

<b>Jailall v Giorgio Armani Corp.</b>
2016 NY Slip Op 32187(U)
October 25, 2016
Supreme Court, New York County
Docket Number: 159532/2015
Judge: Manuel J. Mendez
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**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT:** MANUEL J. MENDEZ  
*Justice*

**PART** 13

SABRINA JAILALL, individually and on behalf of  
other persons similarly situated,  
**Plaintiff,**

**INDEX NO.** 159532/2015  
**MOTION DATE** 09/28/2016  
**MOTION SEQ. NO.** 002  
**MOTION CAL. NO.** \_\_\_\_\_

**-against-**

GIORGIO ARMANI CORPORATION, or any other  
related entities.  
**Defendants.**

The following papers, numbered 1 to 20 were read on this motion to compel and motion for a protective order.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 4; 5 - 8</u>
Answering Affidavits — Exhibits _____	<u>9 - 11; 12 - 14</u>
Replying Affidavits _____	<u>15 - 17; 18 - 20</u>

**Cross-Motion:**  Yes  No

Upon a reading of the foregoing cited papers, it is Ordered that Defendant's motion under Motion Sequence No. 002 is granted to the extent that Plaintiff is to provide authorizations for her former and/or current employers' records pertaining to information regarding Plaintiff's internship experience with Defendant, and Plaintiff's motion for a protective order under Motion Sequence No. 003 is denied.

Plaintiff commenced this class action alleging that she should have been paid wages as an employee, but was instead misclassified as an intern, when she participated in an unpaid academic internship program with Defendant. (Mot. Seq. #2 Exh. A). Issue was joined (Mot. Seq. #2 Exh. B) and the parties have since proceeded with discovery.

Defendant now moves for an Order: (1) compelling Plaintiff to produce authorizations to release her employment and internship records subsequent to her internship with Defendant; or (2) permitting Defendant to serve third-party subpoenas to obtain these records over any objection or motion to quash by Plaintiff, or in the alternative (3) to strike the allegations in the Complaint and preclude Plaintiff from producing any discovery relating to subsequent employment and internship records.

**Plaintiff opposes the motion, and moves under Motion Sequence No. 003 for a Protective Order preventing Defendant from seeking the discovery sought under Motion Sequence No. 002.**

**The Complaint alleges that Defendant employed Plaintiff, without compensation, to perform tasks such as filing, cutting and mailing checks, photocopying, scanning, data input, and other related duties. That Defendant derived a significant benefit from Plaintiff's work, and that additional employees would have been hired, or existing staff required to work additional hours, to perform the work Plaintiff engaged in. The Complaint further alleges that the Defendant did not provide any academic or vocational training, and therefore, Defendant improperly classified Plaintiff as an intern, without providing compensation in violation of the New York Labor Law.**

**Defendant argues, that based on these allegations, one of the central determinations to be made as to whether or not Plaintiff was properly classified as an intern is whether and to what extent Plaintiff benefited from the internship program. That this benefit depends on the activities Plaintiff performed, and the education and training she received. Defendant argues that documents reflecting Plaintiff's own characterization of her internship experience are directly relevant to her claims.**

**Defendant states it requested that Plaintiff produce documents reflecting her experience in the internship program, or provide authorizations for each entity she was employed by or interned for, since her internship with Defendant, to release: (1) any application forms, resumes, cover letters submitted by Plaintiff that relate in any way to the internship program with Defendant, and; (2) any documents prepared by the entity in connection with Plaintiff's application that relate to the internship with Defendant. However, Plaintiff stated she did not have any such documents in her possession, and objected and refused to provide such authorizations because other employer records are completely irrelevant, confidential and highly intrusive. (Mot. Seq. #2 Ex. E at Request and Response Nos. 4, 13, 14, and 24 & Ex. F).**

**Defendant argues that the documents sought are material and necessary, and pertain directly to Plaintiff's legal claims and the veracity of her allegations because the documents reflect Plaintiff's own representations about the activities she performed, skills and training she obtained, and the benefits she received, from the internship. Defendant also contends that to the extent Plaintiff argues that these documents are confidential, the parties have entered into a Confidentiality Stipulation that protects confidential documents. (Mot. Seq. #2 Ex. G). Defendant also argues that this requested discovery is not intrusive because it only seeks documents relevant to Plaintiff's experiences while interning, which she placed directly in issue by filing this action.**

**Plaintiff opposes the motion, and moves under Motion Sequence # 003 for a protective order, arguing that the records Defendant seeks are neither material nor**

necessary, that the requests are a fishing expedition seeking to embarrass Plaintiff, that the confidentiality stipulation would not protect her from any embarrassment or damage to her reputation, and that any benefit the discovery would have on the Defendant is outweighed by the burden placed on Plaintiff. Plaintiff also argues that the Defendant relies on a Second Circuit “primary beneficiary” of the internship standard that is only one of eleven factors contained in the New York Department of Labor internship test (Aff. In Opp. to Mot. Seq. #2 Exh. A), and that the New York test is a lot more stringent in determining whether an unpaid internship is justified.

