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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 **EQUAL EMPLOYMENT OPPORTUNITY**
COMMISSION,

12 Plaintiff,

13 and

14 **RAUL GUTIERREZ,**

15 Plaintiff-Intervenor

16 v.

17 **INTERSTATE HOTELS, L.L.C., et al.,**

18 Defendants.
19

Civil Action No. C-04-4092 WHA

~~-[proposed]-~~

**ORDER RE: PLAINTIFF EEOC'S
REQUEST TO COMPEL
PRODUCTION OF PERSONNEL
FILES**

20 Plaintiff Equal Employment Opportunity Commission (EEOC)'s July 5, 2005
21 request for an Order compelling Defendant Interstate Hotels, L.L.C. to produce the
22 personnel files of Caucasian employees in Defendant's Food and Beverage Department
23 at the Marriott Fisherman's Wharf hotel, including in particular the personnel file of
24 employee Allen Warner, was heard by the Court by telephone on August 16, 2005. All
25 parties appeared through their respective counsel. Having considered the letters and
26 evidence submitted, and heard the arguments of the parties, the Court now issues the
27 following Order:

28 The Court hereby grants the EEOC's request to obtain information from the

1 personnel files of Caucasian employees in Defendant's Food and Beverage Department
2 subject to the following conditions:

3 1. Defendant is obligated to produce information regarding Food and Beverage
4 Department Caucasian employees who worked at least forty (40) days during the
5 time period of Department Manager Cushroo Elavia's employment.

6 2. Defendant has two options for the manner of production of that information.
7 Defendant's options are:

8 a. Produce the information in the form of a sworn interrogatory response.
9 Said response will contain, as to each employee: his or her full name; race;
10 national origin; primary language; dates of employment; career path
11 (including all job titles, promotions and demotions, and dates of same);
12 any disciplinary memos or actions; any documents reflecting
13 consideration of discipline or disciplinary possibilities; any complaints
14 about Elavia; performance evaluations; any references to national origin
15 or race; any request for, grants of, or other documents reflecting vacation,
16 personal time off, and sick leave.

17 If Defendant chooses this option, within three (3) days of
18 Defendant's provision of its interrogatory response, Plaintiff EEOC can
19 designate five (5) files of its choosing to verify whether Defendant's
20 response is an accurate summary of the files. If Plaintiff EEOC finds it to
21 be, Defendant has then fulfilled its obligation. If Plaintiff EEOC finds that
22 Defendant's response is not a reasonable summary, then Defendant must
23 immediately produce all the files to Plaintiff EEOC.

24 The Court advises Defendant that if it intends to use material from
25 any of these files in its case in chief, the production of this interrogatory
26 response does not absolve Defendant of its disclosure obligations under
27 Federal Rule of Civil Procedure Rule 26(a).

28 b. As an alternative manner of production, Defendant may instead produce

1 the actual personnel files to Plaintiff EEOC. Defendant may accomplish
2 this either by copying the files and providing the copies to Plaintiff
3 EEOC, or by making the files available to Plaintiff EEOC and allowing
4 Plaintiff EEOC to copy the documents it chooses. The Court advises
5 Plaintiff EEOC that its selection of documents for copying should be
6 reasonable, using the categories of information designated in Paragraph
7 2.a. above as guidelines for the types of documents to be copied. EEOC
8 trial attorney Cindy O'Hara should conduct the review of the documents.

9 Whichever option Defendant chooses, production should take place no later than
10 two weeks from the date of the hearing, in other words, no later than August 30, 2005.

11 IT IS SO ORDERED.

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13
14 Dated: August 24, 2005 _____



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18 Approved as to form:

19 Dated: August 19, 2005
20 _____/S/_____

21 Joan Herrington, Counsel for Plaintiff
22 Intervenor Raul Gutierrez

Dated August 19, 2005
_____/S/_____

Michael Hoffman, Counsel for
Defendants Interstate Hotels, L.L.C.; HMC
Acquisition Properties, Inc.; John Trovato;
and Penny Richardson

23
24 E-filing concurrence: I, Cindy O'Hara, attorney for Plaintiff EEOC, in submitting this
25 proposed order, certify that I have obtained the concurrence as to form from Ms.
26 Herrington and Mr. Hoffman.
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