Majed Dakak; Dennis Hyun
Cc: MacDonnell, Kristin; Eric Yaeckel
Subject: RE: Rogers v. Conam - meet and confer re discovery

Majed:

I wanted to let you know that I am still reviewing the below with my client. ConAm will have a written response to you next week.

Best,

O'Melveny

Adam P. KohSweeney

akohsweeney@omm.com

O: +1-415-984-8912

M: +1-310-403-0421

O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
[Website](#) | [LinkedIn](#) | [Twitter](#)

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From: Majed Dakak <mdakak@kbslaw.com>
Sent: Friday, July 9, 2021 1:15 PM
To: KohSweeney, Adam P. <akohsweeney@omm.com>; MacDonnell, Kristin <kmacdonnell@omm.com>; Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: Dennis Hyun <dhyun@hyunlegal.com>
Subject: Rogers v. Conam - meet and confer re discovery

[EXTERNAL MESSAGE]

Counsel,

Please see our attached meet and confer letter re discovery in the *Rogers* matter.

Thanks,

Majed Dakak, Esq.
Kesselman Brantly Stockinger LLP
1230 Rosecrans Ave., Suite 400
Manhattan Beach, CA 90266

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(310) 307-4559 (Direct)
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EXHIBIT C

Majed Dakak

From: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Sent: Wednesday, July 21, 2021 2:59 PM
To: Majed Dakak; KohSweeney, Adam P.; MacDonnell, Kristin
Cc: Dennis Hyun
Subject: RE: Rogers v. Conam - meet and confer re discovery

Majeed:

Please allow this to serve as a response to your correspondence regarding discovery in this matter.

At the outset, I would like to take issue with any suggestion that the Court somehow authorized you to proceed with discovery. This issue was never before the Court until you made off handed comments after the close of the last hearing. Judge Whitney did not have any context for what, if any, discovery was at issue and certainly did nothing to suggest discovery would be granted. He cannot grant your requests for the following reasons.

1. There are No Pending Discovery Requests, Making a Meet and Confer on the Propriety of Said Discovery Premature

It is important to note that no document requests are actually pending, which makes it all the more difficult to conduct an actual meet and confer on the merits of the threatened future requests. Accordingly, the meet and confer request is premature.

By a simple read of your letter, it seems clear you intend to seek documents protected by, *inter alia*, attorney work product, settlement discussions privileges, mediation privileges and other private and/or confidential documents. Until you provide actual discovery requests, with definitions, I cannot without more, determine which objections will be needed to preserve those rights.

2. Your Actions Have Already Confirmed You do Not Need Discovery to “Oppose and/or Object to the Settlement”

Your entire request is based on the premise that you somehow do not have enough information to object to the settlement. That is patently false. You have already filed *inter alia*, (1) a 20 page status conference statement which primarily notes objections to the settlement, (2) a 31 page request for intervention (much of which is similarly dedicated to attacking the settlement).

An adequate record of over 50 pages, noting your various, objections has already been made. Any “new evidence on reply” (via the 5 page supplement you have been allowed) would also be highly prejudicial, as Plaintiff Rogers would have no chance to rebut it.

The Court already has everything needed to assess the adequacy of the settlement.

3. You have Not Cited Any Authority Which Would Allow for the Requested Discovery

You have cited no authority authorizing a third party to object to a PAGA Settlement, despite the fact that Judge Whitney has nonetheless allowed you to do so. Our prior papers provided authority directly to the contrary. Similarly, you certainly have not provided us with any authority to suggest you could get discovery to support an objection to a PAGA settlement. If you have any authority to the contrary, please provide it now.

Thanks,

Eric Yaeckel
Sullivan & Yaeckel Law Group, APC
2330 Third Ave.
San Diego, CA 92101
Phone: (619) 702-6760 Fax: (619) 702-6761
Email: Yaeckel@sullivanlawgroupapc.com
<https://sullivanlawsd.com/>

From: Majed Dakak <mdakak@kbslaw.com>
Sent: Friday, July 9, 2021 1:15 PM
To: KohSweeney, Adam P. <akohsweeney@omm.com>; MacDonnell, Kristin <kmacdonnell@omm.com>; Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: Dennis Hyun <dhyun@hyunlegal.com>
Subject: Rogers v. Conam - meet and confer re discovery

Counsel,

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Thanks,

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EXHIBIT D

Majed Dakak

From: Majed Dakak
Sent: Thursday, July 22, 2021 4:19 PM
To: Eric Yaeckel; KohSweeney, Adam P.; MacDonnell, Kristin
Cc: Dennis Hyun
Subject: RE: Rogers v. Conam - meet and confer re discovery

Mr. Yaeckel,

Your response is disappointing. Given the amount of time it took you to provide a response (over a week and a half) we believed you were actually attempting to meet and confer on the scope of discovery. It appears that you are instead engaging in purposeful delay as to this meet and confer.

You are correct that we have not formally propounded any formal discovery requests yet. This is because the judge asked us to meet and confer on discovery which we did before doing so. We also provided you with a specific items that we intend to seek in discovery. You have not specifically commented as to any of our outlined requests.

Your hard line response is that we are not entitled to any discovery and that we have "Not Cited Any Authority Which Would Allow for the Requested Discovery." We will be following the Judge's instructions and filing an ex parte motion with the Court in order to pursue our outlined discovery. Moreover, we disagree that we did not provide you with any case authority for this type of discovery. We cited to case law that allows for this type of discovery despite any issues re settlement or mediation privilege.

Given the above, we intend on filing an ex parte as instructed by our Judge. Please let us know if you plan on opposing?

Thanks,

Majed Dakak, Esq.
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Sent: Wednesday, July 21, 2021 2:59 PM
To: Majed Dakak <mdakak@kbslaw.com>; KohSweeney, Adam P. <akohsweeney@omm.com>; MacDonnell, Kristin <kmacdonnell@omm.com>
Cc: Dennis Hyun <dhyun@hyunlegal.com>
Subject: RE: Rogers v. Conam - meet and confer re discovery

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Thanks,

Eric Yaeckel
Sullivan & Yaeckel Law Group, APC
2330 Third Ave.
San Diego, CA 92101
Phone: (619) 702-6760 Fax: (619) 702-6761
Email: Yaeckel@sullivanlawgroupapc.com
<https://sullivanlawsd.com/>

From: Majed Dakak <mdakak@kbslaw.com>

Sent: Friday, July 9, 2021 1:15 PM

To: KohSweeney, Adam P. <akohsweeney@omm.com>; MacDonnell, Kristin <kmacdonnell@omm.com>; Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: Dennis Hyun <dhyun@hyunlegal.com>
Subject: Rogers v. Conam - meet and confer re discovery

Counsel,

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Thanks,

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