Plaintiff contends that any records from her current or former employer’s are completely irrelevant to the claims alleged because what is relevant is the nature of her work performed during the internship, specifically the hours worked, the tasks performed, and whether the internship program provided an educational experience. That Defendant does not present any evidence that these subsequent employer’s even possess the requested documents, or that Defendant cannot obtain this information from sources other than Plaintiff’s third-party employers.

Plaintiff further argues that any information regarding the nature of the internship and the interns activities while in the internship would be available directly from Defendant, and that Defendant is in a better position to obtain the information they seek regarding their own program. Plaintiff also contends that information regarding whether Plaintiff received any benefit from the internship is solely within Plaintiff’s knowledge that could be obtained through a deposition or interrogatories, that Plaintiff provided her three-page LinkedIn profile which contains her own characterization of the work performed as an intern, and that Defendant is already in receipt of Plaintiff’s college reflection papers regarding her internship experience. (Mot. Seq. #3 Exh. B).

Plaintiff also contends that Defendant seeks discovery going to the merits of the claim, and that this information is irrelevant for purposes of Plaintiff’s anticipated class certification motion. Plaintiff argues that any further inquiry into the merits of Plaintiff’s employment relationship directly implicates the merits of the litigation and would be inappropriate during this pre-class certification stage.

CPLR § 3101(a) allows for the “full disclosure of all evidence material and necessary in the prosecution or defense of an action regardless of the burden of proof.” CPLR § 3124 grants the court the power to compel a party to provide discovery demanded. CPLR § 3126 grants the court the power to sanction a party that fails to comply with a court’s discovery order.

Pursuant to CPLR § 3124, the Court may compel compliance upon failure of a party to provide discovery. It is within the Court’s discretion to determine whether the materials sought are “material and necessary” as a legitimate subject of inquiry or are being used for purposes of harassment to ascertain the existence of evidence (see *Roman Catholic Church of the Good Shepherd v. Tempco Systems*, 202 A.D. 2d 257,

608 N.Y.S. 2d 647 [1<sup>st</sup> Dept., 1994]. “The words ‘material and necessary’ as used in section 3101 must be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist in preparation for trial by sharpening the issues and reducing delay and prolixity” (Kapon v. Koch, 23 N.Y.3d 32, 38, 11 N.E.3d 709, 988 N.Y.S.2d 559 [2014] citing to, Allen v. Crowell–Collier Publishing Co., 21 N.Y.2d 403, 406, 288 N.Y.S.2d 449, 452, 235 N.E.2d 430, 432 [1968]).

CPLR §3103(a) states in part, that the court may “make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.”

Defendant is entitled to authorizations for records that pertain only to Plaintiff’s characterization of her internship experience with Defendant in connection with her application for employment within Plaintiff’s former or current employer’s possession, if any, and any documents prepared by Plaintiff’s former or current employer in connection with Plaintiff’s application for employment pertaining to Plaintiff’s characterization of her internship experience with Defendant, if any. Defendant is not entitled to Plaintiff’s entire employee files, nor did Defendant make such a demand in its discovery requests. Plaintiff’s conclusory assertions that permitting such discovery would result in embarrassment, disadvantage, or prejudice is not sufficient to deny materially relevant evidence. The information sought by the Defendant directly bears on Plaintiff’s assertions in the Complaint that she was not provided any vocational or educational experience while interning, and that she was actually in fact an employee owed at least minimum wage for the work she performed. At the very least, the information contained in the requested documents, if any is available, would either contradict or support Plaintiff’s allegations, which would assist in preparation for trial.

ACCORDINGLY, it is Ordered that Defendant’s motion to compel is granted to the extent stated herein, and Plaintiff’s motion for a protective order is denied, and it is further,

ORDERED, that within thirty (30) days of the service of a copy of this Order with Notice of Entry, Plaintiff is to provide authorizations for her former and/or current employer’s since interning for Defendant in 2013, only for the release of Plaintiff’s records pertaining to her characterization of her internship experience in her submissions for employment, and it is further,

ORDERED, that within thirty (30) days of the service of a copy of this Order with Notice of Entry, Plaintiff is to provide authorizations for her former and/or current employer’s since interning for Defendant in 2013, for the release of documents prepared in connection with Plaintiff’s application for employment pertaining only to Plaintiff’s characterization of her internship experience with Defendant, and it is further,

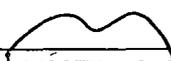
ORDERED, that the remainder of the relief requested by Defendant in Motion Sequence No. 002, is denied, and it is further,

ORDERED, that Plaintiff's motion for a protective order under Motion Sequence No. 003 to prevent the discovery of the evidence sought in Motion Sequence No. 002, is denied, and it is further,

ORDERED, that the parties appear for a Compliance Conference in IAS Part 13, 71 Thomas St., Room 210, New York, New York 10013, on January 18, 2017, at 9:30 a.m.

ENTER:

Dated: October 25, 2016

  
\_\_\_\_\_  
MANUEL J. MENDEZ  
J.S.C.

MANUEL J. MENDEZ  
J.S.C.

Check one:     FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST                       REFERENCE